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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	30 April 2015
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2015) 181 final
Subject:	Proposal for a COUNCIL DECISION on the conclusion, 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

Delegations will find attached document COM(2015) 181 final.

Encl.: COM(2015) 181 final

* 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.

Brussels, 30.4.2015
COM(2015) 181 final

2015/0094 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion, 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

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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 text of the Stabilisation and Association Agreement with Kosovo. The 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 concluded 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.

3. LEGAL ELEMENTS OF THE PROPOSAL

The legal basis for the conclusion of this agreement is Article 217, in conjunction with Articles 218(7) and 218(6)(a)(i) 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 concluded in one single act.

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

Proposal for a

COUNCIL DECISION

on the conclusion, 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

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 Articles 218 (7) and 218 (6)(a)(i) and the second subparagraph of Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Council Decision [XXX] of [...] ¹ 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, was signed on behalf of the European Union on [...] subject to its conclusion at a later date.
- (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 signed 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 conclude 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 signed 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

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¹ OJ L [...], [...], p.[...].

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 conclusion 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.
- (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 conclusion 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.,
- (8) The conclusion 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 be approved on behalf of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

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 on behalf of the European Union for the parts falling under the Treaty on European Union and the Treaty on the Functioning of the European Union.

The text of the Agreement is attached to this Decision.

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

Article 2

1. The Stabilisation and Association Council shall be chaired on the Union side by the High Representative of the Union for Foreign Affairs and Security Policy, in accordance with her responsibilities pursuant to the Treaties and her capacity as President of the Foreign Affairs Council. A representative of the Commission shall preside over the Stabilisation and Association Committee.

2. The Commission is authorised to approve on behalf of the Union modifications to the Agreement where it provides for them to be adopted by the Stabilisation and Association Committee.

Article 3

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

Article 4

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to the notification, provided for in Article 144 of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

Article 5

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

Done at Brussels,

*For the Council
The President*