



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.10.2006
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Proposal for a

COUNCIL DECISION

**amending Decision 2004/793/EC concluding the consultation procedure with the
Togolese Republic under Article 96 of the Cotonou Agreement**

(presented by the Commission)

EXPLANATORY MEMORANDUM

Given the recurrent failure to respect democratic principles and human rights in Togo, the European Union concluded in 2004 that the political situation was a violation of Article 9 of the revised Cotonou Agreement¹ and opened consultations with Togo under Article 96 of the Agreement.

During these consultations the Togolese government gave 22 undertakings relating to the restoration of democracy and the reinforcement of respect for human rights and fundamental freedoms, including:

- a return to democracy through a resumption of dialogue with the traditional opposition and civil society, including a revision of the electoral arrangements. Local and parliamentary elections would be organised within this new framework. Democratisation would be underpinned by a process of decentralisation;
- strengthening of human rights and fundamental freedoms. The government would ensure that there is no torture or other inhuman or degrading treatment and uphold freedom of expression and information, the right of assembly, and freedom of movement. There were also plans to revise the articles of association and terms of reference of the National Commission for Human Rights (CNDH) and High Authority for Audiovisual and Communications (HAAC), to free political prisoners and to speed up the processing of people remanded in custody;
- strengthening the rule of law, in particular the justice system.

At the end of 2004 considerable efforts had been made and many undertakings had been or were being honoured.

The death of President Eyadema on 5 February 2005 triggered a new political crisis in the country, which saw backsliding on many undertakings and an unprecedented deterioration in the human rights situation, especially at the time of the “constitutional” coup of 6 February 2005 and the disputed presidential elections of April 2005. There were, depending on the source, 150 to 500 deaths. The violence in the country led 40 000 Togolese to seek refuge in Benin and Ghana. This situation was confirmed by the first monitoring mission under the Council Decision, which took place in July 2005.

A United Nations fact-finding mission was carried out in June 2005, and the resulting report on human rights violations in Togo before, during and after the April presidential elections was published in September 2005. This report particularly criticises the immunity from prosecution enjoyed by the perpetrators of the violence and one party’s use of the army to hold on to power.

The opposition contested the legitimacy of the new president-elect, Faure Gnassingbe. On 12 May 2005 the European Parliament adopted a resolution along the same lines.

Under pressure from the international community, the new president embarked on a policy of openness. A prime minister from the moderate opposition was appointed on 8 June 2005, and

¹ OJ L 287, 28.10.2005, p. 4.

a government including a number of ministers from the moderate opposition was formed on 20 June. In particular, the justice portfolio was given to a member of the opposition. President Gnassingbe and the government made fulfilling the 22 undertakings given to the European Union central to their political project.

Regular and significant progress has since been made towards honouring the undertakings given, without overlooking the two new issues raised by the events of 2005, namely refugees and the role of the army. These measures have been carried out in a difficult situation attributable to a conservative faction in the government and armed forces.

The main steps taken, as recorded by the second follow-up mission in March 2006 and the latest political developments to August 2006, can be summarised as follows:

- In the media field, the new press code of August 2004, which is considered one of the most liberal in the subregion, is being applied, the situation in the official media has improved, with the abolition of the personality cult and the provision of greater access to political parties, and the High Authority for Audiovisual and Communications (HAAC) has been reconstituted.
- In the field of justice, President Gnassingbe denounced a slow, corrupt judicial system in a hard-hitting speech in August 2005. The political prisoners arrested during the events of 2005, prisoners held on remand for excessively long periods and 11 soldiers held incommunicado since 2001 have all been released. Prison conditions have improved, and a programme of judicial reform has been finalised with the UNDP and is beginning to be implemented.
- August 2006 saw genuine political dialogue with the country's historic opposition, as identified in the Lomé framework agreement. At the opposition's request, the open agenda encompassed not only electoral arrangements but institutional issues, the reform of the armed forces, refugees and the dispute arising from the recent presidential elections. The dialogue produced a comprehensive political agreement covering all the issues on the agenda; it was signed by all parties on 20 August.
- The Togolese authorities have embarked on a number of measures to reform the country's armed forces by separating the functions of national defence and internal security and by limiting the army's role in civilian life. A new armed forces act is being drawn up. In May 2006 civilians replaced soldiers at the head of the country's revenue agencies, and in particular the customs and tax department. Though the first steps towards increasing the staffing of the police and gendarmerie were not as transparent as they might have been, matters are expected to improve.
- For refugees, the main problem is to restore a climate of confidence so that they can return to their homes; the government has adopted a plan to bring refugees home and decided to suspend proceedings against those who may have committed offences. In July and August 2006 the decline in political tension saw large numbers of refugees return home.

The question of undertaking 2.6, which concerns tackling impunity, remains unresolved. There has been no sign of any sanctions against the perpetrators of violence. The opening of an office of the UN High Commissioner for Human Rights is nevertheless a crucial and encouraging step in the right direction.

As regards the restoration of democracy, the inter-Togolese dialogue has produced a political consensus. The agreement signed focuses on the drafting of the electoral arrangements necessary for parliamentary elections to go ahead. It goes beyond the undertakings given to the European Union by addressing other substantive issues fundamental to lasting national reconciliation, including constitutional and armed-forces reforms.

With regard to the parliamentary elections, which are the crux of the process of resuming cooperation with Togo, most of those consulted by the two monitoring missions stated that time should be taken to organise them properly, and especially to establish a credible electoral register. The end of the present assembly's term of office, in November 2007, is, however, a cut-off date.

The Togolese authorities have taken resolute steps in the right direction. The political crisis of the first half of 2005 caused the initial timetable laid down for the 22 undertakings to be overrun, but the headway now being made suggests that the undertakings could be fulfilled in 12 to 24 months.

In view of the above, and in accordance with Articles 9 and 96 of the Cotonou Agreement, the Commission proposes that the Council extend for 24 months the period of application of the Council Decision of 15 November 2004, make minor adjustments to the appropriate measures concerning unexpended resources from earlier EDFs and, therefore, adopt the annexed Decision.

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COUNCIL DECISION

**amending Decision 2004/793/EC concluding the consultation procedure with the
Togolese Republic under Article 96 of the Cotonou Agreement**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States of the other part, signed in Cotonou on 23 June 2000², and revised in Luxembourg on 25 June 2005³,

Having regard to the internal agreement between the representatives of the governments of the Member States, meeting within the Council, on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership Agreement⁴, and in particular, Article 3 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Council Decision 2004/793/EC of 15 November 2004 concluding the consultation procedure with the Togolese Republic under Article 96 of the Cotonou Agreement lays down a period of 24 months from the date of its adoption for monitoring the appropriate measures⁵.
- (2) The political emergency following President Eyadema's death in 2005 was an unforeseen event that set back the initial timetable for implementing the undertakings given by the Togolese government and prevented the objectives from being attained by the initial deadline.
- (3) At the end of the monitoring period many undertakings have been fulfilled and practical steps taken towards fulfilling the main undertakings still outstanding. Nevertheless several important measures concerning essential elements of the Cotonou Agreement have yet to be implemented,

² OJ L 317, 15.12.2000, p. 3.

³ OJ L 287, 28.10.2005, p. 4.

⁴ OJ L 317, 15.12.2000, p. 376.

⁵ OJ L 349, 25.11.2004, p. 17.

HAS DECIDED AS FOLLOWS:

Article 1

The validity of Decision 2004/793/EC concluding the consultation procedure with the Togolese Republic under Article 96 of the Cotonou Agreement is extended for 24 months, to 15 November 2008. It will be reviewed every six months.

Article 2

The measures adopted in Decision 2004/793/EC as appropriate measures within the meaning of Article 96(2)(c) of the Cotonou Agreement remain unchanged, subject to the adjustments specified in the draft letter in the annex to this Decision.

Article 3

This decision shall enter into force on the day it is adopted. It shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President

ANNEX

For the attention of the Prime Minister, head of government of the Togolese Republic

Prime Minister,

The European Union attaches great importance to Article 9 of the Cotonou Agreement. The ACP-EU partnership is founded on respect for human rights, democratic principles and the rule of law; these are essential elements of the Agreement and thus form the basis for relations between us.

In 2004 the European Union felt that the political situation in Togo violated these essential elements and, in April 2004, opened consultations under Article 96 of the Cotonou Agreement, during which the government gave 22 undertakings. The conclusions of these consultations were communicated to the head of government in a letter dated 15 November 2004.

The appropriate measures provide for a 24-month monitoring period, which ends on 14 November 2006. This period has seen an enhanced political dialogue, illustrated inter alia by the joint monitoring missions conducted by the Council and the Commission in July 2005 and March 2006.

Monitoring of the undertakings shows that the situation had improved considerably by the end of 2004, only to worsen during the events that followed the death of President Eyadema in 2005. Since June 2005 a policy of openness has been pursued, and reports show a considerable and sustained improvement in the situation, as exemplified by the recent comprehensive political agreement, for which we congratulate the authorities and all stakeholders in Togo.

Among the main initiatives taken, we would highlight:

- the formation of a bridge-building government including members of the opposition;
- the implementation of the new press code, the efforts to provide more balanced news coverage in the official media and the initial reshuffle in the High Authority for Audiovisual and Communications;
- the adoption of the programme of judicial reform, the release of political prisoners arrested during the events of 2005 and the improvement in prison conditions;
- the holding of a genuine political dialogue in Togo, which has enabled all parties to address all unresolved issues on the basis of an open agenda. This dialogue resulted in the signing of a comprehensive political agreement by all participants on 20 August. The agreement signed is intended to lay the foundations for lasting national reconciliation and goes beyond the undertakings given to the European Union. In addition to issues relating to the electoral arrangements and impunity, it addresses the continuation of constitutional and armed-forces reforms;

- the signing, on 10 July 2006, of a protocol with the UN High Commissioner for Human Rights concerning the opening of an office in Lomé to help the government and monitor human rights in Togo.

We also take note of the fact that measures related to the 22 undertakings, though not strictly covered by them, have begun to be implemented. These measures are the reform of the army by separating national defence from internal security missions and the issue of refugees, for whom the first thing to be done is to restore confidence.

There is no doubt that the measures taken will help restore democracy and respect for human rights and that they are steps towards fulfilling the undertakings given.

In view of this, the European Union would like to state its expectations, namely:

- the consolidation of the progress made, which must be confirmed at the next elections;
- the implementation of the electoral arrangements accepted by all the parties and laid down in the comprehensive political agreement, which paved the way for free and transparent parliamentary elections;
- the establishment of a legal framework for the financing of political parties;
- the continuation of the decentralisation process;
- the resolution of the issue of impunity, as stated in undertaking 2.6 annexed to our previous letter of 15 November 2004, and the guarantees for the observance of human rights, as stated in undertaking 2.1;
- the revision of the articles of association and composition of the National Commission for Human Rights.

Aware of the headway being made in Togo and the ground still to be covered, the European Union has decided to extend the monitoring period for the Decision of 15 November 2004 to 48 months to give the Togolese authorities time to fulfil all the undertakings given.

The appropriate measures communicated to you in our letter of 15 November 2004 remain applicable.

The unexpended balances of the 6th and 7th EDFs will be used according to the objectives laid down in the appropriate measures to support the holding of parliamentary elections, to finance a technical cooperation facility to support, inter alia, the fulfilment of the 22 undertakings, to support a programme to reform the justice system and raise awareness of human rights, and to finance a welfare programme of highly labour-intensive works.

I have the honour to be, Sir, yours faithfully,

Done at Brussels,

For the Commission

For the Council