



Brussels, 30.4.2015
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2015/0095 (NLE)

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and of Kosovo^{*}, of the other part

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

In June 2013, the Council authorised the Commission to open negotiations with Kosovo* on an EU-only Stabilisation and Association Agreement and adopted negotiating directives. There were three formal rounds of negotiations. The first round was held on 28 October 2013, the second on 27 November 2013 and the third on 2 May 2014. The chief negotiators initialled the draft text of the agreement on 25 July 2014.

In the attachment to this proposal, the Commission presents the initialled text of the Stabilisation and Association Agreement with Kosovo. The draft agreement is modelled on similar examples from the region, while taking into consideration the EU-only nature of the agreement and the specificities of Kosovo. In this context, it is important to underline that a Stabilisation and Association Agreement between the EU and Kosovo can be signed in a way that respects the positions of Member States on the status of Kosovo.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

This proposal is the result of extensive negotiations between the Union, on one side, and Kosovo, on the other. The Stabilisation and Association Agreement with Kosovo provides for wide-ranging cooperation. It provides for a framework for political dialogue with Kosovo, both at a bilateral and regional level. The agreement promotes regional cooperation and Kosovo makes a strong commitment in the agreement to the normalisation of relations with Serbia.

The deepening of economic and trade relations is one of the main goals of the agreement. The agreement sets out the perspective of establishing a free trade area covering goods and services, consistent with the relevant WTO principles, after a transitional period in specific areas. The length of the transitional period was established during the negotiations in light of the state of preparation of Kosovo.

The agreement also includes provisions on establishment, supply of services, current payments and movement of capital. It includes the commitment by Kosovo to progressively harmonise its legislation with that of the EU, notably in key areas of the internal market. It establishes relations covering almost all areas of EU interest and provides a basis for wide-ranging cooperation. Overall, the cooperation is underpinned by EU financial and technical assistance, which provides Kosovo with the necessary support and assistance in the implementation of certain aspects of the agreement.

During all stages of the negotiations, the negotiator regularly consulted the special committee designated by the Council (COWEB).

3. LEGAL ELEMENTS OF THE PROPOSAL

The legal basis for the signature of this agreement is Article 217, in conjunction with Article 218(5) and the second subparagraph of Article 218(8) of the Treaty on the Functioning of the European Union.

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Following the judgement in case C-377/12 Commission v. Council, the Commission considers that the Stabilisation and Association Agreement can be signed in one single act.

A separate legal instrument applies to the European Atomic Energy Community.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217, in conjunction with Article 218(5) and the second subparagraph of Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 21 June 2013 the Council authorised the Commission to open negotiations with Kosovo for a Stabilisation and Association Agreement. The negotiations were successfully concluded by the initialling of the Agreement on 25 July 2014.
- (2) The EU and Kosovo have strong links and share values and a desire to strengthen those links and establish a close and lasting relationship based on reciprocity and mutual interest, which should allow Kosovo to further strengthen and extend its relations with the EU.
- (3) The "First agreement on principles governing the normalisation of relations" was reached on 19 April 2013 in the framework of the EU-facilitated dialogue.
- (4) The Agreement as initialled provides for the establishment of an association between the EU and Kosovo involving reciprocal rights and obligations, common actions and special procedure. The decision to sign this Agreement should therefore be based on the legal basis providing for the establishment of an association allowing the Union to enter into commitments in all areas covered by the Treaties.
- (5) This is an EU-only agreement. Next to setting up an association and providing for a framework of political dialogue, the agreement as initialled envisages the granting of rights and obligations in the area of common commercial policy. Furthermore, it contains provisions regarding various policies in which the Union shares competence with Member States and which fall within areas already largely covered by common Union rules. In addition, it provides for wide-ranging cooperation in various policy areas, including in justice and home affairs, which is limited to what is characteristic for technical, financial and economic cooperation.
- (6) The signature of the Stabilisation and Association Agreement is without prejudice to Member States' position on the status of Kosovo, which will be decided in accordance with their national practice and international law.

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- (7) In addition, none of the terms, wording or definitions used in this Decision and the attached text of the Agreement, nor any recourse to all the necessary legal bases for the signature of the Agreement constitute recognition of Kosovo by the Union as an independent State nor does it constitute recognition by individual Member States of Kosovo in that capacity where they have not taken such a step. It is appropriate, in that context that a declaration is issued in that regard by the Union at the moment of signing of this Agreement.
- (8) The signature of the Agreement as regards matters falling under the competence of the European Atomic Energy Community is subject to a separate procedure.
- (9) The Agreement should therefore be signed on behalf of the European Union, subject to its conclusion at a later date,

HAS ADOPTED THIS DECISION:

Article 1

The signing, on behalf of the European Union, of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and of Kosovo*, of the other part, is hereby approved for the parts falling under the Treaty on European Union and the Treaty on the Functioning of the European Union subject to the conclusion of the said Agreement.

The text of the Agreement to be signed is attached to this Decision.

The signature of the Agreement as regards matters falling under the competence of the European Atomic Energy Community is subject to a separate procedure.

Article 2

The Declaration on behalf of the European Union attached to this Decision is hereby approved on behalf of the Union.

Article 3

The present Decision is without prejudice to Member States' and the Union's position on the status of Kosovo.

Article 4

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiator of the Agreement.

Article 5

This Decision shall enter into force on [...].

Done at Brussels,

*For the Council
The President*