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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

**on the opening of consultations with Guinea-Bissau under Article 96 of the revised
Cotonou Agreement**

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1. Background

Since gaining independence in 1975 Guinea-Bissau has maintained close relations with the European Union, which has given it over €500 million in cooperation financing. It remains a fragile state, however, undermined by ethnic tensions, the disproportionate size of the army (non-professional and highly politicised) and endemic poverty. Added to this in recent years is the corrupting effect on various parts of society (army, political parties, the government, etc.) of the money generated by drug trafficking, something which is also destabilising neighbouring countries as a result of the permeable borders created by free movement and the tense security situation in Casamance and Guinea-Conakry.

In the first half of 2009 the political and security situation in the country was affected by renewed tensions, culminating in the assassination in March of the Chief of Staff of the Armed Forces and of President Joao Vieira. In early June the minister for territorial administration and a former defence minister were killed and other key figures arrested. All of these figures were in President Vieira's inner circle and, according to the authorities, were involved in an attempted coup.

Despite all these tragic events, the early presidential election held to find President Vieira's successor took place peacefully. In the second round on 26 July Malam Bacai Sanhá (PAIGC) won with 63.31% of the vote. On 8 September 2009 he began his five-year term of office as President, with Carlos Gomes as Prime Minister. In his inauguration speech, the new President stressed that his priorities included national reconciliation, tackling impunity and reform of the security sector.

A few days later the head of the navy, Admiral José Zamora Induta, a well-known reformer, was confirmed as Armed Forces Chief of Staff. At the end of October the President undertook a major government reshuffle which affected most portfolios and brought in new faces. Shortly after that a new Attorney-General was appointed with the task of improving the record of the department of public prosecutions in both preventing and tackling crime and in pursuing official investigations to find those responsible for the political assassinations carried out in March and June of that year.

The new government seemed more determined than its predecessors to tackle the country's problems but the military's continuing grip on the political life of the country remained a serious threat and cause for concern.

The EU tried to tackle this situation by steadily increasing its support for security-sector reform (SSR) in Guinea-Bissau, which was essential if civilian control over the military was to be re-established. In addition to providing EDF funding, the EU supported the authorities in implementing the SSR with a common security and defence policy (CSDP) mission, which arrived in May 2008 with the task of helping the authorities with the national SSR strategy, notably the army, police and the public prosecution department.

Despite this progress, fears were confirmed on 1 April 2010 when, on the orders of the Deputy Chief of Staff of the Armed Forces, General Antonio Indjai, a group of mutinous soldiers arrested Chief of Staff José Zamora Induta (still detained) and the Prime Minister, who was threatened with death before being released after several hours of detention.

With this mutiny General Indjai became *de facto* Chief of Staff before being officially appointed on 25 June by decree of the President, on a proposal from the government, despite the warnings of the international community.

2. Reaction of the European Union

In a statement of the High Representative issued on 2 April the EU condemned the mutiny of 1 April as a "breach of the constitutional order" and called on the Guinea-Bissau authorities to restore normal democratic order. Similar statements were issued by the African Union and ECOWAS.

On 13 April the Council's Political and Security Committee (PSC) concluded that a period of reflection on the European Union's future engagement in Guinea-Bissau was needed and that it was important to give the civil authorities all necessary support to enable them to deal firmly with the situation.

On 14 April the Council's Africa Group (COAFR) asked the EU heads of mission in Bissau to make representations to the Guinea-Bissau authorities and engage in an enhanced political dialogue on the basis of Article 8 of the Cotonou Agreement on the following points: (i) the immediate release of the Chief of Staff and other persons detained since 1 April; (ii) the legal responsibility of and disciplinary sanctions against those implicated in the incidents of 1 April; (iii) the necessary obedience and respect due to the legitimate democratic authorities. These representations were made on 19 April 2010.

On 26 April COAFR considered the report of the EU heads of mission in Bissau and noted that: (i) security-sector reform (SSR) was of crucial importance for democracy and stability in the country; (ii) the EU's future engagement in Guinea-Bissau would depend on forthcoming political developments there.

On 30 April the PSC asked the Council General Secretariat and the Commission to: (i) propose immediately short-term measures designed to improve the situation on the ground; (ii) carry out by the end of June a strategic review of the EU's engagement in Guinea-Bissau based on all the instruments at the EU's disposal: the final decision on the EU's engagement, in particular the CSDP, would be taken in July 2010 on the basis of that strategic review and future developments in Guinea-Bissau.

On 7 May the Council confirmed that any CSDP commitment to SSR in Guinea-Bissau beyond 30 September would be conditional on: (i) a return to constitutional order; (ii) the release of the former Chief of Staff, Zamora Induta; (iii) prosecution of persons involved in the events of 1 April; (iv) adoption of an SSR legislative package.

In May there was a joint mission (Commission, Council, COAFR Presidency) to Guinea-Bissau on the basis of the short-term measures proposed by the CGS and the Commission. The mission concluded that the Guinea-Bissau authorities, while sharing the EU's analysis of the mutiny, were not in a position to fulfil its request for a return to constitutional order.

In a statement issued on 5 July the High Representative expressed dismay at the appointment of General Antonio Indjai to the post of Chief of Staff as he was mainly responsible for the mutiny of 1 April. The HR also expressed serious concern about José Zamora Induta's unlawful detention and called on the Guinea-Bissau authorities to put an end to it. In her statement the HR said that the situation might constitute a violation of Guinea-Bissau's commitments to human rights, democracy and rule of law, which were essential elements of the Cotonou Agreement, and called for a review of the EU's overall engagement in Guinea-Bissau. Similar statements were issued by the African Union, ECOWAS and the United States.

On 7 July COAFR discussed a new report from the EU heads of mission in Bissau: (i) it welcomed the heads of mission's recommendations; (ii) it deplored the appointment of General Indjai as Chief of Staff and considered that this appointment might violate the principles of democracy and the rule of law and the essential elements of the Cotonou Agreement; (iii) it invited the heads of mission to propose a list of individuals responsible for the chronic instability and/or involved in illicit activities on whom targeted EU sanctions might be imposed; (iv) it welcomed the unanimous reaction of the international community and reiterated the importance of closely coordinating our response with that of the rest of the international community, including the AU, ECOWAS and the UN.

On 9 July the PSC decided: (i) to end the current CSDP SSR mission; (ii) to invite the Council Secretariat and the Commission to make proposals for bolstering the EU presence in Guinea-Bissau with expertise in the field of SSR.

By letter dated 27 July the HR informed the Prime Minister of the definitive closure of the existing CSDP mission on 30 September 2010, of the impossibility of deploying a new mission in the current political climate and of the need to review the EU's overall engagement in Guinea-Bissau through an enhanced political dialogue between both parties.

3. Commission proposal

The Commission considers that the mutiny of 1 April 2010 and the appointment of one of its main instigators as Chief of Staff of the Armed Forces has substantially changed the political and security environment in Guinea-Bissau and is in itself a violation of Guinea-Bissau's commitments to human rights and the rule of law, which are essential elements of the Cotonou Agreement.

Article 96(2) of the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000 and revised in Ouagadougou on 22 June 2010 refers to the essential elements on which the partnership is based, which are set out in Article 9. Democratic principles, the rule of law and human rights underpin the domestic and international policies of the parties and constitute essential elements of the Agreement. In the light of these principles, and given the conditions in which a military mutiny took place in Guinea-Bissau on 1 April 2010, the Commission finds that there has been a particularly serious and clear violation of these essential principles and deems the situation to be a case of special urgency within the meaning of Article 96(2)(b) of the Agreement. It therefore considers it necessary to open consultations with the authorities in power in Guinea-Bissau in order to examine possible solutions to the crisis which would re-establish democratic order. These consultations will be conducted in accordance with Article 96 of the revised Cotonou Agreement and their main aim will be to discuss a list of undertakings with the authorities, including:

- an end to the illegal detention of Vice Admiral Zamora Induta and others arrested during the events of 1 April;

- the opening and conclusion of fully independent investigations into the events that took place between 1 March 2009 and 1 April 2010;
- the appointment of persons of integrity not implicated in acts of violence and unconstitutional conduct to lead Guinea-Bissau's armed forces;
- the acceptance by the authorities of any experts' mission and civil and military support that may be proposed by ECOWAS/the CPLP and/or other partners to supervise and support the reform of the security sector and protect political staff;
- adoption, enactment and publication of the SSR legislative package;
- adoption by the government of an operational programme to implement the SSR package;
- any other undertaking likely to improve the country's democratic governance and security-sector reform.

Such dialogue will give the authorities in Guinea-Bissau an opportunity to take steps to end the crisis and enable the EU to judge whether and how it could, on the basis of this dialogue, support initiatives directed at compliance with the principles of the Cotonou Agreement.

The Commission therefore proposes that the Council invite Guinea-Bissau to hold consultations under Article 96 of the revised Cotonou Agreement in accordance with the attached draft letter.

Pending the outcome of these consultations, the Commission will adopt precautionary measures in respect of development cooperation operations under way in Guinea-Bissau, with the exception of payments for contracts already under way, humanitarian measures or measures that directly benefit the local population, regional projects and projects to combat transnational crime, and preparatory measures for the implementation of future projects, as long as the specific conditions of the relevant instruments and agreements are adhered to.

In accordance with consolidated practice, and given the particular circumstances of Guinea-Bissau, the African Union, ECOWAS and the CPLP will be invited to attend these consultations.

ANNEX

Draft letter

President of the Republic of Guinea-Bissau,

Prime Minister of the Republic of Guinea-Bissau,

Sirs,

Since the mutiny of 1 April 2010 the European Union has on several occasions expressed concern about the flouting of the democratic order by senior officers and the violation of human rights in Guinea-Bissau. It has asked your authorities to take steps to re-establish constitutional order. Despite the EU's representations to your country's authorities on 19 April 2010 and the joint mission (Commission, Council, Spain) sent in May 2010, a number of factors seem to indicate that unfortunately your country is not moving in that direction. This situation - in a context of increasing drug trafficking - is a source of major concern for the EU.

In her statement of 5 July 2010 the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the Commission reacted strongly to the appointment of General Indjai as Chief of Staff and reiterated her deep concern about the illegal detention of Vice Admiral Zamora, calling on your authorities to end his detention.

In her letter of 27 July 2010 the High Representative/Vice-President informed you that the current EU mission to support security-sector reform would come to an end on 30 September 2010, that it was impossible to deploy a new mission in the current political climate and that the EU's overall engagement in Guinea-Bissau would have to be reviewed on the basis of an enhanced political dialogue.

In application of Article 96(2)(a) of the revised Cotonou Agreement and in view of the serious and manifest violation of the essential elements referred to in Article 9 of that Agreement, we have the honour, on behalf of the European Union and its Member States, to invite your country to hold consultations in order, as provided for in the Agreement, to jointly study the situation in a comprehensive and constructive manner, and if possible remedy it. The main aim of these consultations will be to discuss a list of undertakings on human rights and the rule of law with the authorities, including:

- an end to the illegal detention of Vice Admiral Zamora Induta and others arrested during the events of 1 April;
- the opening and conclusion of fully independent investigations into the events that took place between 1 March 2009 and 1 April 2010;
- the appointment of persons of integrity not involved in acts of violence and unconstitutional conduct to lead Guinea-Bissau's armed forces;
- the acceptance by the authorities of any experts' mission and civil and military support that may be proposed by ECOWAS/the CPLP and/or other partners to supervise and support the reform of the security sector and protect political staff;
- the adoption, enactment and publication of the SSR legislative package;

- the adoption by the government of an operational programme to implement the SSR package;
- any other undertaking likely to improve the country's democratic governance and security-sector reform.

These discussions should enable Guinea-Bissau to take appropriate measures to remedy the present situation. We suggest that these consultations take place within 30 days of receipt of this letter at the premises of the Council of the European Union in Brussels. As these consultations should embrace various aspects of governance, including legislative and judicial issues, it would be desirable if senior members of the government attended. The African Union, ECOWAS and the CPLP will be invited to attend these consultations.

Pending the outcome of these consultations, the Commission will adopt precautionary measures in respect of development cooperation operations under way in Guinea-Bissau, with the exception of payments for contracts already under way, humanitarian measures or measures that directly benefit the local population, regional projects and projects to combat transnational crime, and preparatory measures for the implementation of future projects, as long as the specific conditions of the relevant instruments and financing agreements are adhered to.

We have the honour to be, Sirs, yours faithfully,

For the Commission

Andris Piebalgs

For the Council

Catherine Ashton

Copies:

Ambassador of the Republic of Guinea-Bissau
President of the ACP-EU Council of Ministers
Chairman of the Committee of ACP Ambassadors
General Secretariat of the ACP Group