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OPINION OF THE LEGAL SERVICE¹

Subject : Legal implications of the withdrawal of Venezuela from the Andean Community (CAN) for the EU-CAN Agreements

I. Introduction

1. The Andean Community (hereinafter referred to as 'CAN') was created by the Andean Subregional Integration Agreement (the 1969 'Cartagena Agreement') by the Governments of Bolivia, Colombia, Ecuador, Peru and Venezuela. It started operating formally on 21 November 1969. Pursuant to Article 48 of the Cartagena Agreement: "*The Andean Community is a subregional organization with an international legal capacity or status*". Article 5 of the Cartagena Agreement stipulates further that: "*The 'Andean Community' is hereby created, composed of the sovereign States of Bolivia, Colombia, Ecuador, Peru, and Venezuela and of the bodies and institutions of the Andean Integration System...*".

¹ This document contains legal advice protected under Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, and not released by the Council of the European Union to the public. The Council reserves all its rights in law as regards any unauthorized publication.

2. On 15 December 2003, a Political Dialogue and Co-operation Agreement (hereinafter 'the 2003 Agreement') was signed between the European Community and its Member States of the one part, and the Andean Community and its Member Countries (Bolivia, Colombia, Ecuador, Peru and the Bolivarian Republic of Venezuela) of the other part².

At its meeting on 8 January 2007, the 'Latin America' Working Group, following the official written notification by Venezuela of its denunciation of the Cartagena Agreement and its withdrawal from the Andean Community, asked the Council Legal Service for a written opinion on the following two questions:

- does the denunciation by Venezuela of the Cartagena Agreement and its withdrawal from the Andean Community affect the obligation of the EU Member States and the European Community to take the necessary steps to ratify the 2003 Agreement ?

- can the 2003 Agreement enter into force in its current form despite the official declaration by Venezuela that it is not party to the agreement any longer ?

3. In addition, the European Economic Community, of the one part, and the Cartagena Agreement and its Member Countries, namely the Republic of Bolivia, the Republic of Colombia, the Republic of Ecuador, the Republic of Peru and the Republic of Venezuela, of the other part, had concluded a Framework Agreement on Cooperation (hereinafter 'the 1993 Framework Agreement') on 23 April 1993 in Copenhagen. This 1993 Framework Agreement entered into force on 1st May 1998 and governs EU-CAN relations today.³
4. In a letter dated 20 November 2006 and addressed to the Presidency of the Council of the EU, the Bolivian Minister of Foreign Affairs, acting in his capacity as President pro tempore of the Andean Community underlined that: "*I am formally communicating to you that on 22 April 2006 the Bolivarian Republic of Venezuela expressed to the Presidency of the Andean Community's Commission its decision to denounce the Cartagena Agreement in*

² See for the relevant Council Decisions on the subject doc 14856/03.

³ See Council Decision 98/278/EC, OJ L 127, 29.04.1998, pp. 10 et seq.

compliance with Article 135 of this Agreement⁴. It should be pointed out that the Member Countries of the Andean Community are now: Bolivia, Colombia, Ecuador and Peru⁵, which will continue being Parties of the Political Dialogue and Cooperation Agreement, signed with the European Union"⁶.

Therefore, the question arises as to what effect the denunciation by Venezuela of the Cartagena Agreement has on the 1993 Framework Agreement as well.

This opinion responds to these questions.

II. The legal consequences for the 2003 Political Dialogue and Co-operation Agreement:

5. On 18 December 2006, Venezuela's Minister of Foreign Affairs notified the EU authorities about Venezuela's withdrawal from the Andean Community, in the following terms⁷: "*I would like to inform you that the Bolivarian Republic of Venezuela denounced the Cartagena Agreement on 22 April 2006...in accordance with Article 135 of the Cartagena Agreement ... Consequently, the Bolivarian Republic of Venezuela is no longer a party to the Agreement for Political Dialogue and Co-operation between the Andean Community and the European Union*".

⁴ Article 135 of the Cartagena Agreement addresses the issue of denunciation/withdrawal from the Andean Community as follows:
"Any Member Country wishing to denounce this Agreement shall so inform the Commission. From that moment on, it shall cease to enjoy the rights and have the obligations deriving from its status as a member, with the exception of the benefits received and granted in accordance with the Sub-regional Liberalisation Programme, which shall remain effective for a period of five years after the date of the denouncement. The time period stipulated in the paragraph above may be shortened in duly substantiated cases by decision of the Commission and at the request of the interested Member Country."

⁵ The Presidency pro tempore of CAN also stresses in his letter the fact that in the legal sense Venezuela is no longer a member of CAN, by mentioning that in June 2006 the Court of Justice of the Andean Community declined to hear a claim made by Venezuela before that Court, on the ground of lack of jurisdiction (see: proceedings no. 145-AI-05).

⁶ See doc. 16878/06, page 1 point 2, and the letter referred to therein: Note CE-40/06 by Bolivia as CAN Presidency.

⁷ See SN 1028/07, pages 1-2.

6. Pursuant to Article 54 of the 2003 Political Dialogue and Co-operation Agreement: "*1. This Agreement shall enter into force on the first day of the month following that in which the Parties notify each other of completion of the procedures necessary for this purpose*" (i.e. the procedure of ratification, approval or conclusion); "*2. Notifications shall be sent to the Secretary General of the Council of the European Union and the Secretary General of the Andean Community, who shall be the depositories of the Agreement*".

From the available information, it appears that the European Community and its Member States as well as the Andean Community and its Member Countries have all signed the 2003 Agreement, but the Agreement has not yet entered into force because the procedure of ratification, approval or conclusion has not been completed by the signatories⁸. In this respect,

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7. In particular, Venezuela has signed the 2003 Agreement but has not ratified it. Therefore, the question arises as to the legal consequences of the Venezuelan notification referred to in para. 5 above.

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⁸ According to the information available to the Council Legal Service, the ratification/approval process of the 2003 Agreement stands as follows: on the side of the European Community, 11 Member States have ratified the 2003 Agreement so far; only Germany, France, Belgium and Greece have not yet ratified it. It is to be noted that the twelve new EU Member States will be parties to the 2003 Agreement in accordance with the relevant provisions of the Accession Treaties (see Accession Treaty of Athens, OJ L 236, 23.09.2003, pp. 34-35, Art. 6 of the Act of Accession, and the Accession Treaty with Romania and Bulgaria, OJ L 157, 21.06.2005, pp. 11 et seq., Art. 6 of the Act of Accession on page 204). Based on the Council's established practice, the European Community, as a signatory, will conclude the 2003 Agreement only after all Member States are already parties to it. Finally, on the side of the Andean Community, Bolivia and Ecuador have so far ratified the 2003 Agreement.

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III. The legal consequences for the 1993 Framework Agreement

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14. **DELETED**.

15. **DELETED**.

IV. Conclusions

16. **DELETED**.
