



Council of the
European Union

Brussels, 30 September 2016
(OR. en)

11356/16

**Interinstitutional File:
2016/0216 (NLE)**

COLAC 64

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Agreement establishing the EU-LAC International Foundation

AGREEMENT ESTABLISHING
THE EU-LAC INTERNATIONAL FOUNDATION

The Parties to this Agreement,

RECALLING the strategic partnership established between Latin America and the Caribbean (LAC) and the European Union (EU) in June 1999 within the framework of the first EU-LAC Summit of Rio de Janeiro;

BEARING IN MIND the initiative adopted by the Heads of State and Government of LAC and the EU, during the fifth EU-LAC Summit, held in Lima, Republic of Peru, on 16 May 2008;

RECALLING the decision on the creation of the EU-LAC Foundation adopted by the Heads of State and Government of the EU and LAC, the President of the European Council and the President of the Commission, at the sixth EU-LAC Summit, held in Madrid, Spain, on 18 May 2010;

RECALLING the establishment in 2011 of a transitional foundation in the Federal Republic of Germany, which will conclude its activities and be dissolved when the International Constituent Agreement of the EU-LAC Foundation enters into force;

REITERATING the need to create an international organisation of intergovernmental nature subject to public international law through an "International Constituent Agreement of the EU-LAC Foundation based on the Terms of Reference adopted in a Ministerial meeting in the margins of the VI EU-LAC Summit of Madrid," which contributes to the strengthening of the existent bonds among the Latin American and the Caribbean States, the EU and the EU Member States;

HAVE AGREED as follows:

ARTICLE 1

Object

1. The EU-LAC International Foundation, ("the Foundation" or "the EU-LAC Foundation"), is established by this Agreement.
2. This Agreement sets out the Foundation's objectives and establishes the general rules and guidelines regulating its activities, structure and functioning.

ARTICLE 2

Nature and Headquarters

1. The EU-LAC Foundation is an international organisation of intergovernmental nature, established under public international law. It focuses on the strengthening of the bi-regional partnership between the EU and the EU Member States and the Community of Latin American and Caribbean States (CELAC).
2. The EU-LAC Foundation shall have its headquarters in the Free and Hanseatic City of Hamburg, Federal Republic of Germany.

ARTICLE 3

Members of the Foundation

1. The Latin American and Caribbean States, the EU Member States and the EU, having expressed their consent to be bound by this Agreement, following their internal legal procedures, shall become the only Members of the EU-LAC Foundation.
2. The EU-LAC Foundation shall also be open to the participation of the Community of Latin American and Caribbean States (CELAC).

ARTICLE 4

Legal Personality

1. The EU-LAC Foundation shall enjoy international legal personality and the necessary legal capacity for the fulfilment of its objectives and activities, in the territory of each of its Members, in accordance with their domestic laws.
2. The Foundation shall also have the capacity to contract, to acquire and dispose of movable and immovable property and to institute legal proceedings.

ARTICLE 5

Objectives of the Foundation

1. The EU-LAC Foundation shall:
 - (a) contribute to the strengthening of the CELAC-EU bi-regional partnership process involving participation and inputs of civil society and other social actors;
 - (b) encourage further mutual knowledge and understanding between both regions;
 - (c) enhance the mutual visibility between both regions, as well as of the bi-regional partnership itself.

2. The EU-LAC Foundation shall, in particular:
 - (a) promote and coordinate result-oriented activities in support of bi-regional relations and focused on the implementation of priorities established by CELAC-EU Summits;
 - (b) promote the debate on common strategies aiming at the execution of the aforementioned priorities by stimulating research and studies;
 - (c) foster fruitful exchanges and new networking opportunities among civil society and other social actors.

ARTICLE 6

Criteria for the Activities

1. In order to achieve the objectives set out in Article 5 of this Agreement, the activities of the EU-LAC Foundation shall:
 - (a) be based on the priorities and themes addressed at the level of Heads of State and Government at the Summits, concentrating on the identified needs in furtherance of the bi-regional relationship;
 - (b) involve, to the extent possible and under the framework of the activities of the Foundation, civil society and other social actors, such as academic institutions, and take into account their contributions on a non-binding basis. To this end, each Member could identify appropriate institutions and organisations that are working to enhance the bi-regional dialogue at the national level;
 - (c) add value to the existing initiatives;
 - (d) give visibility to the partnership, particularly focusing on actions with multiplier effect.
2. When launching or taking part in activities, the EU-LAC Foundation shall be action-guided, dynamic and result-oriented.

ARTICLE 7

Activities of the Foundation

1. In order to achieve the objectives set out in Article 5, the EU-LAC Foundation shall undertake, among others, the following activities:
 - (a) encourage debate, through seminars, conferences, workshops, reflection groups, courses, exhibitions, publications, presentations, professional training, exchange on best practices and special knowledge;
 - (b) promote and support events related to topics addressed in CELAC-EU Summits and related to CELAC-EU Senior Officials Meetings (SOM) priorities;
 - (c) launch bi-regional awareness programmes and initiatives, including exchanges in identified priority fields;
 - (d) encourage studies on issues identified by both regions;
 - (e) reach and offer new contact opportunities taking into account especially those individuals or institutions not familiar with the CELAC-EU bi-regional partnership;
 - (f) create an internet-based platform and/or generate an electronic publication.

2. The EU-LAC Foundation may launch initiatives in association with public and private institutions, the EU Institutions, international and regional institutions, Latin American and Caribbean States and EU Member States.

ARTICLE 8

Structure of the Foundation

The EU-LAC Foundation shall comprise the following:

- (a) the Board of Governors;
- (b) the President; and
- (c) the Executive Director.

ARTICLE 9

Board of Governors

1. The Board of Governors shall comprise representatives of the Members of the EU-LAC Foundation. It shall meet at the level of Senior Officials and, if appropriate, at the level of Ministers of Foreign Affairs on the occasion of the CELAC-EU Summits.
2. The Community of Latin American and Caribbean States (CELAC) shall be represented on the Board of Governors by the Presidency Pro Tempore without prejudice to the participation of the country concerned in its national capacity.

3. The Executive Bureau of the Euro-Latin American Parliamentary Assembly (EuroLat) shall be invited to appoint one representative from each region as observers on the Board of Governors.

4. The African, Caribbean and Pacific (ACP)-EU Joint Parliamentary Assembly shall be invited to appoint one representative from the EU and one from the Caribbean as observers on the Board of Governors.

ARTICLE 10

Chairmanship of the Board of Governors

The Board of Governors shall have two chairpersons, one representative from the EU and the other from the Latin American and Caribbean States.

ARTICLE 11

Powers of the Board of Governors

The Board of Governors of the EU-LAC Foundation shall exercise the following powers:

- (a) appoint the President and the Executive Director of the Foundation;
- (b) adopt the general guidelines for the work of the Foundation and establish its operational priorities and rules of procedure, as well as the appropriate measures to guarantee transparency and accountability regarding, in particular, the external financing;

- (c) approve the conclusion of the Headquarters Agreement as well as any other agreement or arrangement that the Foundation might conclude with Latin American and Caribbean States and EU Member States on the matter of privileges and immunities;
- (d) adopt budget and staff regulations on the basis of a proposal of the Executive Director;
- (e) approve modifications to the organisational structure of the Foundation on the basis of a proposal of the Executive Director;
- (f) adopt a multi-annual work programme, including a multi-annual budget estimate, in principle with a four year perspective, on the basis of the draft submitted by the Executive Director;
- (g) adopt the annual work programme, including projects and activities for the coming year on the basis of a draft submitted by the Executive Director and within the framework of the multi-annual programme;
- (h) adopt the annual budget for the following year;
- (i) approve the criteria for the monitoring and auditing of, as well as for the reporting of the projects of the Foundation;
- (j) adopt the annual report and financial statements of the Foundation for the previous year;
- (k) provide guidance and advice to the President and to the Executive Director;
- (l) propose amendments to this Agreement to the Parties;

- (m) evaluate the development of the activities of the Foundation and take action on the basis of the reports presented by the Executive Director;
- (n) settle the disputes that may eventually arise between the Parties on the interpretation or application of this Agreement and amendments thereto;
- (o) revoke the appointment of the President and/or that of the Executive Director;
- (p) approve the establishment of Strategic Partnerships;
- (q) approve the conclusion of any agreement or legal instrument negotiated in accordance with paragraph (4)(i) of Article 15.

ARTICLE 12

Meetings of the Board of Governors

1. The Board of Governors shall hold two ordinary meetings a year. They shall coincide with CELAC-EU Senior Officials Meetings (SOM).
2. The Board of Governors shall hold extraordinary meetings at the instance of one chairperson, the Executive Director or by request of at least one third of its Members.
3. The secretariat functions for the Board of Governors shall be carried out under the authority of the Executive Director of the Foundation.

ARTICLE 13

Decision-making of the Board of Governors

The Board of Governors shall act in the presence of more than half of its Members from each region. Decisions shall be taken by consensus of the Members who are present.

ARTICLE 14

President of the Foundation

1. The Board of Governors shall select the President among the nominees submitted by the Members of the EU-LAC Foundation. The President shall be appointed for a four-year term, renewable once.
2. The President shall be a well-known and highly respected personality both in Latin America and the Caribbean and in the EU. The President shall serve in a voluntary capacity, but shall be entitled to reimbursement of any necessary and duly justified expenses.
3. The President's office shall alternate between a national of an EU Member State and a national of a Latin American or Caribbean State. If the appointed President comes from an EU Member State, the appointed Executive Director shall come from a Latin American or Caribbean State, and vice versa.

4. The President shall:
- (a) represent the Foundation in its external relations, ensuring a visible and representative role through high level contacts with authorities from Latin American and Caribbean States and from the EU and the EU Member States, and with other partners;
 - (b) report to the Foreign Ministers' meetings, other ministerial meetings, the Board of Governors and other important meetings as may be required;
 - (c) provide advice to the Executive Director in the preparation of the draft multi-annual and annual work programme and the draft budget for the approval of the Board of Governors;
 - (d) conduct other tasks as agreed by the Board of Governors.

ARTICLE 15

Executive Director of the Foundation

1. The Foundation shall be managed by an Executive Director who shall be appointed by the Board of Governors for a four-year term, renewable once, and shall be selected following the submission of nominees by the Members of the EU-LAC Foundation.
2. Without prejudice to the competences of the Board of Governors, the Executive Director shall neither seek nor take instructions from any government or from any other body.

3. The Executive Director's office shall be remunerated and shall alternate between a national of an EU Member State and a national of a Latin American or Caribbean State. If the appointed Executive Director comes from an EU Member State, the appointed President shall come from a Latin American or Caribbean State, and vice versa.

4. The Executive Director shall be the legal representative of the Foundation and shall exercise the following functions:

- (a) prepare the multi-annual and annual work programme of the Foundation and its budget in consultation with the President;
- (b) appoint and head the staff of the Foundation, ensuring its compliance with the objectives of the Foundation;
- (c) implement the budget;
- (d) submit periodic and annual activity reports, as well as financial accounts to the Board of Governors for adoption, maintaining transparent procedures and correct circulation of the information concerning all activities done or supported by the Foundation, including an updated list of those institutions and organisations identified at national level, as well as those participating in the activities of the Foundation;
- (e) submit the report referred to in Article 18;
- (f) prepare the meetings and assist the Board of Governors;

- (g) consult, when necessary, the appropriate representatives of civil society and other social actors, notably the institutions which might have been identified by the Members of the EU-LAC Foundation, depending on the issue raised and the concrete needs, keeping the Board of Governors informed about the results of these contacts for further consideration;
- (h) conduct consultations and negotiations with the Host Country of the Foundation and the other Parties to this Agreement with regard to the details of the facilities to be enjoyed by the Foundation in these States;
- (i) conduct negotiations of any agreement or legal instrument with international effects, with international organisations, States and public or private institutions on matters going beyond the administrative, day-to-day functioning of the Foundation, following due consultation and notification to the Board of Governors about the beginning and foreseen conclusion of these negotiations as well as periodical consultations about their content, scope and likely outcome;
- (j) report to the Board of Governors on any legal proceedings involving the Foundation.

ARTICLE 16

Financing of the Foundation

1. Contributions are made on a voluntary basis without prejudice to the participation on the Board of Governors.
2. The Foundation shall be financed mainly by its Members. The Board of Governors, respecting the bi-regional balance, may consider other financing modalities of the activities of the Foundation.

3. In specific cases following prior notification to and consultation with the Board of Governors for its approval, the Foundation is authorised to generate additional resources through external financing from public and private institutions, including through the production of reports and analyses on request. Those resources shall be used exclusively for the activities of the Foundation.

4. The Federal Republic of Germany shall provide, at its own expense and in the framework of its financial contribution to the Foundation, appropriately furnished premises suitable for use by the Foundation along with maintenance, utilities and security for the facility.

ARTICLE 17

Audit and Publication of Accounts

1. The Board of Governors shall appoint independent auditors for the purpose of auditing the accounts of the Foundation.

2. Independently audited statements of the assets, liabilities, income and expenditure of the Foundation shall be made available to the Members as soon as possible following the end of each financial year, but not later than six months after that date, and be considered for approval by the Board of Governors at its earliest forthcoming meeting.

3. A summary of the audited accounts and balance sheet shall be published.

ARTICLE 18

Assessment of the Foundation

From the date of the entry into force of this Agreement, the Executive Director shall present every four years to the Board of Governors, a report on the activities of the Foundation. The Board of Governors shall globally assess those activities and shall take any decision regarding the future activities of the Foundation.

ARTICLE 19

Strategic Partnerships

1. The Foundation shall have four initial Strategic Partners: "L'Institut des Amériques" in France and "Regione Lombardia" in Italy for the EU side, and Global Foundation for Democracy and Development (FUNGLODE), in Dominican Republic and United Nations Economic Commission for Latin America and the Caribbean (ECLAC) for the Latin American and Caribbean side.
2. In order to accomplish its objectives, the EU-LAC Foundation may establish future strategic partnerships with intergovernmental organisations, States and public or private institutions of both regions, always respecting the principle of bi-regional balance.

ARTICLE 20

Privileges and Immunities

1. The nature and legal personality of the Foundation is defined in Articles 2 and 4.
2. The status, privileges and immunities of the Foundation, of the Board of Governors, the President, the Executive Director, the staff members, and of representatives of Members in the territory of the Federal Republic of Germany for the purpose of exercising their functions, shall be governed by a Headquarters Agreement concluded between the Government of the Federal Republic of Germany and the Foundation.
3. The Headquarters Agreement referred to in paragraph (2) of this Article shall be independent of this Agreement.
4. The Foundation may conclude with one or more Latin American and Caribbean States and EU Member States other agreements to be approved by the Board of Governors relating to such privileges and immunities as may be necessary for the proper functioning of the Foundation in their respective territories.
5. In the framework of its official activities, the Foundation, its assets, revenues and other property shall be exempt from all direct taxes. The Foundation shall not be exempt from payment for services rendered.
6. The Executive Director and the staff of the Foundation shall be exempt from national taxation on the salaries and emoluments paid by the Foundation.

7. Staff members of the Foundation means all members of staff appointed by the Executive Director, with the exception of those who are locally recruited and assigned to hourly rates.

ARTICLE 21

Languages of the Foundation

The working languages of the Foundation shall be those used by the strategic partnership between Latin America and the Caribbean and the European Union since its establishment in June 1999.

ARTICLE 22

Settlement of Disputes

Any dispute that may arise between the Parties concerning the application or interpretation of this Agreement and of its amendments shall be submitted to direct negotiations among them with a view to its timely settlement. If the dispute is not settled by these means, it shall be submitted to the decision of the Board of Governors.

ARTICLE 23

Amendments

1. This Agreement may be amended by initiative of the Board of Governors of the EU-LAC Foundation, or by request of any of the Parties. The amendment proposals shall be forwarded to the depositary, which shall notify them to all the Parties for their consideration and negotiation.
2. The amendments shall be adopted by consensus and shall enter into force thirty days after the date of receipt by the depositary of the last notification that all necessary formalities to that end have been completed.
3. The depositary shall notify all the Parties of the entry into force of the amendments.

ARTICLE 24

Ratification and Accession

1. This Agreement shall be open for signature by all the Latin American and Caribbean States, by the EU Member States, and by the EU, from 25 October 2016 to the date of its entry into force and shall be subject to ratification. The instruments of ratification shall be deposited with the depositary.
2. This Agreement shall remain open to accession by the EU, and by those Latin American and Caribbean States and EU Member States that have not signed it. The corresponding instruments of accession shall be deposited with the depositary.

ARTICLE 25

Entry into Force

1. This Agreement shall enter into force thirty days after eight Parties of each region, including the Federal Republic of Germany and the EU, have deposited their respective instruments of ratification or accession with the depositary. For the other Latin American and Caribbean States and EU Member States that deposit their instruments of ratification or accession after the date of the entry into force, this Agreement shall enter into force thirty days after the deposit by those Latin American and Caribbean States and EU Member States of their instruments of ratification or accession.
2. The depositary shall notify all the Parties of the receipt of the instruments of ratification or accession as well as the date of the entry into force of this Agreement, in accordance with paragraph 1 of this Article.

ARTICLE 26

Duration and Denunciation

1. This Agreement shall have an indefinite duration.
2. Any of the Parties may denounce this Agreement through written notification addressed to the depositary by diplomatic channels. The denunciation shall take effect twelve months after the notification has been received.

ARTICLE 27

Dissolution and Liquidation

1. The Foundation shall be dissolved:
 - (a) if all the Members of the Foundation, or all the Members of the Foundation but one, have denounced the Agreement; or
 - (b) if the Members of the Foundation decide its termination.

2. In case of termination, the Foundation only exists for the purposes of its liquidation. Its affairs shall be wound up by liquidators which shall proceed with the assets sale of the Foundation and the extinguishing of the liabilities. The balance shall be allocated among the Members pro rata to their respective contributions.

ARTICLE 28

Depositary

The Secretary General of the Council of the European Union shall act as the depositary of this Agreement.

ARTICLE 29

Reservations

1. At the moment of signing or ratifying this Agreement, or acceding to it, the Parties may formulate reservations and/or declarations regarding its text provided that they are not incompatible with its object and purpose.
2. The formulated reservations and declarations shall be communicated to the depositary, who shall notify them to the other Parties of the Agreement.

ARTICLE 30

Transitional Provisions

From the entry into force of this Agreement, the transitional foundation established in 2011 under the laws of the Federal Republic of Germany, shall conclude its activities and be dissolved. The assets and liabilities, resources, funds and other contractual obligations of the transitional foundation shall be transferred to the EU-LAC Foundation established under this Agreement. To this effect the EU-LAC Foundation and the transitional foundation shall complete the necessary legal instruments with the Federal Republic of Germany and satisfy the relevant legal requirements.

In witness whereof the undersigned, duly authorised to this effect, have signed this Agreement in a single original drawn up in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic, which shall be deposited in the archives of the Council of the European Union which shall transmit a true certified copy to all Parties.

Done at _____, on this _____ (201_)