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## BACKGROUND BRIEF:

**“POLITICAL DIALOGUE AND COOPERATION  
AGREEMENT BETWEEN THE E.U. AND CUBA,  
12504/16 (BRUSSELS 25 NOV. 2016) COLAC 76,  
CFSP/PESC 753”**

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**ABSTRACT:** This Background Brief includes an analysis of the PDCA. It considers its provisions in light of the geopolitical aspirations of the Cuban State and its determination to preserve its central planning economy. Most interesting is the possibility that in return for stronger ties the EU might have waived the application of its strong business and human rights measures to EU Cuba bilateral relations



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Even as the United States retreated from direct economic connections with Cuba, the European Union sought to step into the space left by the American action. That strategic initiative, the [Political Dialogue and Cooperation Agreement \(PDCA\)](#) took final form accelerated in the wake of the prior U.S. Administration's policy of opening up.

Negotiations for the [Political Dialogue and Cooperation Agreement \(PDCA\)](#) were launched in April 2014 and [concluded on 11 March 2016](#). After the approval by the Council of the European Union, it was [officially signed on 12 December 2016](#). In parallel, the agreement was submitted to the EU Member States' national parliaments and the Cuban National Assembly for ratification. [The European Parliament gave its consent on 5 July 2017](#). Most parts of the agreement start to be provisionally applied as of 1 November 2017. ([here](#))

The Europeans view this as the marker of a new and more intensely profitable relationship with the Cuban state--though one not without its costs to Cuba. PDCA is the successor policy to the EU's Common Position which was repealed 12 December 2016 ([repeal of the Common Position](#)).

And now the EU's Federica Mogherini is on an official visit to Cuba for talks aimed at implementing the PDCA. It is likely that on the agenda will be the structuring of the Joint Council established by PDCA to oversee the fulfillment of the agreement (PDCA art. 81) and the Joint Committee (Art. 82) charged with the actual implementation of the PDCA (Art. 82).

This Background Brief includes an analysis of the PDCA. Most interesting is the possibility that in return for stronger ties the EU might have waived the application of its strong business and human rights measures to EU-Cuba bilateral relations

The [EU's Press Release](#) announced the visit this way:

The High Representative/Vice President Federica Mogherini will travel to Cuba on 3-4 January, reconfirming the strong EU-Cuban relationship. During her visit, she will meet with government representatives, with a view to an ambitious and swift joint implementation of the Political Dialogue and Cooperation Agreement (PDCA) between the EU and Cuba. Together with Cuban Foreign Minister Bruno Rodríguez Parrilla she will also prepare for the first EU-Cuba Joint Council meeting at ministerial level within the framework of the PDCA.

The Political Dialogue and Cooperation Agreement entered into provisional application on 1 November 2017. This landmark agreement – the first ever between the EU and Cuba – constitutes the new legal framework for EU-Cuba relations. It foresees an enhanced political dialogue, improved bilateral cooperation and the development of joint action in multilateral fora.

The PDCA binds the EU other than potentially the UK and or Ireland (PDCA, CU/EU/en 9). The General Principles (Article 1) reaffirm general commitments to a set of ambiguous concepts:

multilateralism, respect for international law and the principles of the U.N. Charter, the principles of equality, reciprocity and mutual respect, and to the promotion of sustainable development. (Art. 1 ¶¶1-2, 4). Of course, these are likely understood in almost diametrically different ways by the EU and Cuba but it provides sufficient cover for moving forward along pragmatic lines without losing face. That fig leaf is made clear by the agreement that implementation of PDCA would be undertaken "in accordance with their respective constitutional principles, legal frameworks, legislation, norms and regulations, as well as the applicable international instruments to which they are parties." (Art. 1 ¶ 3). Complicating these initial principles are declarations of "respect for and the promotion of democratic principles, respect for all human rights and fundamental freedoms laid down in the Universal Declaration of Human Rights and in the core international human-rights instruments and their optional protocols which are applicable to the Parties, and respect for the rule of law." (Art. 1 ¶5). But this is limited both by the provisions of ¶¶ 1-2 as well as by the provisions of ¶ 6 in which both sides "recognise that all peoples have the right to freely determine their political system and to freely pursue their economic, social and cultural development." (Art. 1, ¶ 6). Taken together these Principles balance nicely the political needs of the EU and Cuba in a way that recognizes both but permits each to ignore the contradictions of their respective positions applied to the condition of the other.

Article 2 specifies the objectives of the PDCA. These are both straightforward and general. It is meant to help Cuba update its economy and society (Art. 2 ¶ (b)) through dialogue and cooperation (Ibid, ¶¶ (a), (g) ), promote mutual trade (Ibid ¶ (e)), and the achievement of the 2030 Agenda for Sustainable Development (Ibid, ¶ (d)). Most interesting is the objective of enhancing regional trade in the Caribbean and Latin America (Ibid ¶ (f)).

To those ends, Part II of PDCA speaks to the contours of political dialogue. These touch on the usual: promoting exchanges, enable broad exchanges of views , center exchange on the UN system, and promote strategic partnerships between the EU and the [Community of Latin American and Caribbean States](#) (CELAC) created in 2010 (Ibid., Art 3). The latter is particularly useful to Cuba, which has had long term ambitions to lead at least Caribbean regional trade and political framework (see, e.g., [here](#)). All of this cooperation is to be undertaken at the state to state level--no people to people focus here (Ibid., Art. 4). That approach serves as the heart of an open ended and vague provision respecting human rights. Article 5 provides in its entirety:

Within the framework of the overall political dialogue, the Parties agree to establish a human rights dialogue, with a view to enhancing practical cooperation between the Parties at both multilateral and bilateral level. The agenda for each dialogue session shall be agreed by the parties, reflect their respective interests and take care to address in a balanced fashion civil and political rights and economic, social and cultural rights.

The key is in the last sentence. The Cubans will emphasize economic, social and cultural rights while the Europeans will push civil and political rights. To some extent this serves U.S. interest as well--to the extent that the EU can be used as a proxy for pushing for political reform acceptable to the Americans. The Cubans, anticipating this, will likely negotiate hard.

In addition, PDCA covers illicit trade in small arms and light weapons and other conventional weapons (Art. 6); disarmament and nonproliferation of weapons of mass destruction (Art. 7); anti-terrorism measures (art. 8); international criminality (art. 9); and unilateral coercive measures (art. 10). Additional areas of cooperation include combating trafficking in persons and migrant smuggling (Art. 11); trade in illicit drugs (Art. 12); and combating race discrimination, xenophobia and relate intolerance (art. 13). With respect to the latter the focus is on exchanging best practices. Lastly Article 14 focuses on sustainable development, mostly through the exchange of views.

Article 10, of course, is the most interesting to the extent that the specter of the U.S. embargo hangs over it. But much more important is the potential effect of Article 10 on the ability of the EU to export its increasingly effective extraterritorial regime for the promotion of human rights. It is not clear from PDCA whether this provision is meant to prohibit the application of new measures--the Modern Slavery Act and the French Supply Chain Due Diligence Law in relations between the EU and Cuba, where ever they might manifest. The EU will resist that reading by emphasizing the language "that are contrary to international law and commonly accepted rules of international trade." (Art. 10 ¶ 1). The Cubans, on the other hand, would emphasize the language: "which are used as a means of political and economic pressure against States and affect the sovereignty of other States." (Ibid). How this will be decided remains to be seen--but for the moment it is clear that both sides believe they have protected their respective principles and thus creating a contradiction that will manifest itself the first time a human rights related charge is brought against enterprises operating in or through Cuba or its SOEs. Expect to see this potentially through the OCED Guidelines for Multinational Enterprise [NCP mechanisms](#).

Part III gets to the root of things, the provisions on Cooperation and sector-policy dialogue. These touch on the core areas of development set out in the Cuban 2030 Plan (see [here](#))(discussed [HERE](#)). In particular, Part III, Title VI then deals with sector specific economic development at ties EU Cuba cooperation to the focal points of the [Cuban 2030 Economic Plan](#). These touch on agriculture (Art. 50); tourism (Art. 51); science, technology and innovation (Art. 52); technology transfer (Art. 53); energy production (Art. 54); and transport (Art. 55).

However, Title I on cooperation sectors (Art. 20) that follow an EU pattern: "(a) sustainable development, (b) human rights and good governance, (c) environmental sustainability, (d) disaster prevention, (e)gender perspective, (f) persons in a situation of vulnerability, (g) building national capacities, and (h) knowledge management." The objectives (Art. 15) emphasize focus on Cuban economic development goals within the sustainable development framework. The principles (Ar. 16) focus on cooperation through which each sides makes the best deal it can (echoing ironically enough the recasting of trade policy by the Trump Administration (see, e.g. [here](#)). Sector policy dialogue (Art. 17) is centered on information sharing, the harmonization of standards, and capacity building through best practices sharing. Implementation of dialogue (Art. 18, Cooperation modalities and procedures) is meant ot be enhanced by EU money (Art. 18 ¶1((a) ("technical and financial assistance")), and by coordination that furthers and complements Cuba's development strategies and policies." (Art. 18 ¶1((b)). Also interesting is the focus on the EU's help in securing financing for Cuban economic ambitions (Art. 18 ¶1((g) ("innovative cooperation and financing modalities and instruments in order to improve the effectiveness of cooperation")). Cuba for its part agrees not to use cooperation as a means of enhancing its revenues and not impede travel by

officials(Art. 18 ¶5). Article 19 then identifies relevant actors covered by the cooperation arrangements. In addition to the usual international public actors, Art. 19 ¶(e) also identifies "civil society, including scientific, technical, cultural, artistic, sports, friendship and solidarity associations, social organisations, trade unions and cooperatives." Again, the provision is vague enough to give Cuba the authority to ban civil society groups that it deems politically threatening, while the EU might take the position that all such organizations come within the umbrella of this provision. Expect some friction here. Some clarity, however, is attempted in Article 36

The Parties recognise the potential contribution of civil society, including academia, think tanks and media, to the fulfilment of the objectives of this Agreement. They agree to promote actions in support of greater civil-society participation in the formulation and implementation of relevant development and sectoral cooperation activities, including through capacity-building.

I expect that the Cubans might read this narrowly (academics, think tanks and credentialed media). Expect some friction as well in the context of the anti-fraud and corruption provisions of Article 21.

Part III, Title II deals specifically with the EU's great concern--democracy, human rights and good governance. These provisions give the EU some leeway in tying economic benefits to political reform, but the potential hidden in those provisions may require substantial work for their realization--at least as the EU might see things. Article 22 touches on human rights. Its first paragraph nicely evidences the mishmash resulting from an attempt to push together two very different views of human rights

Mindful that the protection and promotion of human rights and fundamental freedoms is the first responsibility of governments, bearing in mind the significance of national and regional particularities and of various historical, cultural and religious backgrounds and acknowledging that it is their duty to protect all human rights and fundamental freedoms regardless of their political, economic and cultural systems, the Parties agree to cooperate in the area of democracy and human rights.

Note the tensions in the provisions, the balancing of distinct approaches that will be difficult to untangle and that provides neither side with an advantage. The likely result will be little beyond the usual rhetoric and claims to victory by both sides as their respective enterprise seek to make money. Article 23 (good governance) and Article 25 (modernization of public administration) provides the Cuban with necessary capacity building that aligns with the focus of the Cuban [Lineamientos](#) on the development of governance in furtherance of their economic model. It is not clear in what direction Article 24 (rule of law) will develop. It is likely that this will be used to ensure a measure of protection of investors from the EU operating in Cuba through agreements negotiate under the umbrella of PDCA, something to which Article 26 (prevention and resolution of conflicts) is also devoted.

Part III, title II then focuses on issues of justice, citizen security and migration. These include issues around the protection of personal data (Art. 27), an issue quite dear to the EU and less so to

the Cubans. It also touches on trade in illicit drugs (Art. 28); money laundering (Art. 29); organized crime (Art. 30); anti-corruption measures (Art. 31); illicit trade in small arms (Art. 32); anti-terrorism (Art. 33); migration (Art. 34); and consular protection (Art. 35). Part III, Title IV then touches on social development and social cohesion. This furthers basic Cuban policy elaborated in the 7th Cuban Communist Party Congress' [Conceptualización del Modelo Económico y Social Cubano de Desarrollo Socialista](#) (2017) (discussed [HERE](#)). Article 37 essentially summarizes the Cuban position on the integration of socialist economic and social development from its 7th PCC principles. Article 38 may be more problematic for Cuba, aligning cooperation around ILO standards. Article 39 speaks to educational cooperation, Article 40 to public health, and Article 41, tersely, with consumer protection. There is a wide scope of agreement possible with respect to a number of related areas of cooperation: culture and heritage (Art. 42); protection of vulnerable persons (Art. 43); a focus on gender (Art. 44); interaction of youth (Art. 45); and local community development (Art. 46 with respect to which Cuba has a long history especially with EU based NGOs).

Part III, Title V focuses on environment, disaster risk management, and climate change. These are areas in which cooperation is likely to produce a substantial amount of positive effects. The principal focus (Art. 47 ¶ 4) includes conservation and sustainable development, protection of fresh and marine waters, and climate change issues generally. Disaster risk management (Art. 48) of critical importance to Cuba, looks to "common commitment to improving prevention, mitigation, preparedness, response and recovery measures in order to increase the resilience of their societies and infrastructure, and to cooperate, where appropriate, at bilateral and multilateral political level to improve disaster-risk-management outcomes." Water sanitation (Art. 49) has also been a concern of Cuban planning as its infrastructure, especially in the older portions of its major cities, has been deteriorating. This also aligns with Cuban central planning goals for 2030.

Beyond its focus on the sectoral development of the Cuban economy that aligns with the Cuban 2030 Economic and Social Plan, Part III, Title VI touches on modernization of the economic and social model. But this modernization is narrowly tailored to avoid the complications of political repercussions or back door regime change strategies. Art. 56 ¶ 1 focuses on strengthening Cuban public administration and the development of Cuban cooperatives and enterprises. This is somewhat sensitive in light of recent efforts by the Cuban state to stop licensing cooperatives and to better control the private sector (see [here](#)). Art. 56 ¶ 3 makes the "helpful but not threatening" approach explicit.

The Parties agree to promote and encourage cooperation between institutions, including sector-based institutions, that promote instruments to support SMEs, particularly those whose efforts are aimed at improving competitiveness, technological innovation, integration in value chains, access to credit and training as well as strengthening the institutional capacity and institutional framework. They also agree to promote contacts between companies from both Parties to support their insertion into international markets, investments and technology transfer.

Lastly issues of good governance in taxation (Art. 58) and statistics and data production (Art. 57) are covered. The last is particularly important as regulation moves from command to big data



management systems. It encourages "including the exchange of scientists; the development of improved and consistent methods of data collection, disaggregation, analysis and interpretation; and the organisation of seminars, working groups or programmes complementing statistical capacities."

Part IV then turns to trade and trade cooperation. Article 60's objectives include the usual. There are some more interesting and points to the unequal element in the cooperation deal that the PDCA represents. Cuba has a need that the EU does not--to be integrated into the world economy (Art. 60 ¶ (b)). That means not merely integration into economic globalization, but also avoidance of the U.S. trade sanctions in place since the 1960s. That is a tall order, especially as the U.S. moves from global embargoes to precision blacklists. This is especially likely with expanded use of [Global Magnitsky Act sanctions](#). The EU has also adopted this approach. (see [The List as Law: CARICOM, Cuba and the EU's Tax Haven List](#) for its effects on Caribbean economies and potentially against Cuba). As important, Europe is seen as an important target zone for the exploitation of a key area of sectoral development in Cuba under its 2030 Plan--pharmaceuticals (See Art. 60 ¶(f)).

Part IV Title I focuses on trade and the outlines of bilateral investment (BIT) terms. It is meant to be developed to reduce trade barriers (fiscal and otherwise; Art. 61 ¶1), and to be grounded on "rule-based multilateral trading system under which the Parties are responsible for maintaining the primacy of rules and their effective, fair and balanced implementation" (Ibid ¶ 2). The parties pledge to accord most favored nations treatment to each other with the usual exception in accordance with WTO agreements (Art. 62) as well as to each accord national treatment to the goods of the other (Art. 63). There are affirmances of transparency of trade measures (Art. 64) and of mutual commitment to the [WTO Trade Facilitation Agreement](#) (Art. 65) and the [WTO Agreement on Technical Barriers to Trade](#) (Art. 66) along with standards agreements (Art. 67), trade defense (Art. 68), and of existing obligations under Article XX of GATT (Art. 70), all subject to mutually agreed revision (Art. 69).

Part IV Title II, then focuses on trade related cooperation. These include customs (Art. 71), and administrative measures around trade facilitation (Art. 72). These later commitments will pose something of a challenge for both the rules rigid EU and the sometimes heavy handed administrative control cultures of Cuba. But it is the thought that counts and many of these measures are written as inspirational goals rather than as implementable measures. Protection of intellectual property is the focus of Article 73, which itself can pose problems given the messiness on that score that was generated after the 1959 Revolution. Going forward deals, on the other hand may be easier. Capacity building is an important focus on measures regarding cooperation on technical barriers to trade (Art. 74) and trade defense (Art. 78). Increasing trade in agricultural products is the core of the provisions around food safety and animal welfare (Art. 75) with a similar objective for trade in traditional and artisanal goods--from both sides (Art. 76) though in the absence of strong consumer markets in Cuba it is hard to see how this flows any way but out of Cuba and into the hands of wealthy European consumers. A sustainable development chapeau is also provided (Art. 76). The EU secured recognition of the importance (to it) of protection of rules of origin (Art. 79) and both parties pledged greater and better coordinated mutual investment (Art. 80).

All of these aspirations have to be institutionalized somehow and Part V serves to memorialize these new institutional structures. Given the heavily bureaucratized cultures of the EU and of Cuba it comes as no surprise that

A Joint Council is hereby established. It shall oversee the fulfilment of the objectives of this Agreement and supervise its implementation. It shall meet at ministerial level at regular intervals, not exceeding a period of two years, and extraordinarily whenever circumstances so require, if the Parties so agree. (Art. 81

¶ 1)

Beyond the policy and direction of the Joint Council, a working directorate--the Joint Committee is established to actually attempt implementation (Art. 82). It meets once a year. It is unlikely to have much control of the day to day movement on the agreement which suggests that the driving force will be elsewhere within the EU and Cuban bureaucracies. That "somewhere may be overseen by the various sub-committees that may be established under the Joint Committee (Art. 83), though these too meet infrequently though regularly.

Taken together, the PDCA appears to give both parties what they want most. For the Cubans that is a counterweight to both their friends (the Russians and Chinese) and their frenemies (the Americans). It provides a more solid basis for the fulfillment of key areas of the 2030 Economic Plan through entry into lucrative European markets--but only if the Cubans can deliver. And that may take a bit of financial help from either the Europeans (intimated in the PDCA) or from their friends. Even better, the PDCA might help Cuba avoid the effects of the U.S. embargo--especially those aspects targeting the economic drivers of the Cuban economy that have been targeted by the latest round of U.S. sanctions. For the Europeans, it appears to broaden their influence abroad. It also appears to provide a wedge in to reform on two levels. The first is with respect to human rights related reforms on the political level. The second, and much more achievable in part is the opening to human rights and sustainability based business conduct.

But Cuba and the Europeans have been down this road before. It is far too early to determine whether this time there will be greater success over the long term than in the past. Given the potential instability of the beginning of the transition era, it is likely that success will have to target very long term targets.