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Proposal for a

**COUNCIL DECISION**

**of [...]**

**on adapting and 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**

## EXPLANATORY MEMORANDUM

- (1) On 18 February 2002, the Council of the European Union decided to take "appropriate measures" against Zimbabwe<sup>1</sup> following the consultations under Article 96 of the ACP-EC Partnership Agreement<sup>2</sup>. These measures included the suspension of budgetary support, support for projects, and the signature of the 9<sup>th</sup> 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, insofar 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 of the Zimbabwean government 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 seven occasions, on 18 February 2003<sup>3</sup>, 19 February 2004<sup>4</sup>, 17 February 2005<sup>5</sup>, 14 February 2006<sup>6</sup>, 19 February 2007<sup>7</sup>, 18 February 2008<sup>8</sup> and 20 February 2009<sup>9</sup> 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. It allowed the setting up of an Inclusive Government in February 2009. It represented a significant step forwards towards a sustainable solution to the Zimbabwe crisis and an opportunity to re-establish a constructive relationship between the EU and Zimbabwe.

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<sup>1</sup> OJ L 50, 21.02.2002, p. 64

<sup>2</sup> 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 decisions; and end to illegal occupation of properties).

<sup>3</sup> OJ L 46, 20.2.2003, p. 25

<sup>4</sup> OJ L 50, 20.2.2004, p. 60

<sup>5</sup> OJ L 48, 19.2.2005, p. 28

<sup>6</sup> OJ L 48, 18.2.2006, p. 26

<sup>7</sup> OJ L 53, 22.2.2007, p. 23

<sup>8</sup> OJ L 51, 26.2.2008, p. 19

<sup>9</sup> OJ L 49, 20.02.2009 p. 15

- (6) The EU supports the Inclusive Government and the GPA in its entirety which presently constitutes the only political framework for bringing the country back to 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, the independence of media, respect for rule of law and human rights. Its implementation will create the conditions for a full re-engagement of the EU with Zimbabwe.
- (7) At the request of the Zimbabwean Government, a Ministerial Troika meeting took place on 18-19 June 2009. The Zimbabwean Delegation to Brussels was led by Prime Minister Morgan Tsvangirai. The Article 8 dialogue launched at this occasion was followed up by an EU Troika mission to Zimbabwe on the 12 and 13 of September.
- (8) The parties have agreed that the objective of the dialogue will be to establish joint roadmaps with on one side, a detailed action plan of how the Government of Zimbabwe intends to implement the GPA, expecting all the parties present in the government to contribute, and on the other side an EU roadmap leading towards the normalisation of relations between the EU and Zimbabwe. The EU roadmap setting the normalization process includes the lifting, in due course, of the appropriate measures under Article 96. Normalization would also allow for a revision of the Common Foreign and Security Policy Common Position.
- (9) Meanwhile, the European Commission elaborated an ad hoc short-term response to support the stabilisation of the inclusive government and its reform programme.
- (10) Since February 2009 the Government of Zimbabwe has taken a number of important and effective steps for the economic and social stabilization of the country. However insufficient measures have been undertaken to ensure full implementation of the Global Political Agreement. Furthermore, stalled talks among the political parties and an increase in political violence in the country, particularly against MDC supporters and against human rights defenders, provoked disengagement by MDC-T from the Government in October 2009. This resulted in a constitutional crisis.
- (11) The Southern African Development Community (SADC) stepped up its mediation efforts and President Zuma of South Africa appointed a new South Africa Facilitation Team to unlock inter-party talks and to assess the implementation of the GPA. The constitutional crisis was contained and the basis for a renewed dialogue among the political parties was created aiming at GPA implementation.
- (12) Taking into account the above and in line with the process set out in the framework of the Article 8 political dialogue, the Commission therefore proposes to the Council to extend Decision 2002/148/EC for a further 12 months ending on 19 February 2011 and to adapt it to the creation of the Government of National Unity and the implementation of its reform programs.
- (13) The Commission proposes to inform the Government of Zimbabwe about the renewal of the appropriate measures with a letter which will be addressed to President Mugabe and copied to the two other political principals of the Government of National Unity, Prime Minister Tsvangirai and Deputy Prime Minister Mutambara. In addition it proposes

- (14) To include a reference reflecting transitional assistance to support the Global Political Agreement implementation and the recovery process of the country.
- (15) Given that the proposed Decision provides only for a minor change of the existing measures without any substantive modification, it is not considered necessary to reopen consultations with the Republic of Zimbabwe under Article 96 of the ACP-EC Partnership Agreement.
- (16) The EU remains committed to revitalize the Article 8 political dialogue with the Zimbabwean authorities to adopt jointly the roadmaps setting the conditions for full re-engagement with the country.
- (17) The Decision should be kept under constant review, and the measures should be revoked once the prevailing conditions, as set up in the roadmaps, ensure respect for human rights, democratic principles and the rule of law.

### **Conclusion**

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

Proposal for a

**COUNCIL DECISION**

of [...]

**on adapting and 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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(2) thereof,

Having regard to the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000<sup>10</sup> and revised in Luxembourg on 25 June 2005<sup>11</sup>

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 Agreement<sup>12</sup>, and in particular Article 3 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) By Council Decision 2002/148/EC<sup>13</sup>, 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.
- (2) By Decision 2009/144/EC<sup>14</sup> the application of the measures referred to in Article 2 of Decision 2002/148/EC, which had been extended until 20 February 2004 by Article 1 of Decision 2003/112/EC<sup>15</sup>, until 20 February 2005 by Article 1 of Decision 2004/157/EC<sup>16</sup>, until 20 February 2006 by Article 1 of Decision 2005/139/EC<sup>17</sup>,

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<sup>10</sup> OJ L 317, 15.12.2000, p.3

<sup>11</sup> OJ L 209, 11.8.2005, p.26

<sup>12</sup> OJ L 317, 15.12.2000, p.376

<sup>13</sup> OJ L 50, 21.2.2002, p. 64

<sup>14</sup> OJ L 49, 20.2.2009, p.15

<sup>15</sup> OJ L 46, 20.2.2003, p.25

<sup>16</sup> OJ L 50, 20.2.2004, p.60

<sup>17</sup> OJ L 48, 19.2.2005, p.28

until 20 February 2007 by Article 1 of Decision 2006/114/EC<sup>18</sup>, until 18 February 2008 by Article 1 of Decision 2007/127/EC<sup>19</sup> and until 19 February 2009 by Article 1 of Decision 2008/158/EC<sup>21</sup>, was extended for a further period of twelve months until 20 February 2010.

- (3) The creation of an inclusive Government should be recognized as an opportunity to re-establish a constructive relationship between the EU and Zimbabwe and to support the implementation of its reform program.
- (4) However, taking into consideration recent events in Zimbabwe's political development, as well as the fact that certain important measures concerning the essential elements of the ACP-EC Partnership Agreement, fully integrated into the Global Political Agreement agreed among the three political parties, have still not been adequately implemented, the essential elements cited in Article 9 of the ACP-EC Partnership Agreement are not respected, and the current conditions in Zimbabwe do not ensure respect for human rights, democratic principles and the rule of law.
- (5) The period of application of the measures should therefore be extended.

HAS ADOPTED THIS DECISION:

#### Article 1

The measures referred to in the annexed letter are hereby adopted 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 twelve months from 21 February 2010 until 20 February 2011. The measures shall be kept under constant review

The letter in the Annex to this Decision shall be addressed to President Mugabe of Zimbabwe and shared by copy with Prime Minister Tsvangirai and Deputy Prime Minister Mutambara.

#### Article 2

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

Done at Brussels,

*For the Council*  
*The President*

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<sup>18</sup> OJ L 48, 18.2.2006, p.26

<sup>19</sup> OJ L 53, 22.2.2007, p.23

## 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 certain "appropriate measures" within the meaning of Article 96(2)(c) of that Agreement.

By letters of 19 February 2003, 19 February 2004, 18 February 2005, 15 February 2006, 21 February 2007, 19 February 2008 and 20 February 2009 the European Union informed you of its decisions not to revoke the "appropriate measures" and to extend the period of application until 20 February 2004, 20 February 2005, 20 February 2006, 20 February 2007, 20 February 2008, 20 February 2009 and 20 February 2010 respectively.

The European Union welcomes the constitution of the Government of National Unity based on the Global Political Agreement (GPA) which has been set up on the 13th February 2009. The EU reiterates the great importance it attaches to the Article 8 political dialogue launched officially at the request of the Government of Zimbabwe at the EU - Zimbabwe Ministerial Troika on 18-19 June 2009 in Brussels and to the agreement they have reached on the way forward. This includes the definition of joint roadmaps with mutual commitments. These are intended to reflect on the Zimbabwe side the effective implementation of the GPA, and on the EU side the progressive lifting of current restrictions and the normalization of EU-Zimbabwe relations.

The European Union supports the Government of Zimbabwe's ongoing efforts to implement the GPA, and welcomes the intensified regional diplomacy led by South Africa in support of reform in Zimbabwe however regrets the lack of progress within the framework of the Article 8 political dialogue. We continue to believe that significant progress in the implementation of the GPA is not only essential but possible and achievable as underlined in your exchanges with SADC.

In the light of the above, the European Union has concluded that the appropriate measures can only be fully revoked once the GPA is effectively implemented. The EU has therefore decided to extend the period of application of the appropriate measures set out in the Council Decision 2002/148/2 EC until 20 February 2011 and to adapt the appropriate measure to reflect the GPA implementation since February 2009, in particular in the economic sphere. At this point in time no financial support should be channelled through the Government budget. The EU has decided to work on progressing GPA implementation and to modify indent (b) and (c) as follows:

- (b) Financial support for all projects is suspended except those in support of the population, in particular in social sectors *and those in support of the reforms contained in the GPA*
- (c) Financing shall be reoriented in support of the population in particular in social sectors *and in support of the stabilization process of the country, in particular with regard to democratisation, respect for human rights and the rule of law.*



All the other measures listed in the Annex to Council Decision 2002/148/2 EC shall continue to apply without changes. The Council Decision can be reviewed at any time prior to 20 February 2011.

The European Union will therefore continue supporting the stabilization of the Government of National Unity and its reform programs through its transitional support for agriculture and food security, social sectors, including health and education, and for GPA implementation.

The European Union wishes to re-emphasize the importance it attaches to future EU-Zimbabwe cooperation and to confirm its willingness to revive and advance the political dialogue as provided for in Article 8 of the Cotonou Partnership Agreement. In that context, we hope that sufficient progress will be made in the implementation of the GPA by the Government of Zimbabwe in the near future so as to allow the resumption of full co-operation.

Yours faithfully,

*For the Commission*

*For the Council*

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