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Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union at the Board of Governors
of the EU-LAC International Foundation on the Staff Regulations of the EU-LAC
International Foundation**

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Board of Governors of the EU-LAC International Foundation in connection with the envisaged adoption of the Staff Regulations of the Foundation.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement establishing the EU-LAC International Foundation

The Agreement establishing the EU-LAC International Foundation ('the Agreement') aims to establish the EU-LAC Foundation, to set out the Foundation's objectives and to establish the general rules and guidelines regulating its activities, structure and functioning. The Agreement entered into force on 17 May 2019.

The European Union and all Member States are parties to the Agreement.

2.2. The Board of Governors of the EU-LAC Foundation

The Board of Governors oversees the management of the Foundation and ensures that the Foundation is working towards its goals. It comprises representatives of the Members of the Foundation. The Board of Governors is convened on regular sessions twice per year co-chaired by the Community of Latin American and the Caribbean States (CELAC) via its Pro Tempore Presidency and the European Union (EU) via the European External Action Service (EEAS). The Board of Governors acts in the presence of more than half of its Members from each region. It takes the decisions by consensus of the Members who are present.

2.3. The envisaged act of the Board of Governors of the EU-LAC Foundation

On 24 May 2024, during its 10th Ordinary Meeting, the Board of Governors considered the text of the Staff Regulations of the Foundation ('the envisaged act'). The Staff Regulations were previously revised by the members of the Board, but their finalisation required taking into account the conclusion of the Agreement between the Foundation and the Government of the Federal Republic of Germany concerning the Headquarters of the EU-LAC International Foundation which took place on 11 May 2023.

After consideration by the Board the text was submitted for adoption through a written procedure.

The purpose of the envisaged act is to govern the employment conditions and define the rights and obligations of the staff working for the EU-LAC International Foundation, which is legally represented by the Executive Director. They also establish the general working standards that govern the administrative and labour management between the EU-LAC Foundation and its staff, in order to ensure that the work is carried out within a transparent and efficient framework.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

It is proposed to express EU consent to the adoption of the Staff Regulations of the EU-LAC International Foundation. The Staff Regulations provide a necessary legal framework for a proper functioning of the Foundation.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’*

The concept of *‘acts having legal effects’* includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are *‘capable of decisively influencing the content of the legislation adopted by the EU legislature’*¹.

4.1.2. Application to the present case

The Board of Governors is a body set up by an agreement, namely the Agreement establishing the EU-LAC International Foundation.

The act which the Board of Governors is called upon to adopt constitutes an act having legal effects. The envisaged act has legal effects because it governs the employment conditions and defines the rights and obligations of the staff working for the EU-LAC International Foundation, which is legally represented by the Executive Director.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

4.2.2. Application to the present case

The envisaged act pursues objectives and has components in the area of development cooperation and economic, financial and technical cooperation with third countries. These elements of the envisaged act are inseparably linked without one being incidental to the other.

Therefore, the substantive legal basis of the proposed decision comprises the following provisions: 209(2) and 212(1) TFEU.

¹ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

4.3. Conclusion

The legal basis of the proposed decision should be Articles 209(2) and 212(1), in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Board of Governors of the EU-LAC International Foundation will adopt the Staff Regulations of the EU-LAC International Foundation, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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THE COUNCIL OF THE EUROPEAN UNION,

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(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement establishing the EU-LAC International Foundation ('the Agreement') was concluded by the Union by Council Decision [OJ L 103, 12.4.2019, p. 1–2] and entered into force on 17 May 2019.
- (2) Pursuant to Article 11(d) of the Agreement, the Board of Governors may adopt staff regulations on the basis of a proposal of the Executive Director.
- (3) The Board of Governors, following its 10th Ordinary Meeting on 24 May 2024, is to adopt through a written procedure the Staff Regulations of the EU-LAC International Foundation.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Board of Governors, as the adoption of the envisaged act requires the consent of the members.
- (5) The envisaged act will govern the employment conditions and define the rights and obligations of the staff working for the EU-LAC International Foundation, which is legally represented by the Executive Director.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the written procedure of the Board of Governors shall be based on the draft act of the Board of Governors attached to this Decision.

Article 2

This Decision is addressed to the European Commission.

Done at Brussels,

*For the Council
The President*