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EUROPEAN EXTERNAL ACTION SERVICE

Mr. Jonathan Hatwell 20-02-2024

Head of Division for Mexico, Central America and the Caribbean
Brussels, 12 January 2024

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Dear Mr. Jonathan Hatwell,

On behalf of the many organizations and groups from 21 states and entities in the EU involved in our earlier letter, thank you for your constructive and substantive response.

Like you and the High Representative and High Representative for Foreign Affairs Josep Borrell, we believe that the PDCA is of fundamental importance for improving the EU's bilateral relations with the Republic of Cuba, especially because of the great convergence of challenges and the possibility of setting in motion a win-win process for mutual benefit.

With this reply, we would like to support key aspects with the aim of a concrete and successful implementation of the EU objectives you mentioned.

US embargo/blockade in general

High Representative Borrell, as you rightly write, has on several occasions continued to express the EU's view that the embargo and extraterritorial sanctions are morally wrong and politically counterproductive. The EU's position is that the embargo affects the living conditions of Cubans and also undermines the necessary reform process and modernization efforts.

However, its efforts and talks with the US administration to date have obviously been unsuccessful! Yes: on the contrary, some elements of the Blockade laws and sanctions have been tightened. What have you done wrong or inadequately so far, and what do you intend to do differently based on this frustrating experience?

Titles III and IV of the Helms-Burton Act

You write that the EU strongly opposes the activation of Titles III and IV of the Helms-Burton Act by the US in April 2019, as this would violate the commitments made by the US in the 1997 and 1998 agreements between the US and the EU. You further state that you will take all appropriate measures to counter the effects of the Helms-Burton Act, including in relation to our WTO rights and through the application of the EU Blocking Statute, which protects against the extraterritorial application of these US sanctions to EU citizens, companies and NGOs operating in Cuba.

Here, too, there have been no positive and successful changes.

SST list (State Sponsors of Terrorism)

The EU statement on the UN vote also criticized the renewed classification of Cuba as a state sponsor of terrorism because no new, relevant facts had been presented. According to the EU, the arbitrary classification of Cuba in the SST list has led to obstacles for international financial transactions with the island state.

Current UN intervention: Last week, a working group of **UN experts urged** the United States to critically review its approach to the SST list. Their statements are clear:

"The unilateral designation itself violates the fundamental principles of international law, including the principle of sovereign equality of States, the prohibition of interference in the internal affairs of States and the principle of peaceful settlement of international disputes," the experts said. They recalled that these principles are generally recognized, peremptory norms of international law.

"Fundamental human rights, including the right to food, the right to health, the right to education, economic and social rights, the right to life and the right to development, are negatively affected by the additional restrictions and prohibitions triggered by the expulsion of SST," the experts said.

In addition, the process by which the designation is made is unclear and lacks transparency. Relevant US legislative acts exacerbate fear and uncertainty, creating or reinforcing over-compliance among humanitarian and other actors seeking to engage or operate in the territory of the designated country," the authors said.

"The designation mainly affects countries that are already subject to other unilateral coercive measures and has a potentially catastrophic impact on the humanitarian situation and human rights."

This raises the question of what concrete steps the EU is prepared to take to remedy this injustice, this situation that violates international law and human rights, or to make an appropriate contribution to it?

The EU must intervene here in order to reduce and abolish the aforementioned "exacerbation of fear and insecurity" caused by the unilateral sanctions policy of the USA - especially against the neighboring state of Cuba - from international coexistence. This US policy represents a variant of a Cold War and is also a violation of international law according to the UN Charter.

We recommend and call for the following measures to achieve the goals of the PCDA and to strengthen multilateralism and international law:

1. Talks with the US administration to date have still not resulted in the US finally returning to compliance with the 1996-1998 agreements with the EU. The EU must therefore put forward more effective arguments and **concrete demands** - with deadlines - possibly with higher-ranking representatives of the US administration.
2. The EU should take up a few exemplary cases of penalty payment demands by the US authorities against banks or companies in the EU before a competent court in the USA (e.g. New York) and provide the banks and companies with **appropriate legal support** in the court proceedings. Here it is important to reject the demanded penalty payment and have it nullified in court (i.e. to clarify the question: may a US entity enforce legal requirements and thus violate the sovereignty of the respective penalized country, which is based on and guaranteed by international law).
3. We call on the EU to prepare a **complaint with the WHO**, as it did in 1996. In the case of Cuba, the violations of rights by the US embargo violate the human rights of 11 million Cuban citizens. In addition, human rights are being violated in numerous other countries and regions, particularly in the EU. These ruinous violations must no longer be tolerated!
4. The EU should develop an **alternative payment mechanism** to allow financial transfers to countries under US sanctions, replacing the defunct Instrument in Support of Trade Exchanges (INSTEX).
5. When can we and European citizens and businesses expect to see the **revised version of the Blocking Statute**, which should include additional deterrence mechanisms and simplify its application? We have participated in the investigation and believe that it is time to implement the new statute.

6. **Banks and other financial institutions** in the EU in particular often do not comply with European law, but with unilateral and extraterritorial US rules that violate international law and the UN principles of multilateralism and fair trade. This undermines the sovereignty of the EU system. Therefore, the EU and/or the EBA must take new specific actions and measures to make banks comply with the recommendations of the January 2022 de-risking report.

7. Overall and in addition to the measures mentioned above, the EU needs to launch a public campaign (not least as a signal to partners in the US) **to better inform** companies, banks, organizations and citizens about the blocking minority and make possible support transparent. In addition, the costs for non-compliance with the blocking statute should be increased and be higher than the threatened penalties of the US authorities.

8. For all these measures, discussions and approaches, the clear judgment and its well-founded legal justification of the **international tribunal** should be explicitly used. This took place on November 16-17 in the premises of the European Parliament and was conducted by leading judges, lawyers and legal experts from various countries. Their **unanimous verdict** was:

"The comprehensive political and economic sanctions that have been imposed on the Republic of Cuba since 1960 violate international law."

The individual legal principles are listed, such as the UN Charter, the Universal Declaration of Human Rights, the provisions of the World Trade Organization and numerous principles of the Treaty on European Union. It goes on to say:

"The dramatic and enormous impact of the laws and regulations that have been maintained for more than 60 years also show that no blockade has been as comprehensive, long-lasting and brutal against a people as the one maintained by the United States against Cuba. The blockade has led directly and indirectly to the loss of numerous lives, and the US decision to maintain this blockade until the Cuban people decide to submit shows that the US is determined to maintain measures aimed at bringing about the physical destruction of at least part of the Cuban people in the long term. Such an attitude could constitute the crime of genocide."

The judges conclude:

"Since the numerous sanctions and the US laws on which they are based are unlawful, they must be lifted. The US must pay for the damage caused to the Cuban state, its companies and its citizens."

Now that the US administration has ignored all previous bilateral reminders from the EU and other countries, as well as the clear, emphatic demands of the global community, tangible, more effective measures must be taken and better steps must be taken. All of us, and especially the many young members of our participating organizations, cannot and will not tolerate living and working in an EU where the law of a foreign power prevails, and not the law and principles of our own democratically elected system.

We already consider it shameful how long the US blockade with its many destructive effects has been allowed to maltreat the people in Cuba and also in Europe. We are losing patience!

The EU must act urgently and with noticeable force and effect.

Thank you for your attention.

We wish you every success!

With kind regards from all supporters in Europe
commissioned by Dr. Edgar Göll, M.P.A.

