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EUROPEAN COMMISSION

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Proposal for a

COUNCIL DECISION

of [...]

**concerning the conclusion of consultations with the Republic of Niger under Article 96
of the revised Cotonou Agreement**

EXPLANATORY MEMORANDUM

On 3 November 2009, following President Tandja's decision to remain in office beyond 22 December, the European Union sent a letter to the Niger authorities inviting them to hold consultations under Article 96 of the Cotonou Agreement. These consultations took place in Brussels on 8 December 2009. The conclusions of the meeting mentioned that the consultations were an open-ended process offering the possibility of another meeting.

On 18 February 2010 a military coup brought to power Platoon Commander Djibo Salou at the head of the Supreme Council for Restoration of Democracy (CSRD). This coup d'etat was condemned by the EU on 19 February and led to the suspension of the Article 96 consultations. An exploratory mission to Niger on 18 and 19 April 2010 found that the transition process was broadly taking place as announced in an inclusive and visibly highly structured manner. The main elements of this transition were:

- Setting-up and inauguration on 7 April of the 131-member National Consultative Council, 20 members of which were from the two political groupings.
- Setting-up of a committee on 22 April to draft within 45 days proposals for the following draft laws: constitution, electoral code, charter of political parties, charter of opposition and charter of access to public information.
- Setting-up of a Transitional Constitutional Council (21 April).
- Adoption of a decree on establishing the National Monitoring Centre for Communications responsible for ensuring freedom of information, including equal access to information for all during the election campaign.

Following this exploratory mission, a note verbale dated 5 May 2010 invited the new authorities of Niger to come to Brussels for a second round of consultations on 26 May 2010.

The opening meeting of the consultations took place in Brussels on 26 May. The parties present were the European Union, represented by the Council Presidency and the Commission, Niger, represented by Prime Minister Mahamadou Danda, members of the government and the CSRD, and the ACP Group, including countries friendly to Niger. The Economic Community of West African States (ECOWAS) and the African Union (AU) were also present as observers.

During that meeting the participants were informed of the proposals put forward by Niger for transition towards a return to constitutional rule and the establishment of a democratic government elected through free and transparent parliamentary and presidential elections. The commitments made can be summarised as follows (set out in detail in the letter annexed to this Decision):

- the adoption of basic texts by the CSRD;
- the organisation of a constitutional referendum on the basis of those drafts;
- the holding of local, parliamentary and presidential elections by March 2011;

- the decriminalisation of press offences and a guarantee of independence for regulatory bodies and of access to information;
- a commitment to sound economic and financial management throughout the transition.

To support the return to constitutional rule and the establishment of a democratic government elected through free and transparent parliamentary and presidential elections, the European Union has decided to adopt appropriate measures under Article 96(2)(c) of the Cotonou Agreement with a view to the gradual resumption of cooperation in the light of progress made in the transition process in order to support this transition (see the annexed letter for details).

In view of the above, and in accordance with Articles 9 and 96 of the revised Cotonou Agreement, the Commission proposes that the Council conclude the consultations with the Republic of Niger and adopt the attached Decision.

Proposal for a

COUNCIL DECISION

of [...]

**concerning the conclusion of consultations with the Republic of Niger under Article 96
of the revised Cotonou 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 African, Caribbean and Pacific States and the European Community signed in Cotonou on 23 June 2000¹ and revised in Brussels on 25 June 2005², and in particular Article 96 thereof,

Having regard to the Internal Agreement on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership 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 8 December 2009 and 26 May 2010, pursuant to Article 96 of the Cotonou Agreement, consultations were held with the ACP States and Niger. At the last round of consultations the representatives of the transitional government put forward satisfactory proposals and undertakings.

HAS ADOPTED THIS DECISION:

Article 1

Consultations with the Republic of Niger under Article 96 of the Cotonou Agreement are hereby concluded.

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.

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 will be reviewed at least every six months by means of a monitoring mission of the European Union

Done at Brussels, [...]

For the Council
The President

ANNEX

Draft letter

President of the Supreme Council for Restoration of Democracy
The Prime Minister

Sirs,

The European Union finds that the political crisis your country underwent in 2009 and the coup d'état of 18 February 2010 constituted a serious violation of the essential elements referred to in Article 9 of the Cotonou Agreement. In a Presidency statement on ..., the European Union roundly condemned the coup as being in contradiction with the very principles of democracy. In application of Article 96 of the Cotonou Agreement, the European Union invited the Niger authorities to hold consultations in Brussels and has engaged in a political dialogue with the ruling regime in order to study the situation and possible solutions. The consultations opened on 8 December 2009 and a second round took place on 26 May 2010. Following that meeting the EU representatives expressed their willingness to propose to the EU Council appropriate measures to support the transition under way in Niger towards a return to constitutional order, as announced by the Niger authorities.

During the meeting on 26 May the participants discussed how to organise a return to constitutional rule and the establishment of a democratic government elected through free and transparent elections. Niger also presented a memorandum on the stages and issues at stake in the transition. The EU noted the announcement of:

- the establishment of pluralist institutions for the transition, representing all political elements in Niger;
- the consensual adoption of an electoral code;
- the establishment of a National Independent Election Commission (CENI).

It also welcomed the adoption of a roadmap which, by means of a number of electoral steps, paves the way for the establishment of a new constitutional framework and new democratically elected authorities. Finally, the EU noted the commitment made by members of the Supreme Council for Restoration of Democracy (CSR) and the civilian government established in February 2010 to manage the transition, not to stand for election and to hand over power to the elected civilians at the end of the transitional period, planned for March 2011.

The European Union noted the following proposals put forward by Niger during the discussions, in particular the following undertakings which it considers especially important:

1. *the adoption of basic texts by the CSR;*
2. *the organisation of a constitutional referendum on the basis of those texts;*

- 3 *the holding of local, parliamentary and presidential elections by March 2011;*
- 4 *respect for fundamental rights and civil liberties, including freedom of action for political parties;*
- 5 *the decriminalisation of press offences and a guarantee of independence for regulatory bodies and of access to information;*
6. *a commitment to sound economic and financial management throughout the transition.*

The European Union found the undertakings made by Niger broadly encouraging. It has therefore decided to adopt the appropriate measures listed in the annexed commitments table under Article 96(2)(c) of the Cotonou Agreement with a view to the gradual resumption of cooperation in order to assist in the transition.

In particular, the European Union will continue to finance humanitarian and emergency operations in direct support of the people of Niger and measures to support the political transition and help end the crisis. In this context, note that fresh aid for the preparation of the parliamentary and presidential elections may be provided.

However, the European Commission reserves the right, where necessary, to take over the duties of the EDF National Authorising Officer on its own account.

As part of the procedure under Article 96 of the Cotonou Agreement, the European Union will continue to monitor the situation in Niger closely over a period of 12 months. During this period an enhanced dialogue will be pursued with the Niger Government under Article 8 of the Cotonou Agreement in order to support the transition process, and regular reviews will be conducted by the EU. The first monitoring mission will take place within no more than six months.

The European Union reserves the right to amend the 'appropriate measures' in the light of progress in the implementation of commitments.

The EU will also wish to hold, under Article 8 of the Cotonou Agreement, a regular political dialogue with the new government formed after the elections, particularly on the subject of reforms in the field of political, judicial and economic governance and reforms in the security sector.

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

For the Council, For the Commission,

Annex: Schedule of commitments

Commitments by partners

Niger	EU
<ul style="list-style-type: none"> • Current situation 	<ul style="list-style-type: none"> • The European Union will continue to finance humanitarian and emergency operations in direct support of the people of Niger and measures to assist in the political transition and in ending the crisis
<ul style="list-style-type: none"> • Consensual adoption of an electoral code (with the favourable opinion of the National Consultative Council) • Establishment of the Independent National Electoral Commission with a consensually chosen membership (with the favourable opinion of the National Consultative Council) 	<ul style="list-style-type: none"> • Resumption of the project Consolidation of Democracy, in particular the component for electoral support, and its extension until the forthcoming polls. The Financing Agreement is in force. • Processing of a request from the authorities to increase the financial allocation for the Financing Agreement for 'Electoral Support' • Renewal of institutional support for reforms in the field of public-finance management, including support for the Court of Auditors, with the aim of maintaining eligibility for budgetary support • Resumption of the support programme for justice and the rule of law (PAJED)

<ul style="list-style-type: none"> • Adoption of the proposed basic laws by the Supreme Council for the Restoration of Democracy (with a favourable opinion of the National Consultative Council) • Displaying of electoral rolls (in order to update the electoral register) • Decriminalisation of press offences 	<ul style="list-style-type: none"> • Reintroduction for approval of projects to support trade and the national statistics system • Resumption of the appraisal of 10th EDF NIP programmes (justice, decentralisation, rural development, etc.) and launch of the necessary studies • Retention of the remaining balances of the Financing Agreement on 9th EDF budgetary support • Launching of study to identify measures to support the stabilisation of the situation in the North • Start-up of support for the Rural Development Strategy (10th EDF) • Resumption of the Support Programme for Development of the Mining Sector
<ul style="list-style-type: none"> • Holding of constitutional referendum in conditions deemed satisfactory 	<ul style="list-style-type: none"> • Gradual disbursement of budgetary support (9th and 10th EDFs) • Resumption of tender procedure for 10th EDF-financed road maintenance • Resumption of tender procedure for the extension of the Arlit hospital (mining sector programme)

<ul style="list-style-type: none"> • Holding of parliamentary elections and the first round of presidential elections in conditions deemed satisfactory • Holding of the second round of presidential elections (if necessary) in satisfactory conditions • Inaugural sitting of the new National Assembly • Inauguration of the President of the Republic 	<ul style="list-style-type: none"> • Continued disbursements of the budgetary support already committed • Signing of Financing Agreements for the projects to support trade and the national statistics system • Resumption of cooperation activities across the board
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