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separated from its annex.*

Recommendation for a

COUNCIL DECISION

**authorising the opening of negotiations on a Stabilisation and Association Agreement
between the European Union and Kosovo***

* 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

In its Communication of May 1999¹, the Commission outlined the main elements of the Stabilisation and Association Process. The aim of the process is to contribute to the stability of the Western Balkans by establishing closer relations between the European Union and the countries of this region. The Stabilisation and Association Process provides for a wide-ranging partnership and it foresees the establishment of a new type of agreement between these countries and the European Union – Stabilisation and Association Agreements. The Thessaloniki Summit in June 2003 confirmed the Stabilisation and Association Process as the framework for the relations with the countries of the Western Balkans region. It confirmed that support to the preparation of the future integration of Western Balkans countries into the European structures and their ultimate membership in the Union was a high priority for the EU.

Kosovo* has been part of the Stabilisation and Association Process from the start. To mark a new stage in EU-Kosovo relations, in October 2009 the Commission proposed to enhance the Stabilisation and Association Process's Tracking Mechanism and develop it into a policy dialogue focused on progress on EU-related reforms and cooperation – the 'Stabilisation and Association Process Dialogue'.²

To date, Stabilisation and Association Agreements have been signed with Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Serbia and Montenegro. Prior to the launch of negotiations on the agreements, feasibility studies had been prepared for all these countries. In the case of Kosovo, in February 2012 the Council took note of the intention of the Commission to launch the feasibility study for a Stabilisation and Association Agreement between the European Union and Kosovo, without prejudice to Member States' position on status, or any future decisions to be taken by the Council. The Commission issued the study in October 2012.

The study concluded that Kosovo is largely ready to open negotiations for a Stabilisation and Association Agreement. It also underlined that it is essential for Kosovo to continue to implement in good faith all agreements reached between Belgrade and Pristina to date and to engage constructively on the full range of issues, with the facilitation of the EU. The study stated that the Commission intends to propose negotiating directives for such an agreement once Kosovo takes steps on rule of law, public administration, protection of minorities and trade. In December 2012, the Council took note of this intention.

The analysis on Kosovo's progress on the short-term priorities of the feasibility study as well as other issues referred to in the Council Conclusions of December 2012 is presented in the joint report of the Commission and the High Representative of the Union for Foreign Affairs and Security Policy submitted alongside this recommendation.³ The joint report concludes that Kosovo has met the short-term priorities, and thus the Commission submits its proposal for a Council decision authorising the opening of negotiations on a Stabilisation and Association Agreement between the European Union and Kosovo.

In the annex to this recommendation, the Commission presents the draft negotiating directives for a Stabilisation and Association Agreement with Kosovo. The directives are modelled on similar examples from the region, while taking into consideration the specificities of Kosovo as well as developments within the European Union, notably the Treaty on the Functioning of

¹ COM(1999) 235 final

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² COM(2009) 534 final

³ JOIN(2013) 8

the European Union. In this context, it is important to underline that a Stabilisation and Association Agreement between Kosovo and the EU can be concluded in a way that respects the positions of Member States on the status of Kosovo. The legal nature of the agreement would be determined at the end of the negotiations taking into consideration its content.

Article 218 TFEU provides for the procedure to be followed for negotiating agreements between the Union and third countries, including in the case of association agreements. Negotiating and, at a later stage, signing and concluding such agreements cannot be construed as recognition of Kosovo as a State, neither by the Union nor by its Member States. As a matter of fact, Kosovo is not able to join many international instruments. However, it is in the interest of the European Union and of peace and security that Kosovo respects the fundamental principles contained in international instruments in areas such as the protection of human rights or international trade by adhering to those relevant instruments should circumstances permit and within a European perspective. This consideration is reflected in the draft negotiating directives. Where this is not possible, Kosovo should apply the rules and principles stemming from these instruments unilaterally.

The Stabilisation and Association Agreement with Kosovo would provide for wide-ranging cooperation. The negotiating directives include the establishment of a framework for political dialogue with Kosovo under the competences of the EU, both at a bilateral and regional level. The promotion of economic and trade relations would be a main goal of the agreement, with the perspective of establishing a free trade area covering goods and services, compatible with the relevant WTO principles, after a transitional period in specific areas, the length of which would be established during the negotiations in light of the state of preparation of Kosovo. The provisions of the agreement on trade would fully incorporate all the provisions contained in the Autonomous Trade Preferences already granted to Kosovo on a unilateral basis. The agreement would also aim to promote regional integration.

The agreement would regulate the movement of workers, freedom of establishment, supply of services, current payments and movement of capital. It would include the commitment by Kosovo to progressively harmonise its legislation with that of the EU, notably in key areas of the internal market. It would establish wide-ranging relations covering all the areas of EU interest and would provide a basis for cooperation in the field of justice and home affairs. Overall, the cooperation would be underpinned by EU financial and technical assistance, which would provide Kosovo with the necessary support and assistance in the implementation of certain aspects of the agreement.

Taking into consideration the current administrative capacity of Kosovo, as described in the feasibility study, the pace of the negotiations and the conclusion of the agreement should be guided by the strengthening of Kosovo's legislative and institutional framework and its capacity to implement the commitments in the agreement.

Given that the negotiations are likely to relate to both non-CFSP and CFSP matters, it is necessary to set up a negotiating team composed of the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. Given that the thrust of the negotiations are likely to lie within non-CFSP policies, the negotiating team should be headed by the Commission.

The High Representative of the Union for Foreign Affairs and Security Policy has agreed thereto.

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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 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Noting that Article 218 TFEU provides for the procedure to be followed for negotiating agreements between the Union and third countries,

Taking into account the difference in the positions of the Member States on the status of Kosovo, the decision to open negotiations for a Stabilisation and Association Agreement with that country should not be construed as recognition of Kosovo by the Union as a state nor should it be construed as recognition by individual Member States of Kosovo in that capacity where they have not previously taken such a step,

Whereas negotiations should be opened with a view to concluding a Stabilisation and Association Agreement with Kosovo,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, a Stabilisation and Association Agreement with Kosovo.

The Commission shall be the head of the negotiating team, also comprising the High Representative of the Union for Foreign Affairs and Security Policy.

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with the [name of the special committee to be inserted by the Council].

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Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*

ANNEX

Directives for the negotiation of a Stabilisation and Association Agreement between
the European Union and Kosovo

This annex is classified and is circulated as a separate document.