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COMMISSION IMPLEMENTING DECISION

of 22.3.2016

on the establishment of a European Union Trust Fund for Colombia

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union¹, and in particular Article 187 thereof,

Whereas:

- (1) A violent armed conflict has afflicted Colombia for the past 50 years, destabilising the country and causing the death of over 200,000 people and the forced internal displacement of more than five million people. The conflict has largely destroyed the country's social fabric, seriously impeded its economic development, and undermined the resilience of large parts of the population. It has also had significant destabilising spill-over effects into neighbouring countries, in particular Ecuador and Venezuela, who have had to cope with a major influx of refugees for decades. Colombia's rural areas have been disproportionately affected by the violent conflict, and have suffered from illegal activities and violence. The delivery of public services has been seriously hampered by the state's weak presence in many rural areas.
- (2) The negotiations between the Government of Colombia and the *Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo* (FARC)² guerrilla group, which are taking place in Havana, present a historic opportunity to put an end to one of the world's oldest internal conflicts. Peace in Colombia will bring major economic, political and social benefits, including for the stability of its neighbouring countries and the entire region.
- (3) The Colombian Government has requested repeatedly and at the highest level that the EU and its Member States support the implementation of the future peace agreement, which is expected to be concluded by the end of March 2016. Following its successful track record of local development, especially in the rural and conflict affected areas, the EU is now asked to provide targeted support for the post-conflict phase in these sectors. A coordinated European response to the peace process is the most effective way to support Colombia. Experience has shown that weakened local administrations, as there are in rural areas of Colombia, combined with a sudden increase in the number of aid donors, leads to disorganisation and a fragmentation of the response of the international community. This hampers the country's effective and sustainable reconstruction. Joint action carried out by the EU and its Member States would add value and make a difference. To support an efficient and effective coordinated European response, structures should be set up to facilitate dialogue between the

¹ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union, OJ L 298, 26.10.2012, p. 1.

² In English: Revolutionary Armed Forces of Colombia – People's Army.

European Commission, EU Member States and Colombia, to pool funding from various donors, and to create fast decision-making and implementation mechanisms.

- (4) To this end, the European Union and its Member States declared, during the EU-Community of Latin American and Caribbean States (CELAC) Summit of June 2015³, to be working towards the establishment of a Trust Fund to support the post-conflict phase in Colombia. Article 187 of Regulation (EU, Euratom) No 966/2012 authorises the Commission to set up and manage an EU Trust Fund under an agreement concluded with other donors. A Trust Fund should be designed to mobilise various sources of EU financing and to receive contributions from EU Member States and from donors from non-member countries in a Trust Fund account. It should set up governing and managing structures to ensure that these contributions are used for the purpose for which this Trust Fund was established.
- (5) Amongst the types of financing tools envisaged under Article 4(1) of Regulation (EU) No 236/2014⁴, only a post-emergency EU Trust Fund for Colombia (the “Trust Fund”) would ensure that European resources are pooled together with those of other donors to support the implementation of the Peace Agreement in Colombia and that a stable governing structure is set up for the Commission, EU Member States, the Colombian authorities and other local, regional or international actors to discuss EU support for the peace process. The governing body would decide on a joint strategy and would have the capacity to quickly adopt any measures needed, on a case-by-case basis and tailored to the specific needs identified. The pooling of EU resources with those of other donors and the coordinated project identification in the governing body of the Trust Fund would be more efficient and have a greater impact than separate interventions made by individual donors. The establishment of the Trust Fund would also make it possible for donors not yet present in Colombia to contribute to the peace process. Finally, the Trust Fund, more than any other implementing tool available under the EU financial instruments for external action, would ensure involvement of the Colombian authorities in the decision-making process, and would make it possible for them to participate in the Trust Fund’s governing bodies as observers.
- (6) In accordance with Article 187(4) of Regulation (EU, Euratom) No 966/2012, a board chaired by the Commission should be established for each Trust Fund. The Commission should therefore appoint a representative and an alternate representative to chair the Trust Fund Board on its behalf and to exercise its voting rights. In order to ensure efficient implementation, the Commission should also appoint a representative to the Operational Committee.
- (7) Entrusting the management of the pooled funds to the Commission and not to a third entity would not only ensure the visibility of the EU and Member States' political support for this important peace process. It would promote the general interest of the EU and of its Member States to be seen as one actor in support of the peace process in Colombia, as more than the sum of its parts. It would also allow for the generation of economies of scale, and would help the EU achieve maximum impact and visibility on

³ Paragraph 17 of the Brussels Declaration “*Shaping our common future: working together for prosperous, cohesive and sustainable societies for our citizens,*” from the Heads of State and Government of the European Union and of the Community of Latin American and Caribbean States (CELAC), adopted on 11 June 2015.

⁴ Regulation (EU) No 236/2014 of the European Parliament and of the Council laying down common rules and procedure for the implementation of the Union’s instruments for financing external action, OJ L 77, 15.3.2014, p. 95.

the ground. Furthermore, due to the fact that the Commission is entrusted with the management of the pooled funds, the EU control bodies and institutions would have full access to the activities of the Trust Fund and of the actions financed by it and the European Parliament and the Council would be duly informed of the activities of the Trust Fund through the annual reports.

- (8) The Trust Fund's establishment and management should be coordinated with the Colombian Government, Member States' bilateral initiatives, and other trust funds or multi-donor initiatives. For this purpose, the Colombian Government has put in place a framework for post-conflict international cooperation, which includes an 'umbrella fund' (*Colombia en Paz*) to coordinate post-conflict support from the international community and to help avoid overlap. This umbrella fund includes a specific role for the intended EU Trust Fund, guaranteeing coordination of all international initiatives from the outset.
- (9) In light of the above, the conditions for setting-up a Trust Fund supporting the implementation of the peace process in Colombia set out in Article 187 of Regulation (EU, Euratom) No 966/2012 have all been met.
- (10) The Trust Fund's overall objective is to support the implementation of the provisions established in the Peace Agreement between the Government of Colombia and the FARC.. The general objectives of the Trust Fund should be development at the local level, in line with the territorial focus of the peace agreement and building on the experience achieved in this area by the EU and its Member States.
- (11) The Trust Fund is established under the Development Cooperation Instrument⁵ (DCI). Colombia is included in the list of recipients of Official Development Assistance (ODA) established by the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD/DAC) and eligible for DCI funds in accordance with Article 1(1) of the DCI. All the actions financed from the DCI under this Trust Fund should comply with the criteria for ODA in accordance with Article 2(3) of the DCI.
- (12) The Trust Fund should be complementary to actions undertaken by the EU's external financing instruments; these include, in addition to the DCI, the Instrument contributing to Stability and Peace⁶ (IcSP), the European Instrument for Democracy and Human Rights⁷ (EIDHR) and Regulation (EC) No 1257/96⁸ concerning humanitarian aid (Article 2(d)) may contribute to the Trust Fund, in accordance with the conditions set out therein and with the ceilings set in the 2014-2020 multiannual financial framework. A 'notional' approach in the sense of Article 42(2) of the

⁵ Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financial instrument for development cooperation for the period 2014-2020, OJ L 77, 15.3.2014, p. 44.

⁶ Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace, OJ L 77, 15.3.2014, p. 1. Inclusion of the IcSP short-term component is subject to finding arrangements that would preserve the flexibility and rapidity of action under Article 3 of the IcSP regulation.

⁷ Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide, OJ L 77, 15.3.2014, p. 85.

⁸ Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid, OJ L 163, 2.7.1996, p. 1.

Commission Delegated Regulation (EU, Euratom) No 1268/2012⁹ should be taken in respecting the remit of the contributing financial instruments.

- (13) Ireland, Italy, the Netherlands, Spain and Sweden have confirmed their intention to contribute to the Fund to the High Representative of the Union for Foreign Affairs and Security Policy / Vice-President of the Commission and/or the Commissioner responsible for International Cooperation and Development.
- (14) The agreement establishing the Trust Fund (the ‘Constitutive Agreement’), to be signed after a peace agreement is signed and the negotiations in Havana end, should define the Fund’s objectives and the rules which apply to its management and governance.
- (15) The Trust Fund should be established in full compliance with Council Decision 2010/427/EU¹⁰ on establishing the organisation and functioning of the European External Action Service, and in particular the provisions of Article 9 concerning external action instruments and programming.
- (16) Regardless of the funding financial instrument used, all European Union contributions to the Trust Fund should take the form of a financing decision in the sense of Article 84 of Regulation (EU, Euratom) 966/2012. The adoption of these financial decisions must comply with the procedure set out in Regulation (EU) No 182/2011¹¹ and with the rules applicable to the funding financial instrument used, in particular its scope and eligibility rules.
- (17) The Trust Fund is set up for a limited duration and should therefore have a fixed end date. The Commission should implement it in accordance with the applicable rules and regulations, in particular those concerning countries in crisis and post-crisis situations, in light of the aforementioned risks and circumstances of post-conflict Colombia.
- (18) Under Article 187(7) of Regulation (EU, Euratom) No 966/2012, the Commission is authorised to deduct a sum of up to 5% of the amounts contributed to the Trust Fund to cover its management costs. For staff needed to manage the Trust Fund, the ceiling for the number of posts to be created either for staff based in Brussels or in EU delegations should only depend on the budgetary allocation available within the Trust Fund.
- (19) Decisions concerning amendments to the Constitutive Agreement, made by the Trust Fund Board and the Operational Committee under Article 19 of the Agreement, must be in line with and preceded by a decision of the College. They should be made in accordance with Article 187(8) of Regulation (EU, Euratom) No 966/2012 and with the principles of economy, efficiency and effectiveness.
- (20) The establishment of the EU Trust Fund is in accordance with the opinion of the Development Cooperation Instrument Committee set up by Article 19 of the DCI.

⁹ Commission Delegated Regulation (EU, Euratom) No 1268/2012 of 29 October 2012 on the rules of application of Regulation No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p.1)

¹⁰ OJ L 201 3.8.2010, p. 30.

¹¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

HAS DECIDED AS FOLLOWS:

Article 1

1. A post-emergency European Union Trust Fund for Colombia ('the Trust Fund') shall be created upon conclusion of the Constitutive Agreement between the European Commission, on behalf of the European Union, and the donors who are interested in contributing to the Trust Fund (the 'the Constitutive Agreement').
2. The signing of the Constitutive Agreement is conditional upon the signature of the Peace Agreement putting an end to the negotiations between the Colombian Government and the FARC.
3. The overall objective of this Trust Fund shall be to provide support to the implementation of the provisions established in the Peace Agreement between the Government of Colombia and the FARC.
4. The general objectives of the Trust Fund, with the main focus on development at the local level, will be, inter alia, to seek to support programmes on government reform, decentralisation and citizen participation as well as to aim to strengthen involvement by civil society, and to strengthen the general resilience notably of the population groups in most vulnerable conditions such as victims, indigenous peoples, and afro-descendants. Furthermore, they will seek to support the Government on the issue of illicit crops substitution and the problem of narcotics production and commercialisation. They will seek to strengthen the respect of rule-of law principles and shall be guided by the need to promote environmental sustainability, gender equality and a human rights-based perspective, which are key factors for peace. They will have special regard to the particular needs of women and girls affected by the conflict, and will be implemented taking due account of established principles of linking relief, rehabilitation and development (LRRD).

The geographical scope of the Trust Fund will be the territory of Colombia.

5. The Constitutive Agreement shall define the Trust Fund's specific objectives and the rules and procedures applicable to its management and governance. It shall do so in line with Regulation (EU, Euratom) No 966/2012 and the draft in annex to this Decision.
6. The Director General for International Cooperation and Development is authorised to sign the Constitutive Agreement on behalf of the European Commission.

Article 2

1. The Constitutive Agreement shall establish:
 - a Trust Fund Board, chaired by the Commission, and including representatives of all donors and of non-contributing Member States as observers, to decide on the Trust Fund's overall strategy;
 - an Operational Committee, chaired by the Commission and including representatives of donors which have provided a minimal contribution to be fixed in the Constitutive Agreement and, as observers, of other donors and of non-contributing Member States, to decide on how funds will be allocated to specific actions.
2. The Director-General of the Directorate-General for International Cooperation and Development shall:

- represent the Commission on the Trust Fund Board, and shall designate one or more alternate representatives at the level of Deputy Director-General in the same Directorate-General; and
- designate the Head of the EU delegation in Colombia as the Commission’s representative to the Operational Committee and one or more alternate representatives..

The Commission’s alternate representative(s) to the Trust Fund Board and its designated representative and alternate representative(s) to the Operational Committee, shall act under the instructions of and report to the Director-General of the Directorate-General for International Cooperation and Development on all matters related to the functioning of the Trust Fund.

The Commission’s representative may be accompanied by a maximum of two advisory staff members from the Commission services.

The Secretary-General of the European External Action Service may designate a representative and one or more alternate representatives to be part of the Commission’s delegation to the Trust Fund Board and the Operational Committee.

In order to ensure continuity of service, if the representatives and alternate representatives are unavailable, the deputising rules of the Commission and the European External Action Service apply.

3. The Director-General of the Directorate General for International Cooperation and Development shall be the authorising officer by delegation responsible for managing the Trust Fund in accordance with Article 65 of Regulation (EU, Euratom) No 966/2012 applicable by virtue of Article 19 of Regulation (EU) No 2015/323.

Article 3

1. The Director-General of the Directorate-General for International Cooperation and Development may delegate tasks related to the Trust Fund’s management to a staff member, and appoint him/her as the Manager of the Trust Fund, in accordance with the Commission’s rules of procedure.
2. When implementing the decisions adopted by the Trust Fund Board and Operational Committee, the Manager of the Trust Fund shall follow the rules and procedures set out in the Constitutive Agreement, and the Commission’s relevant rules and regulations, including those on reporting to the Trust Fund’s governing bodies and to the European Parliament and the Council. For the purposes of implementing this Trust Fund, Colombia shall be considered a country in crisis situation in the sense of Article 190(2) of Commission Delegated Regulation (EU) No 1268/2012.
3. A maximum of 5% of the amount pooled into this Trust Fund will be deducted to cover its management costs, including the costs of hiring additional contractual staff.
4. The Trust Fund shall be managed in Colombia.

Article 4

The contributions made to the Trust Fund by the European Union from the general budget of the Union shall take the form of financing decisions in the sense of Article 84 of Regulation (EU, Euratom) 966/2012. The adoption of these financial decisions

shall comply with the procedure set out in Regulation (EU) No 182/2011 and with the rules applicable to the relevant external financing instrument used.

Article 5

1. The end date of this Trust Fund shall be 31 December 2020.
2. The duration referred to in paragraph 1 may be extended by an amendment of this decision upon a request of the Trust Fund Board.

Done at Brussels, 22.3.2016

For the Commission
Neven MIMICA
Member of the Commission