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EUROPEAN COMMISSION

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Proposal for a

COUNCIL DECISION

**concerning the conclusion of consultations with the Republic of Madagascar under
Article 96 of the ACP-EC Partnership Agreement**

EXPLANATORY MEMORANDUM

In the wake of the forcible transfer of power that occurred in Madagascar on 17 March 2009, Mr. Andry Rajoelina was proclaimed President of the High Transitional Authority.

Since this forcible transfer of power constitutes a flagrant violation of the essential elements set out in Article 9 of the ACP-EC Partnership Agreement, hereinafter "the Cotonou Agreement", on 9 June 2009 the Council and the Commission sent a letter inviting Madagascar's High Transitional Authority to consultations in accordance with Article 96 of that Agreement.

At the opening meeting of the consultations held in Brussels on 6 July 2009, the European Union did not consider that any satisfactory proposals had been made by the Malagasy side.

In a spirit of openness to dialogue and fully aware of the complexity of the political situation in Madagascar, the European Union has proposed that the consultations remain open in order to encourage Madagascar's High Transitional Authority to continue negotiations with the country's various political factions, under the aegis of the joint mediation team consisting of the African Union, the Southern African Development Community (SADC), the *Organisation Internationale de la Francophonie* and the United Nations, in order to reach a consensual agreement that would allow a return to constitutional order.

Under the aegis of this joint mediation team for Madagascar and, particularly, following the appointment of President Chissano at the SADC Summit in June 2009, the leaders of the four political factions signed in Maputo on 9 August 2009 'the Maputo Political Agreement' and the 'Charter of the Transition', plus other agreements providing, in particular, for the creation of institutions to manage the transition process and organise presidential and legislative elections within fifteen months. These agreements, which were to be implemented over the ensuing thirty days with appointments to key posts in the transition institutions made by consensus, have been supplemented by the 'Additional Act to the Malagasy Charter of the Transition', which was signed by the leaders of the four political factions on 6 November 2009 in Addis Ababa.

Despite the many efforts of the joint mediation team with the support of the international community over the last few months and despite the most recent ad hoc initiative of the President of the AU Commission, the political factions have not reached agreement on the implementation of the transition process to which they agreed in Maputo and in Addis Ababa. Rather, Mr. Rajoelina has embarked upon a unilateral transition process, including the appointment of a Prime Minister and a government and the organisation of elections for the month of May 2010, which runs counter to both the spirit and the letter of the Maputo agreements and the Addis Ababa Charter.

The European Union considers that it cannot be a party to this unilateral transition plan, which, moreover, cannot bring a lasting resolution to the current crisis that would restore the constitutional order in Madagascar.

Accordingly, it is proposed:

- to decide to close consultations with Madagascar's High Transitional Authority in accordance with Articles 9 and 96 of the Cotonou Agreement and to inform the Malagasy authorities of a series of appropriate measures concerning Community aid for cooperation

with Madagascar. These measures will not affect any operations that might be implemented to facilitate a return to constitutional legality or humanitarian measures or measures that directly benefit the population, and they will preserve the legal certainty of contracts for the implementation of operations already under way.

- should the prospect arise of a positive outcome involving a consensual agreement between all the factions in Madagascar on a transition process, the European Union reserves the right to adopt measures in support of this process.

Proposal for a

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concerning the conclusion of consultations with the Republic of Madagascar 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 2000¹, as revised in Luxembourg on 25 June 2005² (hereinafter referred to as the 'Cotonou Agreement'), and in particular Article 96 thereof,

Having regard to the Internal Agreement between 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 Cotonou Agreement³, and in particular Article 3 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The essential elements referred to in Article 9 of the Cotonou Agreement have been violated.
- (2) On 6 July 2009, under Article 96 of the Cotonou Agreement, consultations were opened with Madagascar in the presence of representatives of the African, Caribbean and Pacific (ACP) Group of States, during which representatives of the High Transitional Authority failed to present satisfactory proposals or undertakings.
- (3) The European Union proposed that consultations remain open in order to encourage Madagascar's High Transitional Authority to continue negotiations with the country's political factions under the aegis of the joint mediation team in order to arrive at a consensual agreement.
- (4) Under the aegis of the joint mediation team headed by President Chissano, Madagascar's four political factions signed, in Maputo on 9 August 2009, agreements including provisions for the establishment of transition institutions to manage the transition process and organise presidential and legislative elections within fifteen

¹ OJ L 317, 15.12.2000, p. 3.

² OJ L 287, 28.10.2005, p. 4.

³ OJ L 317, 15.12.2000, p. 376, as amended in OJ L 247, 9.9.2006, p. 48.

months. These agreements were supplemented by the 'Additional Act to the Malagasy Charter of the Transition', which was signed in Addis Ababa on 6 November 2009.

- (5) Since then, no compromise has been reached between the four political factions on the practical implementation of these agreements. The High Transitional Authority, which currently holds the reins of power, has, however, committed itself to a unilateral transition process, including the appointment of a Prime Minister and a government and the organisation of elections for May 2010, which runs counter to the spirit and the letter of the Maputo agreements and the Addis Ababa Charter.
- (6) Consequently, the consultations opened under Article 96 of the Cotonou Agreement should be closed and appropriate measures adopted.

HAS DECIDED AS FOLLOWS:

Article 1

Consultations with the Republic of Madagascar under Article 96 of the Cotonou Agreement are hereby closed.

Article 2

The measures set out in the annexed letter are hereby adopted as appropriate measures under Article 96(2)(c) of the Cotonou Agreement.

Article 3

This Decision shall enter into force on the day of its adoption. It shall be published in the *Official Journal of the European Union*.

It shall remain in force for a period of 12 months. It shall be re-examined regularly.

Done at Brussels,

*For the Council
The President*

ANNEX

Draft letter

Sir,

The European Union attaches great importance to the essential elements set out in Article 9 of the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000 and revised in Luxembourg on 25 June 2005, hereinafter 'the Cotonou Agreement', concerning respect for human rights, democratic principles and the rule of law, which underpin the ACP-EC Partnership.

The EU therefore reacted immediately to the forcible transfer of power that occurred in Madagascar on 17 March 2009 and took the view that it constituted a flagrant violation of the essential elements set out in Article 9 of the Cotonou Agreement.

Acting under Article 96 of the Agreement, the EU entered into a political dialogue with the ruling regime, which led to the opening of consultations with a view to assessing the situation and possible solutions for a rapid return to constitutional order. At the opening meeting of these consultations, which were held in Brussels on 6 July 2009, the European Union did not consider that any satisfactory proposals had been made by the Malagasy side.

In a spirit of openness to dialogue and taking full account of the complexity of the political situation in Madagascar, the European Union proposed that the consultations remain open in order to encourage Madagascar's High Transitional Authority to continue negotiations with Madagascar's political factions under the aegis of the joint mediation team made up of the African Union, the Southern African Development Community, the *Organisation Internationale de la Francophonie* and the United Nations, in order to arrive at a consensus that would permit a return to constitutional order.

Under the aegis of this joint mediation team for Madagascar, and particularly after the appointment of President Chissano at the SADC Summit in June 2009, the leaders of the four political factions signed in Maputo on 9 August 2009 the Maputo Political Agreement and the Charter of the Transition, plus other agreements providing, in particular, for the creation of the institutions to manage the transition process and organise presidential and legislative elections over the next fifteen months. These agreements, which were to be implemented over the ensuing thirty days with appointments to key posts in the transition institutions made by consensus, have been supplemented by the Additional Act to the Malagasy Charter of the Transition, which was signed by the leaders of the four political factions on 6 November 2009 in Addis Ababa.

Despite the many efforts of the joint mediation team with the support of the international community over the last few months, and despite the most recent ad hoc initiative of the President of the AU Commission, the political factions have not been able to reach agreement on the implementation of the transition process to which they agreed in Maputo and in Addis Ababa. Rather, Mr. Rajoelina has embarked upon a unilateral transition process, including the appointment of a Prime Minister and a government and the organisation of elections for the month of May 2010, which runs counter to both the spirit and the letter of the Maputo Agreements and the Addis Ababa Charter.

In light of the foregoing, the European Union has decided to close the consultation period and has decided under Article 96(2)(c) of the Cotonou Agreement to adopt the appropriate measures described below:

- Humanitarian and emergency aid is not affected.

- Budgetary aid provided for in the national indicative programmes (NIP) of the 9th and 10th EDF shall be suspended.
- Projects and programmes already under way under the 9th EDF shall continue to be implemented except for activities and payments directly involving the government and its agencies. Modifications and addenda to current contracts shall be examined on a case-by-case basis. New contracts shall be suspended.
- The implementation of the National Indicative Programme (NIP) - 10th EDF shall be suspended.
- The European Commission may implement certain projects and programmes that directly benefit the population.
- Regional projects shall be evaluated on a case-by-case basis.
- The European Commission reserves the right to assume immediately, wholly or partially, the functions of National Authorising Officer for the EDF.
- The European Union will continue to monitor closely developments in Madagascar and may give its support to, if applicable, the implementation of a consensual political solution to the crisis.
- The political dialogue provided for in Article 8 of the Cotonou Agreement shall be maintained and conducted, as far as possible, in coordination with the International Contact Group on Madagascar. It may be stepped up if a consensus-based solution for a return to constitutional order is reached. The European Union will continue to monitor closely developments in Madagascar and may give its support to, if applicable, the implementation of a consensual political solution to the crisis.

These appropriate measures shall be adopted for an initial period of twelve months.

The European Union reserves the right to examine and revise the measures mentioned above in order to take into consideration any developments, positive or negative, in the situation in Madagascar.

We wish to assure you, Mr. Chairman, of our highest consideration.
For the European Union

The Commission
José Manuel BARROSO

The Council