



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.01.2005
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Proposal for a

COUNCIL DECISION

Extending the period of application of the measures in Decision 2002/148/EC concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. On 18 February 2002, the Council of the European Union decided to take “appropriate measures” against Zimbabwe¹ following the conclusion of the consultations held under Article 96 of the ACP-EC Partnership Agreement². These measures included the suspension of financing of budgetary support and support for projects, as well as the suspension of the signature of the 9th EDF National Indicative Programme, but explicitly did not affect the contributions to operations of a humanitarian nature and projects in direct support to the population, in particular those in social sectors, democratisation, respect for human rights and the rule of law. They also included the suspension of Article 12 of Annex 2 to the ACP-EU Partnership Agreement, concerning current payments and capital movements, in so far as required for the application of further restrictive measures, and in particular the freezing of funds.
2. The stated reason for introducing these measures was the serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly. A more immediate reason was the attempts by the Zimbabwean government to prevent free and fair elections, notably by refusing access for international election observers and for the media.
3. According to Article 2 (3) of the Decision of 18 February 2002, the measures shall apply for a period of twelve months. According to the same provision, the measures will be revoked once conditions prevail which ensure respect for human rights, democratic principles and the rule of law.
4. On two occasions, on 18 February 2003³ and 19 February 2004⁴, the Council, taking into account that the essential elements referred to in Article 9 of the ACP-EC Partnership Agreement continued to be violated by the Government of Zimbabwe and that the conditions in this country did not ensure respect for human rights, democratic principles and the rule of law, decided to extend for two additional periods of 12 months until 20 February 2004 and 20 February 2005, respectively, the appropriate measures against Zimbabwe.
5. Since February 2004 there has been no progress on the five issues identified by the Article 96 consultations and no commitments from the Government of Zimbabwe to remedy to the situation or willingness to accept “benchmarks” on the above mentioned five core issues, as convergence points for a constructive dialogue as concrete steps for measuring progress. On the contrary, the current situation in

¹ Cf. Council Decision 2002/148/EC (OJCE L50/64 of 21.02.2002. Furthermore (see GAC Conclusions of 18 February 2002) the Council adopted as well targeted CFSP sanctions (Council Common Position 2002/145/CFSP and Council Regulation (EC) N°310/2002 concerning certain restrictive measures in respect of Zimbabwe; OJCE L50/1-12).

² Art. 96 consultations were open with a view to agreeing on measures to be taken by the Government of Zimbabwe to remedy the situation, in particular on five issues (end to all official tolerance to political violence; early invitation to international partners to support and observe coming elections and full access to that end; protection of the freedom of mass media; independence of the judiciary and the respect for its decisions and end to illegal occupation of properties).

³ OJEU, L46 of 20.02.2003, page 25.

⁴ OJEU, L50 of 20.02.2004, page 60.

Zimbabwe continues being a matter of great concern and several reports from the Heads of Missions⁵ in Harare have provided detailed information on the unchanged situation and even deterioration in some fields.

6. The expiration of the current period of application intervenes only one month before the upcoming Parliamentary elections⁶. This fact would justify postponing the adoption of any EU position on the substance until after the elections. This would allow time for the EU position to be reviewed based on an in-depth assessment of the situation in the aftermath of the elections and, if conditions require, leading to the re-opening of consultations with the Government of Zimbabwe.
7. In view of the absence of progress and commitments on the part of the government of the Republic of Zimbabwe, a prorogation of a further twelve months would be justified, as in the two previous reviews in 2003 and 2004. In view of the Parliamentary elections it is, however, proposed that the application of the Council Decision be extended for a further period ending the 31 July 2005. Given that the proposed decision concerns only an extension in time of the existing appropriate measures without any modification of the substance, it is not necessary to reopen consultations with the Republic of Zimbabwe under Art. 96 of the ACP-EU Partnership Agreement.
8. The decision is to be kept under constant review and the measures should be revoked once conditions prevail which ensure respect for human rights, democratic principles and the rule of law.

⁵ Cf. HOMs report of 25.05.2004 on the humanitarian situation, HOMs report of 25.05.2004 on elections in Zimbabwe, HOMs report of 03.09.2004 on the position to be adopted by the EU in light of upcoming events in Zimbabwe and HOMs report of 02.12.04 on Zimbabwe NGO Bill.

⁶ The Parliamentary elections have been scheduled for March 2005 but they have not been officially called yet.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 300(2), second subparagraph thereof,

Having regard to the Internal Agreement on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000⁷, as put into provisional application by Decision 2000/771/EC of the Representatives of the Governments of the Member States of 18 September 2000⁸, and in particular Article 3 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) By Council Decision 2002/148/EC⁹, the consultations with Zimbabwe under Article 96(2)(c) of the ACP-EC Partnership Agreement were closed and appropriate measures, as specified in the annex to that Decision were taken.
- (2) By Decision 2004/157/EC¹⁰, the application of the measures referred to in Article 2 of Decision 2002/148/EC, which were extended until 20 February 2004 by Article 1 of Decision 2003/112/EC¹¹, has been extended for a further period of 12 months. In accordance with Article 1 of Decision 2004/157/EC, the measures shall cease to apply on 20 February 2005.
- (3) The essential elements cited in Article 9 of the ACP-EC Partnership Agreement continue to be violated by the Government of Zimbabwe and the current conditions in Zimbabwe do not ensure respect for human rights, democratic principles and the rule of law.
- (4) The period of application of the measures should therefore be extended.

⁷ OJ L 317, 15.12.2000, p. 376.

⁸ OJ L 317, 15.12.2000, p. 375

⁹ OJ L 50, 21.2.2002, p. 64.

¹⁰ OJ L 50, 20.2.2004, p. 60.

¹¹ OJ L 46, 20.2.2003, p. 25.

HAS DECIDED AS FOLLOWS:

Article 1

The application of the measures referred to in Article 2 of Decision 2002/148/EC, which were extended until 20 February 2004 by Article 1 of Decision 2003/112/EC and until 20 February 2005 by Article 1 of Decision 2004/157/EC, shall be extended until 31 July 2005. They shall be kept under constant review.

The letter appearing in Annex to this Decision shall be addressed to the President of Zimbabwe.

Article 2

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Done at Brussels,

For the Council
The President

ANNEX

Brussels,

LETTER TO THE PRESIDENT OF ZIMBABWE

The European Union attaches the utmost importance to the provisions of Article 9 of the ACP-EC Partnership Agreement. As essential elements of the Partnership Agreement, respect for human rights, democratic institutions and the rule of law are the basis of our relations.

By letter of 19 February 2002, the European Union informed you of its decision to conclude the consultations held under Article 96 of the ACP-EC Partnership Agreement and to take certain 'appropriate measures' within the meaning of Article 96(2)(c) of that Agreement.

By letters of 19 February 2003 and 19 February 2004, the European Union informed you of its decisions not to revoke the application of the 'appropriate measures' and to extend the period of application until 20 February 2004 and 20 February 2005 respectively.

Today, after 12 months, the European Union considers that democratic principles are still not upheld in Zimbabwe and that no progress has been achieved by the Government of Zimbabwe in the five fields addressed by the 18 February 2002 Council Decision (end of politically motivated violence, free and fair elections, freedom of the media, independence of the judiciary, end of illegal occupations).

In the light of the above, the European Union does not consider that the appropriate measures can be revoked and it has decided to extend the period of its application until after the holding of the Parliamentary elections in your country foreseen for March 2005.

The European Union would like to emphasise that it attaches a paramount importance to the holding of free and fair Parliamentary elections and, to this effect, it hopes that you and your Government will do everything you can to ensure that the overall electoral environment is conducive to the holding of free and fair elections. This would enable to engage in a dialogue on the basis of the ACP-EC Partnership Agreement, which could lead to the lifting of the suspension of the signing of the 9th EDF National Indicative Programme for Zimbabwe thereby making possible the resumption of full co-operation instruments in the near future.

Yours faithfully,

For the Commission

For the Council