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Proposal for a

COUNCIL DECISION

on adapting and extending the period of application of the appropriate measures first established by Decision 2002/148/EC concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement

EXPLANATORY MEMORANDUM

1. On 18 February 2002, the Council of the European Union decided to take "appropriate measures" against Zimbabwe¹ following the consultations under Article 96 of the ACP-EC Partnership Agreement². These measures included the suspension of budgetary support, support for projects, and the signature of the 9th EDF National Indicative Programme, but explicitly did not affect contributions to humanitarian operations and projects in direct support of the population, in particular in the social sectors, democratisation, human rights and the rule of law. They also included suspension of Article 12 of Annex 2 to the ACP-EC Partnership Agreement, concerning current payments and capital movements, in so far as required for application of further restrictive measures, in particular for freezing funds.
2. The reasons stated for introducing these measures were the serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly. The attempts by the Government of Zimbabwe to prevent free and fair elections, notably by refusing access for international election observers and for the media were another reason.
3. Under Article 2(3) of the Decision of 18 February 2002, the measures were to apply for a period of twelve months, but would be revoked once the prevailing conditions ensured respect for human rights, democratic principles and the rule of law.
4. On nine occasions, on 18 February 2003³, 19 February 2004⁴, 17 February 2005⁵, 14 February 2006⁶, 19 February 2007⁷, 18 February 2008⁸, 20 February 2009⁹, 15 February 2010¹⁰ and 16 February 2011 the Council concluded 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 prevailing conditions did not ensure respect for human rights, democratic principles and the rule of law, and decided to extend the measures against Zimbabwe, each time for a further period of 12 months.
5. The Global Political Agreement (GPA), a power sharing agreement between the three main political parties (ZANU PF, MDC-T, MDC-M), was concluded in September 2008, following elections in March 2008. The GPA allowed for the establishment of the Government of National Unity (GNU), comprised of the leaders of each of the three parties, in February 2009.

¹ Cf. Council Decision 2002/148/EC (OJ L 50, 21.02.2002, p. 64. Furthermore (see GAC conclusions of 18 February 2002) the Council adopted targeted CFSP measures (Council Common Position 2002/145/CFSP and Council Regulation (EC) No310/2002 concerning certain restrictive measures in respect of Zimbabwe, OJ L 50, 21.02.2002, pp. 1-12).

² Article 96 consultations were opened 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 of political violence; early invitation to international partners to support and observe forthcoming elections and full access to that end; protection of the freedom of mass media; independence of the judiciary and respect for its decision; and end to illegal occupation of properties).

³ OJ L 46, 20.02.2003, p. 25.

⁴ OJ L 50, 20.02.2004, p. 60.

⁵ OJ L 48, 19.02.2005, p. 28.

⁶ OJ L 48, 18.02.2006, p. 26.

⁷ OJ L 53, 22.02.2007, p. 23.

⁸ OJ L 51, 26.02.2008, p. 19.

⁹ OJ L 49, 20.02.2009, p. 15.

¹⁰ OJ L 44, 16.02.2010, p. 20.

6. The EU supports the GNU in its entirety which presently constitutes the only political framework for restoring democracy. The GPA sets out a series of reforms which address EU concerns on human rights, rule of law and democratic principles such as the elaboration of a new constitution, a land audit, a national healing process, independence of the media etc. Its implementation is essential for the conduct of credible elections.
7. Since February 2009, the GNU has taken effective steps for the economic and social stabilization of the country. While the implementation of political reforms remains slow, the overall situation, including political space and dialogue, keeps improving. Nevertheless, the transition is still fiercely resisted by those who have the most to lose.
8. Upon request of the Zimbabwean Government, a Ministerial Troika took place on 18-19 June 2009. The Zimbabwean Delegation to Brussels was led by Prime Minister Morgan Tsvangirai. On this occasion, Article 8 political dialogue was launched and was subsequently followed-up by an EU Troika visit to Zimbabwe on 11-12 September 2009. The objective of the political dialogue is to progressively normalize EU-Zimbabwe relations along the implementation of the reforms necessary for democratic elections. Normalization of relations foresees the eventual lifting of Article 96 and also the revision of the Common Foreign and Security Policy Common Position¹¹.
9. As part of the overall re-engagement process, steps were taken in 2010 and 2011 to recalibrate EU measures in support of the GPA: 1) appropriate measures were modified in 2010 to allow support to institutions and processes related to the GPA implementation; 2) the European Commission prepared ad-hoc short-term responses to support the stabilization of the GNU and its reform program; and 3) in September 2010, Zimbabwe was notified of its allocation under the 10th European Development Fund.
10. EU support (around 90 million per year, including humanitarian aid) has made an important contribution to Zimbabwe's socio-economic recovery, restoring confidence and generating a sense of hope within the population. EU support to strengthen GPA related processes and institutions have helped enhance democratic space and supported the efforts of the region and reformers. Nevertheless, remaining restrictions on development assistance are used by conservative political forces to hamper political progress.
11. In 2011 the Southern African Development Community (SADC), under the leadership of President Zuma, has stepped-up its engagement on Zimbabwe. As facilitator in of the transitional process, South Africa has succeeded in aligning SADC Member States behind a firm line *vis à vis* ZANU PF and has resisted pressure for early elections. South Africa and SADC are currently engaging the GNU in an effort to establish an environment conducive to credible elections. Concerted regional efforts aim at ensuring that elections will take place only after reforms are implemented, including the adoption of a new constitution.

¹¹ 2009/68/CFSP of 26.01.09.

12. The relationship between South Africa and the EU on Zimbabwe has substantially deepened over the past two years, with increasingly converging views, creating opportunities for enhanced collaboration, even though South Africa, SADC and the three political leaders in Zimbabwe consider EU measures as an impediment.
13. The delayed constitutional process should culminate in a referendum during the first semester of 2012. The agreement on a draft constitution between the three parties and subsequent referendum will be an important stepping stone on the road to elections. Elections are expected to take place at the earliest in the second half of 2012, and at the latest early 2013 when they are legally due. As spelt out in the draft roadmap for elections, the adoption of the new constitution, agreement on a set of electoral reforms (including the establishment of a new voters' roll and the delineation of new constituencies) together with measures related to the opening of political space (i.e. media reforms, freedom of assembly) will be crucial steps towards credible elections.
14. The period leading up to and directly following the election is likely to be decisive for the future direction of Zimbabwe, and with implications for the Southern African region. At this critical juncture, it is important to calibrate EU instruments to best achieve the EU's objective which remains Zimbabwe's democratic transition toward peace and prosperity. The EU should make every effort to support the window of opportunity created by the GPA and the GNU, by supporting the efforts of the region and reformers, and help to overcome polarization.
15. Progress in the implementation of the GPA has been mixed. However it is important to further encourage the region and reformers and to adapt EU's instruments strategically to the political dynamics in Zimbabwe. It is therefore proposed:
 - That the Council extends the existing Article 96 measures for a period of six months only. This will align Article 96 to expected in-country political developments. Progress in constitutional and electoral processes will be reviewed after 6 months, anticipating that the Constitutional referendum would have been completed by then.
 - Engage the GNU to prepare a Country Strategy Paper (CSP) in the framework of the European Development Fund.
 - To intensify the political dialogue between the EU and the GNU and to define further steps towards normalization¹² in response to concrete achievements preparing for credible elections. In this context, the EU would welcome a visit of the Zimbabwe re-engagement committee in Brussels.
 - The EU will consider lifting the restrictions on development cooperation in light of concrete progress in the preparation of peaceful elections
16. The Commission proposes to inform the Government of Zimbabwe about the change in EU policy by way of a letter to be addressed to President Mugabe and copied to the two other Principals of the GNU, Prime Minister Tsvangirai and Welshman Ncube.

¹² including signing the CSP and granting access to Zimbabwe programmable envelop under the EDF.

Conclusion

In light of the above, the Council is requested to adopt the attached draft proposal for a Council Decision extending the period of application of the appropriate measures to Zimbabwe.

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on adapting and extending the period of application of the appropriate measures first established by Decision 2002/148/EC concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

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 2000¹³ and revised in Ouagadougou, Burkina Faso, on 23 June 2010¹⁴, hereinafter referred to as "the ACP-EC Partnership Agreement", and in particular Article 96 thereof,

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 Agreement¹⁵, and in particular Article 3 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By Decision 2002/148/EC¹⁶, the consultations with the Republic of Zimbabwe under Article 96(2)(c) of the ACP-EC Partnership Agreement were concluded and appropriate measures, as specified in the Annex to that Decision, were taken. These measures have been updated and extended each year since then.
- (2) By Decision 2011/106/EU¹⁷ the measures were extended and adapted for a further period of 12 months until 20 February 2012.
- (3) In the meantime, the creation of the Government of National Unity (GNU) was recognized as an opportunity to re-establish a constructive relationship between the European Union and Zimbabwe and to support the implementation of its reform programme.

¹³ OJ L 317, 15.12.2000, p. 3.

¹⁴ OJ L 287, 4.11.2010, p. 3.

¹⁵ OJ L 317, 15.12.2000, p. 376.

¹⁶ OJ L 50, 21.2.2002, p. 64.

¹⁷ OJ L 44, 16.2.2010, p.20.

- (4) While the overall situation has improved, the implementation of political reforms remains slow, certain essential elements of the ACP-EC Partnership Agreement, to which the GNU had committed in the Global Political Agreement still need to be implemented.
- (5) The EU recognises the efforts made by SADC and South Africa, as facilitators of the Global Political Agreement, to establish an environment conducive to credible elections. The completion of the referendum on the Constitution will be an important stepping stone on the road to elections and will provide for sound grounds that credible elections can take place.
- (6) The appropriate measures should be updated accordingly, and should be reviewed within 6 months,

HAS ADOPTED THIS DECISION:

Article 1

The measures referred to in the letter annexed to this Decision are hereby maintained as appropriate measures within the meaning of Article 96(2)(c) of the ACP-EC Partnership Agreement.

These measures shall apply for a period of 6 months from 20 February 2012 until 20 August 2012. They shall be kept under constant review and shall be reassessed in light of concrete progress in the preparation of peaceful elections.

The letter annexed to this Decision shall be addressed to the President of Zimbabwe, Mr Mugabe, and copied to the Prime Minister, Mr. Tsvangirai, and to Welshman Ncube.

Article 2

This Decision shall enter into force on the day of its adoption.

Article 3

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council
The President*

ANNEX

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 form 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 appropriate measures within the meaning of Article 96(2)(c) of that Agreement. By annual letters, the latest one dated 23 February 2011, the EU informed you of its decisions not to revoke the appropriate measures and to extend their period of application.

Since its inception in 2009, progress achieved by the Government of National Unity based on the Global Political Agreement (GPA) has been welcomed by the European Union. The European Union reiterates the great importance it attaches to the political dialogue, provided for in Article 8 of the ACP-EC Partnership Agreement, and officially launched at the request of the Government of Zimbabwe at the EU-Zimbabwe Ministerial Troika on 18-19 June 2009 in Brussels. As agreed by both parties, the objective of this political dialogue is to progressively normalise EU-Zimbabwe relations along the implementation of the reforms foreseen in the GPA, paving the way for credible and democratic elections.

As part of its overall re-engagement process, the EU has taken steps towards easing measures applying to Zimbabwe. Appropriate measures were modified to allow support to institutions and processes related to the implementation of the GPA. The European Commission also prepared a short-term response to support the stabilization of the Government of National Unity and its reform programme.

Since then, the EU has continued supporting the ongoing efforts of the Government of National Unity to implement the GPA, and has welcomed the achievements made in stabilising the economy and restoring basic social services. However, the EU still awaits progress on several of the political reforms of the GPA, including the constitutional process and reforms needed to create a conducive environment for democratic elections. In this context, the EU welcomes the intensified regional diplomacy and the efforts led by the Republic of South Africa and the South African Development Community, and the establishment of a roadmap by all parties.

The EU welcomes recent statements made by all Zimbabwean parties against political violence, and remains hopeful that recent social and economic progress will be complemented by political reforms leading to democratic and credible elections.

To further accompany the transitional process, the EU has decided:

- to extend its appropriate measures set out in Council Decisions 2002/148/EC and 2010/97 for a limited period of six months. The EU thus reiterates its willingness to reconsider its position at any time following concrete steps in implementing the Global Political Agreement and in preparing for elections.
- to engage the Government of Zimbabwe in preparing a Country Strategy Paper in the framework of the European Development Fund.

- to invite the Government of Zimbabwe for an intensified political dialogue provided for in Article 8 of the ACP-EC Partnership Agreement and to define further steps towards normalisation of EU-Zimbabwe relations, in response to concrete steps contributing to a conducive environment for credible elections. In this context, the EU is looking forward to the visit of the Zimbabwe Re-engagement Committee to Brussels, which it hopes can be arranged for the near future.

Meanwhile, the EU will continue to provide transitional assistance to the economic recovery, social sectors and the implementation of the GPA in support of the Government of National Unity and its reforms programmes.

All the other measures listed in the Annex to Council Decision 2002/148/EC shall continue to apply without changes. The Council Decision can, if circumstances change, be reviewed at any time prior to 20 August 2012.

The European Union wishes to emphasise once again the importance it attaches to future cooperation with Zimbabwe and to confirm its willingness to revive and advance the political dialogue provided for in Article 8 of the ACP-EC Partnership Agreement in view of progressively normalising EU-Zimbabwe relations.

Yours faithfully,

For the Commission

For the Council