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EUROPEAN COMMISSION

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2010/0304 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted by the European Union within the ACP-EU Council of Ministers concerning the status of Equatorial Guinea in relation to the revised ACP-EC Partnership Agreement

EXPLANATORY MEMORANDUM

Equatorial Guinea has from the outset subscribed to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, on the one hand, and the European Community and its Member States on the other, signed in Cotonou (Benin) on 23 June 2000 (hereinafter referred to as the "ACP-EC Partnership Agreement").

On 25 June 2005 in Luxembourg, Equatorial Guinea joined with other ACP countries in signing the agreement amending the ACP-EC Partnership Agreement (hereinafter referred to as the "revised ACP-EC Partnership Agreement").

In accordance with Article 93(3) thereof, the revised ACP-EC Partnership Agreement entered into force on 1 July 2008 following ratification of the revision by the EU and its Member States and by two thirds of the ACP States. Article 93(4) of the Agreement stipulates that an ACP signatory State that has not completed the ratification procedures by the date of entry into force of the Agreement may do so only within the 12 months following that date. Subsequently, such a signatory State is to follow the accession procedure provided for in Article 94.

On 12 September 2008, Equatorial Guinea deposited the instrument of ratification for the revised Cotonou Agreement with a reservation regarding Article 11(6), which refers to the International Criminal Court (ICC). In a letter dated 19 December 2008, the European Union and its Member States rejected this ratification with a reservation. As a result, the ratification was not accepted as being valid.

Obiang Nguema, President of the Republic of Equatorial Guinea, announced his intention to deposit the instruments of ratification for the revised Cotonou Agreement without a reservation before the ratification deadline of 30 June 2009, but the Parliament has since then made it known that legal impediments prevent it from granting the authorisation requested by the Executive for ratifying the Agreement without a reservation. Since then, the matter has not been re-examined by the Parliament.

In a letter dated 21 May 2010 sent to the Secretariat General of the Council of the European Union, Equatorial Guinea's Minister for Foreign Affairs, Pastor Micha Ondo Bile, informed the EU that his country intended to adhere to the revised ACP-EC Partnership Agreement in accordance with the provisions of Article 94 of the Agreement. Equatorial Guinea asked that it in the meantime be granted observer status, enabling it to participate in the joint institutions set up by the ACP-EC Partnership Agreement until the accession procedure was completed. This status should be granted until the authorities of Equatorial Guinea are in a position to present their accession instruments, that is to say until 30 April 2011.

The European Union should, then, respond favourably to this request, which will be approved in a formal decision by the Joint ACP-EU Council of Ministers.

In accordance with Article 218(10) TFEU, the European Parliament will be informed.

The Commission therefore proposes that the Council adopt the attached proposal for a decision.

Proposal for a

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on the position to be adopted by the European Union within the ACP-EU Council of Ministers concerning the status of Equatorial Guinea in relation to the revised 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 217 thereof in conjunction with Article 218(9),

Whereas:

- (1) In accordance with Article 93(3) thereof, the revised ACP-EC Agreement entered into force on 1 July 2008.
- (2) Equatorial Guinea, which signed the revised ACP-EC Agreement on 25 June 2005, deposited an instrument of ratification with a reservation – an instrument rejected by the European Union and its Member States. As a result, the ratification is invalid according to the provisions of Article 93(4).
- (3) Article 94 of the revised ACP-EC Agreement stipulates that any request for accession by a State is to be presented to, and approved by, the ACP-EU Council of Ministers.
- (4) In May 2010, Equatorial Guinea presented a request for accession in accordance with Article 94 of the ACP-EC Agreement and a request for observer status, enabling it to participate in the joint institutions set up by the ACP-EC Partnership Agreement, until the accession procedure was completed.
- (5) The granting of this status until 30 April 2011 by the joint ACP-EU Council of Ministers should be approved, with Equatorial Guinea having to deposit the Act of Accession no later than the aforementioned date with the Secretariat General of the Council of the European Union and the Secretariat of the ACP States, Depositories of the Agreement.
- (6) In accordance with Article 15(4) of the Agreement, the Joint ACP-EU Council of Ministers agreed in Ouagadougou on 21 June 2010 to give a mandate to the Committee of Ambassadors to take a decision to this effect.
- (7) There is a need to determine the position to be adopted by the EU within the ACP-EU Committee of Ambassadors in response to this request,

HAS ADOPTED THIS DECISION:

Sole Article

The position of the European Union within the ACP-EU Committee of Ambassadors, on the matter of Equatorial Guinea's request for observer status is to accept this request under the terms of the attached draft decision.

The observer status shall be valid until 30 April 2011. Equatorial Guinea should deposit the Act of Accession with the Council's Secretariat General before that date.

Formal changes to the draft ACP-EU Council of Ministers decision may be agreed without its being necessary to amend the annex to this Decision.

Done at Brussels, [...]

*For the Council
The President*

ANNEX

Draft

Decision of the ACP-EU Council of Ministers concerning the status of Equatorial Guinea in relation to the revised ACP-EC Partnership Agreement

THE ACP-EU COUNCIL OF MINISTERS,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States (hereinafter referred to as the “ACP”), on the one hand, and the European Community and its Member States, on the other, signed in Cotonou (Benin) on 23 June 2000 and revised in Luxembourg (Grand Duchy of Luxembourg) on 25 June 2005 (hereinafter referred to as the “ACP-EC Agreement”)¹ and, in particular, Article 15(3) and (4) thereof.

Having regard to Decision No 1/2005 of 8 March 2005 of the ACP-EU Council of Ministers concerning the adoption of the Rules of Procedure of the ACP-EU Council of Ministers and, in particular, Article 8(3) thereof,

- (1) In accordance with Article 93(3) thereof, the revised ACP-EC Agreement entered into force on 1 July 2008.
- (2) Equatorial Guinea, which signed the revised ACP-EC Agreement on 25 June 2005, deposited an instrument of ratification with a reservation – an instrument that was rejected by the European Union and its Member States in a letter of 19 December 2008. As a result, the ratification was not validated according to the provisions of Article 93(4).
- (3) Article 94 of the revised ACP-EC Agreement stipulates that any request for accession by a State is to be presented to, and approved by, the ACP-EU Council of Ministers.
- (4) In May 2010, Equatorial Guinea presented a request for accession in accordance with Article 94 of the ACP-EC Agreement and a request for observer status, enabling it to participate in the joint institutions set up by the ACP-EC Partnership Agreement, until the accession procedure was completed.
- (5) Observer status would be valid until 30 April 2011. Before that date, Equatorial Guinea should deposit the Act of Accession with the Secretariat General of the Council of the European Union and with the Secretariat of the ACP States, Depositaries of the Agreement.
- (6) In accordance with Article 15(4) of the Agreement, the ACP-EU Council of Ministers agreed in Ouagadougou on 21 June 2010 to give a mandate to the ACP-EU Committee of Ambassadors to take a decision on its behalf.

¹ OJ L 209, 11.08.2005; OJ L 287, 28/10/2005.

HAS DECIDED AS FOLLOWS:

Article 1

Equatorial Guinea shall have observer status until 30 April 2011 under the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, on the one hand, and the European Community and its Member States on the other, signed in Cotonou (Benin) on 23 June 2000 and revised in Luxembourg (Grand Duchy of Luxembourg) on 25 June 2005. Before that date, Equatorial Guinea should deposit its Act of Accession with the Secretariat General of the Council of the European Union and the Secretariat of the ACP States, Depositories of the Agreement.

Article 2

Entry into force

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

Done at Brussels, [...]

*For the ACP-EU Committee of Ambassadors
on behalf of the ACP-EU Council of Ministers
The President*