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HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

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Joint Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement establishing the EU-LAC International Foundation

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Background

The European Union (EU) and the Latin American and Caribbean (LAC) countries have enjoyed special relations since a strategic partnership was established at the first bi-regional summit of their heads of state and government in Rio de Janeiro in 1999. The EU's main LAC interlocutor between 1999 and 2012 was the 'Rio Group' of countries. As from 2012, the Community of Latin American and Caribbean States (CELAC) was designated by its member countries to replace the Rio Group as the EU's counterpart for the region-to-region summit process and strategic partnership.

Since 1999, the two regions have worked together to promote shared interests and values, as confirmed at summits in Madrid (2002), Guadalajara (2004), Vienna (2006), Lima (2008), Madrid (2010), Santiago de Chile (2013) and Brussels (2015). The successive summits have ensured a steady intensification of political dialogue and progress on jointly tackling a wide range of issues including climate change, migration, the fight against illicit drugs, the promotion of human rights and gender equality, education and cultural issues, and in the fields of science and technology.

Objectives of the EU-LAC International Foundation and consistency with relevant policies

At the Fifth EU-LAC Summit (Lima, 2008), leaders of both regions decided to consider the creation of a bi-regional foundation to foster debate on common strategies and action to strengthen the partnership and enhance its visibility. At the Sixth Summit (Madrid, 2010), the heads of state and government decided that an EU-LAC Foundation should be established, with the following objectives:

- to contribute to the strengthening of the EU-CELAC partnership process through the participation and inputs of civil society and other social actors;
- to encourage further acquaintance and understanding between the regions; and
- to enhance mutual visibility between the regions and the visibility of the partnership itself.

That decision must be seen in the context of the EU's existing foundations to promote relations with Asia (the Asia-Europe Foundation – ASEF) and the Euro-Mediterranean region (the Anna Lindh Foundation for Dialogue between Cultures). The EU-LAC Foundation was conceived as an instrument to help strengthen bi-regional relations between the EU and LAC, in line with priorities and strategies set out in relevant summit declarations and successive Commission Communications, such as *A stronger partnership between the EU and Latin America* (2005)¹ and *EU-Latin America: global players in partnership* (2009)². Both the European Parliament (April 2006) and the Euro-Latin American Parliamentary Assembly (December 2007) adopted resolutions in favour of creating the Foundation.

The EU-LAC Foundation was formally established in Hamburg in 2011 as a German civil law body, pending the possible conclusion of an international constituent agreement to convert it into an international organisation. It was tasked with:

¹ COM (2005) 636 final

² COM (2009) 495 final

- promoting and coordinating result-oriented activities in support of bi-regional relations, focusing on the implementation of priorities identified at EU-LAC summits;
- encouraging debate on common strategies for delivering on those priorities by stimulating research and studies; and
- fostering fruitful exchange and new networking opportunities among civil society and other stakeholders involved with, or potentially interested in, the bi-regional relationship.

The Foundation can launch initiatives in association with public and private institutions, LAC and EU governments, the European Commission and other EU institutions and agencies, and international and regional institutions. In its first four years, the Foundation has undertaken a range of activities in this framework.

Council Decision 2012/493/EU authorised the Commission to open negotiations for an international agreement on the creation of the EU-LAC Foundation as an international organisation, with the EU, its Member States and the LAC countries as members. Negotiations started in December 2012 and were conducted on the EU side by the European External Action Service (EEAS) on behalf of the Commission. Member States have been consulted throughout the negotiating process at meetings of the Council's Working Party on Latin America and the Caribbean (COLAC). The European Parliament has been kept regularly informed throughout the negotiations. At the Seventh EU-LAC/First EU-CELAC Summit (Santiago de Chile, 2013), the heads of state and government called for the early conclusion of the negotiations, which duly came to a close in January 2015.

At the Second EU-CELAC Summit (Brussels, June 2015), the heads of state and government welcomed the initialling of the Agreement establishing the EU-LAC International Foundation and looked forward to 'its swift signature and early entering into force'. The High Representative and the Commission consider that the objectives set by the Council in its directives on the negotiation of the Agreement have been met, and that the draft Agreement can be submitted for signature and conclusion. It is the shared aim of CELAC and the EU that the Agreement be signed during a meeting of the foreign ministers from the two regions on 25-26 October in the Dominican Republic. This will be the culmination of a decade-long process during which the leaders of the 61 countries concerned have worked to establish and consolidate the EU-LAC Foundation as an international organisation that can help strengthen the partnership process and improve mutual understanding and visibility.

Objective of this proposal

The present joint proposal concerns the legal instrument that authorises the conclusion of the Agreement on behalf of the EU. Establishing the Foundation as an international organisation will improve its capacity to obtain funding from its member countries, many of which are unable to make financial contributions to it while it remains established under German civil law. By acquiring the status of an international organisation, the Foundation will also be able to reduce certain costs, benefit from privileges and immunities under international law and make better use of its financial and human resources. This, in turn, will allow it to maintain and develop further its activities in support of the partnership.

2. LEGAL BASIS

The joint proposal constitutes the legal instrument for the conclusion of the Agreement.

The choice of legal basis for the conclusion of the Agreement must rest on objective factors amenable to judicial review, which include the aim and content of the measure.

The aim of the Agreement is to establish the EU-LAC Foundation as an international organisation with legal personality under public international law. The Foundation will help to strengthen the EU-CELAC partnership, encourage mutual understanding and enhance mutual visibility between the regions. The Foundation can be seen as an instrument of EU common foreign policy because its activities contribute to the convergence of Member States' actions towards the Latin American and Caribbean region, ensuring that the EU is able to assert its interests and values in the framework of the partnership between the two regions. Specific activities of the Foundation contribute to the political dialogue between the EU and CELAC in areas such as global governance and the promotion of democracy, human rights and the rule of law. Relevant past activities of the Foundation include studies and seminars on the strategic partnership itself and on the collaboration of EU and LAC as partners in global governance (e.g. studies on “The EU and CELAC: Reinvigorating a strategic partnership” and “Summit Diplomacy: Challenges and opportunities of the new regionalisms”; a panel on “The EU and LAC: Powers in a Multipolar World or partners in Global Governance?”; and a seminar on “China, Latin America and the Caribbean, and the European Union: A Triangular Relationship?”). Similar activities will be undertaken once the Foundation becomes an international organisation. In this sense, the Agreement pursues CFSP-related objectives.

The Foundation will also strengthen cooperation between the EU and LAC regions, fostering intercultural exchange, notably by facilitating and promoting participation by, and inputs from, civil society and other social actors. Taking into account that some of the LAC member countries have already graduated from development assistance, while others remain eligible, the Foundation will:

- support EU-CELAC policy dialogue and cooperation involving some or all LAC countries in key areas of common interest such as research, sustainable development, climate change, competitiveness, jobs and growth, and gender equality;
- conduct or support analysis and research on themes of interest for the partnership; and
- develop and support bi-regional networks and foster exchanges of knowledge and best practices between them.

In view of its aim and content, the Agreement falls within the scope of Article 37 of the Treaty on European Union (TEU) and Articles 209 and 212 of the Treaty on the Functioning of the European Union (TFEU). The procedural legal bases for the conclusion of the Agreement are Articles 218(5) and (8), second subparagraph, TFEU.

3. BUDGETARY IMPLICATIONS

The conclusion of the Agreement will have no direct budgetary implications, as it does not oblige the EU or other signatories to make financial contributions to the Foundation. These will be voluntary. As host country granting privileges and immunities on the basis of a headquarters agreement, Germany will provide (at its own expense) appropriately furnished premises suitable for use by the Foundation along with maintenance, utilities and security.

The Commission has made financial contributions to the Foundation since it was established under German civil law in 2011, most recently (through the Partnership Instrument) the sum of EUR 3 million for the two years from October 2015. Some LAC and EU countries, including Germany as host country, have contributed financially on one or more occasions. Others are unable to contribute until the Foundation becomes an international organisation, so the conclusion and entry into force of the Agreement will help to improve its financial sustainability.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 37 thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 209(2) and 212(1), in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8) thereof,

Having regard to the joint proposal of the High Representative of the Union for Foreign Affairs and Security Policy and of the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Council Decision [XXX] of ³, the Agreement establishing the EU-LAC International Foundation was signed on , subject to its conclusion at a later date.
- (2) The Agreement will establish the EU-LAC Foundation as an international organisation with legal personality under public international law.
- (3) The Agreement should be approved on behalf of the European Union.
- (4) When acting in the framework of the EU-LAC Foundation, the EU and its Member States shall coordinate their positions in accordance with the Treaties and with the principle of sincere cooperation,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement establishing the EU-LAC International Foundation is hereby approved on behalf of the European Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person(s) empowered to proceed, on behalf of the European Union, to the deposit of the instrument of approval provided for in Article 24 of the Agreement, in order to express the consent of the European Union to be bound by it.

Article 3

This Decision shall enter into force on [...] ⁴.

³ OJ L , , p. .

Done at Brussels,

*For the Council
The President*

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The Council's General Secretariat will publish the date of entry into force of the Agreement in the *Official Journal of the European Union*.