THE NATURE OF EU-CELAC RELATIONS IN THEIR CULTURAL, SCIENTIFIC AND SOCIAL DIMENSIONS

AN INTRODUCTORY DOCUMENT FOR THE NOVEMBER 2017 BUENOS AIRES EULAC FOCUS WORKSHOP

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A. The Nature of EU–CELAC Relations: A Summary[1]

The EU Perspective

1. WHAT EU-CELAC RELATIONS ARE NOT:

- Not, relations between civil societies (including business): They are an area of Public Policies.
- Not, bilateral relations of individual States on either side of the Atlantic.
- Not, regional or sub-regional policies of some individual States (for example, "Ibero-American" relations of Spain and Portugal with Spanish-and-Portuguese speaking countries of Latin America and the Caribbean).
- Not, the specific relations of the EU with individual LAC countries or even with sub-regions (the Caribbean, for example, in the framework of the ACP Convention).

2. WHAT ARE THEY (looked at from the EU side)?

- An area of foreign policy of the EU. And this, in practice, means:
    - an area where the EU "does things" (see below what type of things);
    - an area where all EU Member States can converge under the umbrella of the Union.
- Which, from a geographical perspective, covers the whole of Latin America and the Caribbean, even if some of the instruments defined and implemented in its framework are differentiated and focus only on some countries or groups of LAC countries.

3. But as the relations identified in point 1 do exist, an analytical and political problem of decisive importance appears: that of correctly analyzing and properly articulating EU–CELAC relations with all those spaces and levels of cooperation.

4. WHAT CAN THE EU DO IN THE FRAMEWORK OF EU–CELAC RELATIONS?

- More than it does internally? One can legitimately have doubts. However, it is true that in the area of International Cooperation the EU can cover areas that it does not cover internally.

- In order to give ANY answer, one must carefully identify the instruments of EU regional integration:[2]

[1] This section reproduces, with very minor changes, a document already brought to the attention of all EULAC Focus partners on November 2016.
[2] See the next section.

    - legal rules,
    - common activities,
    - redistribution through the budget,
    - diplomatic instruments.

- In order to give ANY answer, one must consider whether all EU Member States can converge under the umbrella of the Union, in the framework of EU–CELAC relations, further than with the use of some diplomatic instruments (i.e. producing political declarations)? Everyone can think about this and give his/her own answer. It is difficult to find another instrument in any area in which all EU Member States will converge in their relations with CELAC.

5.- But the EU can go much further than using diplomatic instruments. HOWEVER, NOT IN ALL AREAS CAN ALL THE INSTRUMENTS BE USED EQUALLY. Examples from

- trade and trade related matters: legal rules (at the internal level and embedded/locked in in international agreements)
- social issues: legal rules (mainly at the internal level and not so much embedded/locked in international agreements) and, at the international level, some common activities (with funding)
- research: common activities (with funding)
- culture: common activities (with funding), but no rules (the EU Treaty forbids the EU from legislating in this area).
- redistribution through the budget is important at the internal level, but it seems very difficult to bi-regionalize.

6.- Once EU-CELAC relations are adequately focused, analytically and politically, their institutional framework favors raising, defining and implementing specific programs and actions that, furthermore, can involve other actors. Examples just to stimulate the reflection:

- Looking for regional / bi-regional actors. The best example: the collaboration between EU and CELAC regional associations of universities.
- Looking for interdisciplinary programs and policies that would have not been easily conceived in the often too fragmented policy setting on both sides. The best example: Digitalisation for Social and Economic Development.
- Facing a difficult but very rewarding challenge: adequately articulating the different levels of relations between EU and CELAC societies and political systems (back to point 3). Two good examples:
    - Finding synergies between the OEI initiatives in the area of Higher Education and Research and the EU initiatives in these areas.
    - The EU-CELAC JIRI initiative in the area of Research and Innovation, in which, under the EU leadership, some Member States converge with

the EU. A more institutionalized example is, the PRIMA project in the area of EU-Mediterranean relations, which EULAC Focus should analyze very carefully (including its difficulties for implementation).

This is certainly a difficult challenge, but it is much better to look for these synergies, while distinguishing the different levels of relations, than confusing them with no practical result.

The CELAC Perspective

1.- It seems that CELAC is, at present, no more than a relatively loose framework for Political Concertation.

2.- If this is the case, a paradoxical consequence arises: CELAC has the disadvantage of "being very small", nearly nothing, in terms of integration at the internal CELAC level, but it can become "everything" at the level of EU-CELAC relations, provided, of course, agreement is reached between CELAC Member States. This is the paradoxical result of not being, like the EU, an organization with legal personality and its own competences.

B. Giving Focus to the Cultural, Scientific and Social Dimensions of EU-CELAC Relations: the Analytical Departure Point[3]

Introduction

The purpose of this document is to lead to empiricism: to look at the EU and CELAC, and the relations between them, such as they are and not as imagined by anybody. This particularly applies to the EU. CELAC is little more than a not very well demarcated project; however, the EU is not a project but a reality with very well defined profiles (quite another thing is for these profiles to give shape to a very unusual legal-political-institutional entity, widely different from the image that many – both in Europe and in Latin America and the Caribbean – have of it.)

From the specific perspective of EULAC Focus as a collective research project, with almost half of the project executed, unless this document is completely wrong, a major conclusion can be drawn that is hard to accept, namely, that if the nature of the European Union is not sufficiently or at least minimally well known, it is almost impossible to say anything relevant about its relations with CELAC. This document (supplemented with other material already available in EULAC Focus) purports to provide such minimum knowledge about the EU on a relatively low number of pages – the content of which, therefore, can be absorbed in only two or three very careful readings – perhaps with the help of a couple of consortium internal webinars to comment and answer questions about the content of this document.

1. The Analytical Framework of Regional Integration and Bi-Regional Relations

An analytical framework of Regional Integration is available as one of the background materials for EULAC Focus. It is easily applicable to bi-regional relations.

This analytical framework differentiates between

- preconditions,
- objetives,
- instruments and
- dimensions

of regional integration.

[3] This is a re-elaboration of the "Summary Paper" of a document sent to all EULAC Focus partners in July 2016.

1.1. Preconditions must be studied using an interdisciplinary approach. The study must not only integrate evident geographical, demographic, economic and historical considerations but also other considerations that are often relegated. Two of the major ones are:

- political culture and the degree of observance of the rule of law;
- the structure of public revenues and their dependence on tariffs.

From the perspective of EULAC Focus, of special interest are the political congruence between the various Governments in the region and the extreme presidentialism of Latin American states, which make it hard for integration mechanisms led by ministers or senior officers to exist.

1.2. As for goals, it is critical to study if there is adequate articulation between

- the big political goal (or the series of very few goals) that brings sense to the integration process and
- intermediate or short-term goals, which might be more numerous and diversified in nature.

Long listings of goals usually end up by being completely irrelevant and useless for guiding the process.

From an analytical point of view, the discussion of the other two aspects of the analytical framework, instruments and dimensions, becomes more complex.

1.3. There are four different instruments: a) legal rules; b) common activities; c) budgetary redistributions/transfers; d) diplomatic cooperation. These different instruments have different logics, require different assumptions, and their effect on the integration process is also different.

- Legal rules may differ (on the basis an essential feature, they can be classified in (a) market access rules; (b) uniform law rules; and (c) treatment rules) and may be approved through two different channels (as primary or original law or as secondary or derived law). These last two distinctions are very important when it comes to analyzing the EU and CELAC and the relations between them.

- Common activities can be widely different in nature, but they all share an essential aspect that, initially, has a very positive effect on the integration process: they involve a pooling of resources and allow the integration process and its institutions to appear before the public as political actors that "really do something".

- Budgetary redistributions/transfers require a number of prior economic conditions and, therefore, might not be within reach of all integration processes.

- Diplomatic cooperation must be adequately used so that it does not turn into an instrument to hide from the public opinion the inefficiencies of the integration process, its inability to use the other instruments and its failure to meet the planned goals. Presidential summits can be effective integration instruments but may also become a mechanism for rhetoric to replace actual content.

1.4. Dimensions are always present, such as space and time are in classic mechanics. They must not be confused with goals, which may or may not exist. There are four different dimensions to measure/evaluate integration processes, in other words, to discuss their progress or development. Initially, progress in these different dimensions must be assessed as positive for the integration/cooperation process. But a process may progress in one of these dimensions and go back in others. The evolution of European integration in the last 30 years is the best example of this. These four dimensions are the following:

- External Dimension.

  Is the integration process a mechanism to "present a common front to the world" or are the effects of integration limited to the relations between the participating states, with the states still appearing separately before the world (TLCAN/NAFTA would be the best example)? This might be the essential dimension in CELAC; however, at least for decades, there was no progress in this dimension for the European Union, beyond the external facet of the customs union.

- Effective Content.

  - What areas are covered by the integration process (width) and to what degree do the states wish to harmonize or share their policies (depth) in those areas? Content is defined by width by depth; if one factor is zero, the result of the multiplication is also zero.

  - However, given that there are areas of international relations with wider geographic coverage, it must be analyzed whether this content exceeds or not the content of these wider frameworks. If this is not the case, the content is no longer "effective": it simply translates to a regional area relationship systems that exist outside of it.

- Strength.

  Both as regards law observance (if regional law exists) and the political commitment of the Member States in each process.

- Dynamism and Adaptability.

  Can the process evolve? Can the process adapt to changed circumstances – which will necessarily occur? Is there any danger that the process will be so adaptable that it will become distorted and forget its own goals?

These four aspects of any integration process (preconditions, objectives, instruments and dimensions) must be analyzed separately (to thoroughly understand every one of them) and together (because they are interdependent and because a successful assessment of an integration process requires all aspects to be considered).

2. The Nature of the European Union and an Analysis of its Evolution using the Analytical Framework

The Nature of the European Union

A summary study, pending update, is available at EULAC Focus about the nature of the EU from which some elements especially relevant to the Project are briefly extracted below.

2.1. Difference between the European Community/Union and the Member States

This difference is critical. The European Union (as the European Community before) is absolutely not a state (nor an embryo state). It is a legal-political entity with its own legal personality and political life that interacts with Member States, which retain their sovereignty. The distribution of competences between the EU and its Member States is the "existential basis" for the integration process.

The EU only has attributed/conferred competences (competencias de atribución): those conferred by the treaties. The 1992 Edimburgh European Council put it very bluntly:

> *The principle that the Community can only act where given the power to do so - implying that national powers are the rule and the Community's the exception - has always been a basic feature of the Community legal order (the principle of attribution of powers).*

This is still a core principle despite all the transformations suffered since 1992. The principle is almost as bluntly incorporated in the new version of the Treaty on the EU:

Article 4. 1. In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States.

2.2. Paths of Integration under the EC / EU Framework

Under the EC/EU framework, there have been three major paths of integration. The first two are explicitly provided for in the founding treaties. The third emerged from the very beginning and is still under development, though no detailed framework is planned for it. A discussion of these paths has been made difficult by the vague and abusive use of the "intergovernmental/supranational" distinction.

- The first path – typical of every international treaty or agreement – is the imposition of obligations to the Member States. Under EC Treaty, these obligations consisted mainly in market access and national treatment obligations, but in a number of cases it was also about the adoption of a uniform law.

- The second path consists in conferring to an entity vested with autonomous normative power (the European Community) the competence to create new legal rules. These rules are "hang from" (or "use as a hook") the obligations imposed under founding treaties and either enlarge upon or supplement them. They may concern market access and national treatment obligations but have especially dealt with the creation of uniform law.

- The third path is the result of the common action of all Member States in such areas still under their competence (the huge majority of public policies) where they choose to exercise their competences "closely to" or "around" the European Community. This path is very important for this study as it would appear that it is predominantly used in the EU-CELAC summits.

Therefore, a decisive factor in the field of public policies (including EU-CELAC relations) is to know how to use these different paths and articulate them with one another.

2.3. A degree of knowledge about the nature of EU competences is indispensable to design the EU policy in foreign affairs (including the EU-CELAC sphere).

Four aspects of this nature are essential and must be thoroughly understood:

- The distinction between exclusive and non-exclusive EU competences (initially, EU's competences in cultural, scientific and social areas are **non-**exclusive and therefore can be jointly exercised with the competences of the Member States);

- The distinction between internal competence (creation of secondary law for internal application) and external competence (applicable at international level);

- External exclusive competence originated in the exercise of internal non-exclusive competences (AETR judgment; article 3.2 of the TFEU);

- Distinction between competences involving nationals from European Union Member States and nationals from third-party States.

2.4. An adequate knowledge of the EU internal institutional structure is also indispensable to design its policy in foreign affairs (including the EU-CELAC sphere).

Indeed, without such knowledge, it cannot be understood why the declarations of the EU-CELAC summits are, seemingly paradoxically, more focused on those areas **not** covered by the EU exclusive competence than on those areas covered by the Union exclusive competence.

It is important to understand that as the EU is not a State, there is no point in applying categories conceived for a state framework to its analysis. What particularly matters is the interaction between Commission-Council in the decision-making process ("decision-making" is the key phrase used by founding treaties to describe what the Community – currently the Union – does).

Particularly harmful is the notion that the European Commission is the "executive of the Union", which certainly is not. Instead, the Commission holds a considerable sway in the legislative process because of its "monopoly on initiative". Indeed, this explains the fact that the Commission can object and has often objected to the summits issuing declarations that set out concrete initiatives, particularly in areas of EC/EU exclusive competence. If this should happen, it would impair the Commission's power of legislative initiative from a political point of view. (This helps to understand the meaning of the scathing phrase uttered by a senior officer of the Commission that was responsible for the relations with Latin America: "that the declarations of EU-LA set out concrete initiatives… over my dead body". Instead, in those areas were competences are NON-exclusive, the risk is counterbalanced by the drive to expand the EC/EU action across areas previously covered by the Member States.

The Council of EU (which is different from the European Council as regards both composition and functions) plays a major role in relation to our themes, especially because it would allow the articulation, with some degree of coherence, of the second and third paths of integration above described at 2.2 (even though, to adequately discharge that function, the Council should work much better than at present).

The EU institutional structure, especially as regards foreign affairs, has become extraordinarily complex after the Lisbon Treaty came into force in 2009. This new institutional structure must be studied and adequately understood. It is still arguable whether it has been beneficial to EU foreign affairs or not. In any case it seems to be clear that it has left much room for improvement.

2.5. It is essential to adequately understand the issue concerning the "legal basis" for the Union's action.

As already said, the Union is not a State with general capacity for action but only with specific competences conferred upon it by specific provisions of the Treaty. Moreover, the Commission is not the executive of the Union and therefore lacks general capacity for administrative action. Therefore, any act of the Union requires a "legal basis" in the double sense that:

- It must be based on a provision of the Treaty; and
- Its execution must have been entrusted to the Commission, provided however that it is the Commission that must execute it ("provided", because, in many cases, execution/implementation is left to Member States)

This is of decisive importance for international relations, including EU-CELAC relations, because it explains why the chapters on cooperation of the Union's International Treaties (and the declarations of the Summits) lack effectiveness: neither one nor the other conform a legal basis for the Union's action.

An Analysis of the Evolution of the European Integration using the Analytical Framework

2.6. The preconditions for the European integration process have extremely changed from the 1950s to the present (2010s): 1950-1985 changes; changes from 1985 onwards (disintegration of the soviet bloc); changes involving the expansion of the EU. Have these changes been adequately considered to give a new direction to or to adapt the process? Unfortunately, the answer seems to be no.

As far as the goals are concerned, the integration process has shown a progressive loss of clear and well-articulated goals. The first stage of the process (up to 1985) is directed to a very ambitious political goal (contributing to the pacification of Western Europe), which is well articulated with other intermediate goals (creating a customs union with some common policies and a number of general obligations of national treatment). Have the goals been clear from 1985 onwards? Unfortunately, the answer also seems to be no. The most significant example is the 2000 Lisbon European Council that purported to establish as a new major integration goal the transformation of the EU in the most

competitive knowledge-based economy of the world by 2010 (sic!!!). The evident failure in attaining this goal has left the EU with no set of clear goals.

As for the use of the different instruments,

- The EC/EU has intensively used all four regional integration instruments.

- However the use has not been equal in all areas. As will be shown below, the use has been widely different in the three dimensions studied by EULAC Focus. Legal rules have been mostly used in the social sphere while common activities have been mostly used in the other two areas (cultural and scientific fields).

- In any case, it must be noted that the law has been the fundamental integration instrument. The process (and the Community/Union born of it) lacks many of the most elementary attributes of any State or Public Administration. It should be remembered that even today the European Union lacks an instrument that is available to any Public Administration (even the tiniest and remotest village in Spain): the power to create new taxes. The Community/Union has been almost exclusively a "Community of law" in the double sense that (a) it was created and is governed by law and (b) its principal means of action derives from the law. This has provided the Union with strength and adaptability and has allowed it to increase its content and have an external dimension. But it is also evident that **many of the topics that the process has tried to address in the last decades cannot be addressed by law alone**. **A piece of hardware with a (limited) capacity of law production cannot support very complex softwares. If it tries, the computer will generate insufficient and inadequate results. Deep down, this is the most synthetic explanation of the process crisis, which today is self-evident and undisputed.**

- As for legal rules and law production techniques, it must be noted that the success of the EC integration in the first 30 years can be largely ascribed to its clever combination of the two above described techniques: primary law (imposition of obligations to Member States) and secondary law (production of law by the EC). The Maastricht Treaty unbalanced this clever combination: too many obligations were imposed on the Member States through the first path while, through the second, too few competences were conferred to the Community to produce law and kick-start policies. Primary law has been especially decisive in the social sphere; however, secondary law has also made positive contributions.

- The integration process has showed unequal progress in its different dimensions:

    - While there has been great progress in effective content,

- a clear decrease in strength, particularly evident in the last 15 years, has simultaneously occurred,
- and the external dimension was not enhanced to the extent predicted by the postulate of "the UE as a global actor"; in fact, the EU is actually perceived by many countries and world regions as a declining actor.
- This makes one wonder if the indubitable dynamism of the process might not have been responsible for exceeding the load of public policies that can be adequately processed by the institutional hardware, a hardware that deep down is the same as in the 1950s founding treaties.

3. The Nature of CELAC and an Analysis of its Evolution using the Analytical Framework

As an integration process, CELAC is clearly at a very initial stage and, therefore, an analysis of its nature can go no much further than what has already been said: that it is a very loose framework for coordination and political concertation between its Member States.

However this is not an impediment, but rather the opposite, to applying to CELAC the Analytical Framework proposed by EULAC Focus.

- Have preconditions been sufficiently and precisely analyzed, without complacency, both in the literature and political practice to see what they will permit? The answer seems to be a clear no.

- Have the last (few) goals been accurately defined in the political sphere, and have they been articulated with the intermediate objectives? The answer here seems also to be a clear no.

- What integration instruments are being used and can be used in the future? Up to now, it seems that only the instrument of diplomatic cooperation is being used. However, could not a very limited and specific use of legal rules, such as the acceptance of some national treatment obligations, be considered? Could not the implementation of a very limited common activity that would bring life and a feeling of unity to the process be considered, for instance, a scholarship program covering all the states integrated in the process, or some common research program?

- What integration dimension is to be preferably boosted? Maybe the external dimension: to appear before the world as a region? Is that the reason for prioritizing the instrument of diplomatic cooperation? But may an external dimension exist with no effective internal content?

4.- EU-CELAC Relations

EU-CELAC relations are much less advanced than the rhetoric of Summit Declarations would often lead us to believe. Maybe that is why most of the questions regarding CELAC are also applicable to the EU-CELAC relations:

- Have preconditions been sufficiently and precisely analyzed, without complacency, both in the literature and political practice to see what they will permit?

- Have the last (few) goals been accurately defined in the political sphere, and have they been articulated with the intermediate goals?

- What integration instruments are being used and can be used in the future? Up to now, it seems that only the instrument of diplomatic cooperation is being used. However, could not a very limited and specific use of legal rules be considered, for instance, in areas where the EU is already providing a favorable treatment to nationals from CELAC states and a certain degree of reciprocity might be demanded? Could not the implementation of a very limited common activity that would bring life and a feeling of unity to the process be considered, particularly in areas where the EU already has programs with such an external dimension, such as in Higher Education and Research?

- What integration dimension is to be preferably boosted? Maybe the external dimension: to appear before the world as an actor that can at least counterbalance the already existing major influence of the United States or the growing influence of China? Is that the reason for prioritizing the instrument of diplomatic cooperation? It would seem that this is the case if we analyze the multiple references made in the Summit Declarations to issues dealt with in much wider geographical forums. Might not this be an easy way to cover up a lack of effective content? May an external dimension exist with no effective internal content?

5.- The Cultural, Scientific and Social Dimensions of the EU

An unfinished study is available in EULAC Focus setting out a more thorough analysis of the issues barely outlined in this section. An historical perspective is the best way to briefly and plainly introduce the EU's cultural, scientific and social dimensions.

5.1- The Treaty of Rome, 1956-1957, has a more limited thematic coverage than is usually believed. Most public policies still remained with the Member States, only

subject to such market liberalization and national treatment as were imposed by the Treaty.

Out of the three thematic areas dealt with by EULAC Focus, the Treaty only considered the social area. The cultural and scientific dimensions were simply excluded from the integration process.

Two chapters/titles of the Treaty addressed social issues.

The first and main chapter set out the freedom of movement for workers, a feature that still today makes the EC/EU integration process extraordinarily favorably stand out from absolutely all other integration processes, which do not dare to address this issue. The addition of this chapter is part of the "founding balances/equilibria" of the integration process, and a thorough understanding of this issue is of particular importance, especially from the CELAC perspective.[4]

The second chapter was the one about the social provisions, including the creation of the European Social Fund (poorly funded and therefore, as an integration instrument, much less politically significant than legal rules).

Both were the basis on which the European Community started producing derived law.

- To show how important this area was, it is enough to note that the third legislative act of the European Community, the first not strictly internal to its own organization, was the Regulation addressing the decisive subject of the aggregation of periods of contribution to Social Security by migrant workers in different Member States.[5]
- Production of derived law was not only limited to the internal level. International agreements entered into by the European Community, in many cases jointly with its Member States, included provisions about the scheme for salaried workers. This very important development, precisely in the area of EU-CELAC relations, resulted in one of the most interesting rulings of the Court of Justice, with widely known effects in an area covered by EULAC Focus: the

[4] This chapter was added as an indispensable condition for Italy to join the "founding club" for two reasons: (a) Italy had already experienced a migratory outflow towards other members of that club; (b) the subtle pacts between the Christian Democracy and the Communist Party (leaded by De Gasperi and Togliatti) around the post-war Democratic Constitution had transformed certain policies on workers in "State policies".

[5] The first two dealt, one with the languages to be used by the EEC and the other with the issuance of a laissez passer for officers managing the integration.

cultural/sport area. This ruling transformed the scheme of professional sports and the international relations at its bosom.[6]

5.2.- With no primary law rules included in the Treaty and no specific power to produce secondary law conferred to the Community, activities in the cultural and scientific area could only be conducted after a long time and on an exceptional basis (see previous chapter on "legal basis") on the basis of Article 235 of the Treaty, which sets out as follows

> *If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, take the appropriate measures.*

For years, this provision was used as if it conferred some kind of generic competence to do just about anything provided the procedural conditions for application were met. By the end of the 1980s, the abusive use of this provision caused a negative reaction of some Governments, Parliaments and Constitutional Courts of Member States. As a result, it had to be acknowledged that the provision could not be interpreted as a generic attribution of competence, contrary to the principle of conferral on which the Treaty on the EC was based. Its use was not only restricted but to counteract abuse, as explained below, a series of articles that hugely restricted the competence of the Community in such areas where abuse had occurred were introduced.

5.3.- Single European Act: Conferring on the EC Non-Exclusive Competences in Research

In 1985-86 the Single Act introduced a decisive change in the field of research. A new chapter on research (articles 130 G to 130 Q) conferred competences on the EC to start a research policy – though it was a policy almost exclusively centered on the instrument of common activities – namely, the implementation of a Research Framework Programme. The second framework programme of 1987 was already based on this new chapter, enabling continuation from the first programme, launched on the basis of the above mentioned Article 235 only (TO BE CONFIRMED).

It must be noted that this addition (one of J. Delors priorities when he launched the Single Act initiative) was some kind of indirect way to carry out a true industrial policy, on the premises that European undertakings must find a strong operating base within the EC (the notion of an internal market) to strengthen their global presence (before USA

[6]It is quite noteworthy that the CELAC states never availed themselves of this precedent to add to their agreements with the Community/Union a chapter on migrant salaried workers. It might not be wrong to assume that the reason is that this is more of a taboo subject for CELAC than for the UE.

and Japan). This “industrial” logic behind the Community research action can be very clearly seen even in the first phrases and articles of the new chapter (bold added)

Article 130 F

1. ***The Community's aim shall be to strengthen the scientific and technological basis of European industry and to encourage it to become more competitive at international level***.
2. *In order to achieve this, it shall encourage undertakings including small and medium-sized undertakings, research centres and universities in their research and technological development activities; it shall support their efforts to co-operate with one another,* ***aiming, notably, at enabling undertakings to exploit the Community's internal market potential to the full****, in particular through the opening up of national public contracts, the definition of common standards and the removal of legal and fiscal barriers to that co-operation.*
3. *In the achievement of these aims, special account shall be taken of the connection between the common research and technological development effort, the establishment of the internal market and the implementation of common policies, particularly as regards competition and trade.*

Artículo 130 G

In pursuing these objectives the Community shall carry out the following activities, complementing the activities carried out in the Member States: (a) implementation of research, technological development and demonstration programmes, by promoting co-operation with undertakings, research centres and universities; (b) promotion of co-operation in the field of Community research, technological development, and demonstration with third countries and international organizations; (c) dissemination and optimization of the results of activities in Community research, technological development, and demonstration;(d) stimulation of the training and mobility of researchers in the Community.

…

Articulo 130 I

1. The Community shall adopt a multiannual framework programme setting out all its activities. …

Conferral of this specific competence on the Community was accompanied by an allocation of funds in the multi-annual provision and annual budgets, which was possible thanks to the double mechanism of increasing income and cutting down the main expense chapter: that of agricultural policy.

This budget has increased with time. And the programme, in a development that is key to our topic, has been opened to third countries, first to those of the European Economic Space and then to many others. A detailed study of this opening must be one of the primary goals of the WP 4 of EULAC Focus.

5.4. Treaty of Maastricht (1992)

The Treaty of Maastricht was a new critical step forward in the social and cultural dimensions (but not in relation to the scientific dimension, which has remained unaltered since the addition of the specific chapter to the Single Act, though it is now somewhat more free from industrial policy considerations).

Social Area

The European Foundation for the Improvement of Living and Social Conditions, created in 1975 by Regulation (EEC) No. 1365/75 of the Council, provides an adequate summary of this new step forward in the social area (see http://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/agreement-on-social-policy):

> *The Agreement on Social Policy of 2 February 1992 was annexed to the Protocol on Social Policy of the Treaty of Maastricht.*
>
> *In contrast to the Protocol, it was signed by only eleven EU Member States, excluding the United Kingdom. The agreement goes back to the Joint Agreement of the Social Partners of 31 October 1991, which EU social partners had elaborated in the preparation of the intergovernmental conference in Maastricht. Both texts are almost identical. The Agreement on Social Policy proposed a constitutionally recognised role for the social partners in the community legislative process, which had formerly engaged only the EU institutions. At the same time, a major extension of EC competences in employment and industrial relations was proposed, allowing for qualified majority voting with respect to some of the new competences. The agreement proposed a radical change in the community legislative process for social policy.*
>
> *The Social Policy Protocol of the Treaty of Maastricht also embodied a compromise in the form of an 'opt-out' for the UK, thus creating a 'twin-track' EU social policy. On one track, all 12 Member States would continue to observe and to be bound by the previous provisions of the 'Social Chapter' of the EC Treaty. On the other track, all 12 Member States agreed that 11 Member States could adopt policies on employment and industrial relations, in accordance with the new procedure laid down in the agreement annexed to the Protocol. It was*

agreed that the UK would not participate in these procedures, nor would it be bound by the outcome of these procedures.

Between 1992 and 1997, therefore, a 'two-speed' Europe operated in employment and industrial relations. In accordance with the new social policy procedures of the Protocol and the Agreement on Social Policy, only 11 Member States signed the Directives on European Works Councils (1994), parental leave (1996) and part-time work (1997). It was not until May 1997 that the newly elected UK government decided to terminate the 'opt-out.' The Social Policy Protocol was deleted and the Agreement on Social Policy was incorporated into a revised 'Social Chapter' of the EC Treaty by the 1997 Treaty of Amsterdam.

Cultural Area

The Treaty of Maastricht introduced also a range of new provisions in education, culture, professional training and health. Occasionally, this is mistakenly shown as a "step forward" in the conferral of new competences on the Community. The purpose of these new provisions, incorporated mainly at the initiative of the "Regional Chamber" (Bundesrat) of the German Parliament (very jealous of its competencies in these fields), was quite the opposite: to limit the use and abuse of Article 235 as above discussed by creating a specific legal basis that confers on the Community very limited non-exclusive competences and, exceptionally, explicitly excludes from the competence of the Community the harmonization of national laws. The sense of these new provisions (very similar among themselves) is understood after carefully reading them. The specific article on culture is cited below (bold added).

CULTURE
Article 128
1. The Community shall ***contribute to the flowering*** *of the cultures…*
2. Action by the Community shall be aimed at ***encouraging cooperation*** *between Member States and, if necessary, supporting and supplementing their action …*
3. The Community and the Member States shall ***foster cooperation*** *with third countries and the competent international organizations …*
4. The Community ***shall take cultural aspects into account*** *in its action under other provisions of this Treaty.*
5. In order to contribute to the achievement of the objectives referred to in this Article, the Council:

- *acting in accordance with the procedure referred to in Article 189b and after consulting the Committee of the Regions, shall adopt incentive measures,* ***excluding any harmonization of the laws and regulations of the Member States.*** *The Council shall act unanimously throughout the procedures referred to in Article 189b;*

- *acting unanimously on a proposal from the Commission, shall adopt recommendations.*

Clearly, the most important provision of this article is the one that prohibits any harmonization, i.e. any policy, on the part of the EU.

5.5. The Evolution after the Treaty of Maastricht

After the Treaty of Maastricht nothing new has occurred that is important in relation to the legal framework of EC/EU cultural, scientific and social policies, except for the inclusion in the chapter on Social Policy of the Protocol and the Agreement on Social Policy of the Treaty of Maastritch, as above mentioned.

Within this invariable framework,

Social Field

- The production of derived law in the social field has increased. A recent Communication (March 2016) by the European Commission summarizes the current status of the social *acquis*.
- The third path of integration above described at 3.2 has also been used in the social field. Encouraged by the European Commission, the Member States have used the "open method of coordination" (OMC) to discuss their own social policies and to attempt to find some kind of convergence. A recent paper by Francesco Chiodi adequately reviews these paths and their limitations (see http://reciprocamente.eurosocial-ii.eu/rec-wp/wp-content/uploads/2015/06/Articulo-FM-Chiodi.pdf). This paper was later included in a book called "Coordinación de políticas sociales: desafíos para la gestión pública" [Coordination of Social Policies, a Challenge for Public Management] under the chapter entitled "La coordinación de las políticas de protección social en Europa" [Coordination of Social Protection Policies in Europe], by Carla Bronzo, Fabian Repetto [publishers], published in November 2015 by the EUROSOCIAL program. See http://sia.eurosocial-ii.eu/files/docs/1453800699-estudio_18.pdf).

- The old tradition of adding provisions dealing with the salaried workers scheme to the international agreements signed by the Community/Union has been fading as those agreement have been "colonized" first by the OMC law (particularly services agreements, GATS) and then by the NAFTA and NAFTA-like agreements[7].

[7] This evolution has been described in the article called "*CETA on Investment: The definitive surrender of EU law to GATS and NAFTA/BITS*" – authors: Fernández-Pons, Polanco y Torrent – published in the October 2017 issue of Common Market Law Review.

- A new and very much expected Communication from the Commission was finally published on 26 April 2016 with the title *Establishing a European Pillar of Social Rights*. However, this relatively brief Communication, which should be thoroughly studied by all EULAC focus members (see http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2017:0250:FIN) does not substantially change the approach to social policy/social policies formerly applied that we have just described.

Research Field

- As above described, Research Framework Programmes have followed (with increased resources) and have been increasingly opened to third countries for partnering.

Cultural Field

- Several programmes were started, the most important of which has been the MEDIA Programme in its successive versions, until the current CREATIVE EUROPE programme. This programme is very significant from the perspective of international relations because it provides a less favorable treatment to undertakings established in Member States that are under the control of capitals/persons from third country (including the CELAC states).

6. Conclusions

Conclusions cannot but repeat what has been said in the introduction.

The purpose of this document is to lead to empiricism: to look at the EU and CELAC, and the relations between them, such as they are and not as imagined by anybody. This particularly applies to the EU. CELAC is little more than a not very well demarcated project; however, the EU is not a project but a reality with very well defined profiles (quite another thing is for these profiles to give shape to a very unusual legal-political-institutional entity, widely different from the image that many – both in Europe and in Latin America and the Caribbean – have of it.)

From the specific perspective of EULAC Focus as a collective research project, with almost half of the project executed, unless this document is completely wrong, a major conclusion can be drawn that is hard to accept, namely, that if the nature of the European Union is not sufficiently or at least minimally well known, it is almost impossible to say anything relevant about its relations with CELAC. This document (supplemented with other material already available in EULAC Focus) purports to provide such minimum knowledge about the EU on a relatively low number of pages – the content of which, therefore, can be absorbed in only two or three very careful

readings – perhaps with the help of a couple of consortium internal webinars to comment and answer questions about the content of this document.