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European Union

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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	13 June 2022
To:	General Secretariat of the Council
No. Cion doc.:	COM(2022) 276 final
Subject:	Proposal for a Council Decision on the signing, on behalf of the European Union, of the Enhanced Partnership and Cooperation Agreement between the European Union, of the one part, and the Kyrgyz Republic, of the other part

Delegations will find attached document COM(2022) 276 final.

Encl.: COM(2022) 276 final



Brussels, 13.6.2022
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Proposal for a

COUNCIL DECISION

**on the signing, on behalf of the European Union, of the Enhanced Partnership and
Cooperation Agreement between the European Union, of the one part, and the Kyrgyz
Republic, of the other part**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The attached proposal constitutes the legal instrument for authorising the signature of the Enhanced Partnership and Cooperation Agreement between the European Union and the Kyrgyz Republic (hereinafter referred to as the 'EPCA' or the 'Agreement').

Relations between the European Union (EU) and the Kyrgyz Republic are currently based on the Partnership and Cooperation Agreement (hereinafter referred to as the 'PCA') signed in Brussels on 9 February 1995, which entered into force on 1 July 1999.

On 21 September 2017, the Council adopted a Decision authorising the opening of negotiations with the Kyrgyz Republic for an Enhanced Partnership and Cooperation Agreement. The negotiation of the Agreement commenced in December 2017. Following seven negotiating rounds, the European Union and the Kyrgyz Republic finalised their negotiation of the EPCA in June 2019. On 6 July 2019, the text of the EPCA was initialled.

The Agreement constitutes an important step towards enhancing the EU's political and economic engagement with Central Asia. It will provide the basis for more effective bilateral engagement between the EU and the Kyrgyz Republic by strengthening political dialogue and enhancing cooperation across a broad range of areas. The Agreement also demonstrates that the EU can develop a relationship with a member of the Eurasian Economic Union in a comprehensive way.

The EPCA covers the EU's standard clauses on human rights, International Criminal Court (ICC), Weapons of Mass Destructions (WMD), Small Arms and Light Weapons (SALW) and counter-terrorism. It also encompasses cooperation in areas such as health, environment, climate change, energy, tax, education and culture, labour, employment and social affairs, science and technology, and transport. The Agreement further addresses legal cooperation, rule of law, money laundering and terrorist financing, organised crime and corruption. The Trade part of the Agreement is expected to ensure a better regulatory environment for economic operators and will thus bring substantial economic benefits for EU businesses. The EPCA does not constitute an initiative within the remit of the Regulatory Fitness Programme (REFIT).

The Agreement sets up an institutional framework composed of the Cooperation Council, Cooperation Committee and Parliamentary Cooperation Committee (see Title VII 'Institutional, general and final provisions'), an Intellectual Property Rights Sub-Committee, and allows for the establishment of sub-committees and other bodies to assist the Cooperation Council. It equally establishes a fulfilment of obligations mechanism to address failure by one of the Parties to fulfil obligations assumed under the Agreement.

As of its entry into force, the Agreement supersedes the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Kyrgyz Republic, of the other part, signed on 9 February 1995.

- **Consistency with existing policy provisions in the policy area**

The EPCA builds on the ambitions and needs of the Kyrgyz Republic and the EU respectively to take forward their bilateral relationship, in the spirit of the Council conclusions on the EU Central Asia Strategy of 19 June 2017. The Agreement will contribute to the implementation of the new EU Strategy on Central Asia adopted on 15 May 2019.

The EPCA modernises the 1999 PCA, extending its scope into new areas of cooperation and significantly upgrading the regulatory framework for our trade and economic relations in line with the World Trade Organization (WTO) rules and regional economic agreements.

The Agreement, once implemented, will be usefully complemented by the Generalised System of Preferences (GSP+) mechanism, from which the Kyrgyz Republic has benefitted since 2017. This scheme offers additional tariff preferences in exchange for compliance with 27 core human rights, governance, environment and labour conventions.

- **Consistency with other Union policies**

The EPCA fully respects the Treaties and preserves the integrity and the autonomy of the Union's legal order. It promotes the values, objectives, and interests of the Union, and ensures the consistency, effectiveness and continuity of its policies and actions.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

- *Substantive legal basis*

According to the case-law, if examination of an EU measure reveals that it pursues two purposes or that it comprises two components and if one of these is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the measure must be founded on a single legal basis, namely that required by the main or predominant purpose or component. Exceptionally, if it is established, on the other hand, that the measure simultaneously pursues a number of objectives, or has several components, which are inextricably linked without one being incidental to the other, so that various provisions of the Treaty are applicable, the measure must be founded on the various corresponding legal bases (see, to that effect, judgments of 10 January 2006, *Commission v Parliament and Council*, C-178/03, EU:C:2006:4, paragraphs 42 and 43; of 11 June 2014, *Commission v Council*, C-377/12, EU:C:2014:1903, paragraph 34; of 14 June 2016, *Parliament v Council*, C-263/14, EU:C:2016:435, paragraph 44; and of 4 September 2018, *Commission v Council (Kazakhstan)*, C-244/17, ECLI:EU:C:2018:662, paragraph 40).

In this particular case, the Agreement pursues two main objectives and has two main components which fall within the area of development cooperation and common commercial policy. The legal basis of the proposed decision should therefore be Articles 207 and 209¹ of the Treaty on the Functioning of the European Union (TFEU).

¹ The Kyrgyz Republic is a lower middle income country included on the DAC list of Official Development Assistance recipients effective for reporting on 2014, 2015, 2016 and 2017 flows, as mentioned in Article 1(1) of the Regulation No 233/2014 of 11 March 2014 establishing a financial instrument for development cooperation for the period 2014-2020.

It is noted that the Agreement does not include areas falling within the competence of the Member States, and therefore does not require the EU Member States to become a Party to this Agreement.

- *Procedural legal basis*

Article 218(5) TFEU provides for the adoption of a decision by the Council, on a proposal by the negotiator, authorising the signing of the agreement and, if necessary, its provisional application before entry into force.

Article 218(8) TFEU provides that the Council is to act by qualified majority except for the circumstances listed in the second subparagraph of Article 218(8) TFEU where the Council is to act unanimously. Given the fact that the two predominant components of the Agreement are trade policy and development cooperation, the voting rule for this particular case is therefore qualified majority.

- **Subsidiarity (for non-exclusive competence)**

The Agreement covers matters of EU competence and strengthens political dialogue and cooperation between the EU and the Kyrgyz Republic. Therefore, action at EU level, instead of Member States level, is needed

- **Proportionality**

The Agreement does not go beyond what is necessary to achieve the policy objectives of strengthening relations between the EU and the Kyrgyz Republic, with a view to furthering democratic reforms, the rule of law and sustainable economic development as a means to increase the stability and security of the Kyrgyz Republic. The Agreement will not require the Union to amend its rules, regulations or standards in any regulated area.

3. RESULTS OF STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Consultations**

The Council has been regularly informed and consulted in the relevant Council Working Party, notably in the Working Party on Eastern Europe and Central Asia (COEST) and the Trade Policy Committee (TPC), at all stages of the negotiations.

The European Parliament has been kept regularly and promptly informed throughout the negotiations.

The High Representative and the Commission consider that the objectives set by the Council in its negotiating directives have been attained, and that the draft Agreement can be submitted for signature.

- **Impact assessment**

An impact assessment has not been carried out, as the Agreement mostly updates and enhances the existing PCA, and will therefore not introduce substantial new areas of cooperation which would have a considerable economic, social or environmental impact. The expected impact is predominantly political - the EU aims at reinforcing a partner country's

political course and at strengthening the political capital of the EU. There can be positive social consequences in the Kyrgyz Republic related mainly to the envisaged provisions on the rule of law, human rights and security. An increase in trade is also expected as a result of an improved business environment, but does not present any risk to specific industry sectors on either side, as the Kyrgyz Republic and the EU are not competing in the same sectors. As stated in the roadmap, carrying-out an impact assessment would not add sufficient value.

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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of the Enhanced Partnership and Cooperation Agreement between the European Union, of the one part, and the Kyrgyz Republic, 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 Articles 207 and 209, in conjunction with Article 218(5),

Having regard to the proposal by the European Commission,

Whereas:

- (1) On 21 September 2017, the Council authorised the opening of negotiations with the Kyrgyz Republic for an Enhanced Partnership and Cooperation Agreement,
- (2) Building upon the desire of the Parties to strengthen and widen relations in an ambitious and innovative way, the negotiation of the Enhanced Partnership and Cooperation Agreement (the ‘Agreement’) was successfully finalised by the initialling of the Agreement on 6 July 2019,
- (3) Therefore, the Agreement should be signed on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

1. The signing of the Enhanced Partnership and Cooperation Agreement between the European Union, of the one part, and the Kyrgyz Republic, of the other part, is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.
2. The text of the Agreement to be signed is attached to this Decision.

Article 2

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 negotiators of the Agreement.

Article 3

This Decision shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council
The President*