COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.11.2007
COM(2007) 743 final

2007/0255 (AVC)

Proposal for a

COUNCIL DECISION

on the signing of the Stabilisation and Association Agreement between the European Communities and its Member States, of the one part, and the Republic of Serbia, of the other part

Proposal for a

COUNCIL AND COMMISSION DECISION

on the conclusion of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The attached two proposals constitute the legal instruments for the signature and the conclusion of the Stabilisation and Association Agreement between the European Communities and their Member States, on the one part, and the Republic of Serbia, hereinafter called Serbia, on the other part: (i) Proposal for a Council Decision for the signature of the Agreement; (ii) Proposal for a Council and Commission Decision for the conclusion of the Agreement.

2. The Commission presented in April 2005 its Feasibility Report on an SAA with Serbia and Montenegro[1]. The Report concluded that Serbia and Montenegro was sufficiently prepared to negotiate an SAA. The Council decided on 3 October 2005 to authorise the Commission to negotiate a Stabilisation and Association Agreement with Serbia and Montenegro. The negotiation for a Stabilisation and Association Agreement with Serbia and Montenegro was launched on 10 October 2005. As Serbia did not fulfil the conditionality set in the Council Conclusion of 3 October 2005[2], to fully cooperate with the International Criminal Tribunal for the former Yugoslavia (ICTY), the Commission decided on 3 May 2006 to call off the SAA negotiations

3. Following a referendum in May 2006, the Montenegrin Parliament adopted on 3 June 2006 a Declaration of Independence and the Republic of Montenegro withdrew from the State Union of Serbia and Montenegro. Consequently, amended Negotiating Directives for Serbia were adopted on 24 July 2006

4. The improvements in the cooperation with the ICTY that the new Serbian Government was able to demonstrate in May and June 2007 enabled the Commission to resume negotiations on 13 June. These negotiations were finished on 10 September 2007 and after consultations with the EU Member States, the Stabilisation and Association Agreement was initialled in Brussels on 7 November 2007.

5. The final decision to sign the SAA remains subject to Serbia meeting the political conditionality established when the Council adopted the negotiating Directives - the full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY)[3]. The present proposal does not prejudge the assessment of Serbia's compliance with its obligations in this regard.

   At the adoption of the negotiating Directives in October 2005, the Commission and the Council jointly declared that before the final decision can be taken:

   1. the Commission will report on the political conditionality to the Council and that;

   2. the Council and Commission will jointly review the progress made by Serbia.

   Consequently, the Commission will, in due time and in line with the joint declaration, report to the Council and will jointly review progress with the Council before the final decision can be taken to sign the SAA with Serbia.

6. The Stabilisation and Association Agreement focuses on the following main elements:

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1 COM (2005) 476 final of 12 April 2005
2 12591/05 PESC 786 COSDP 615 COWEB 138 + COR 1
3 12589/05 and 12591/05 PESC

– provision for political dialogue with Serbia;

– provisions on enhanced regional co-operation, including the perspective of establishing free trade areas between the countries of the region;

– the perspective of the establishment of a free-trade area between the Community and Serbia within five years of the entry into force of the Agreement;

– provisions on the movement of workers, freedom of establishment, supply of services, current payments and movement of capital;

– the commitment by Serbia to approximate its legislation to that of the EC, notably in key areas of the internal market;

– provisions on co-operation with Serbia in a wide range of fields, including justice, freedom and security.

– provision for the establishment of a Stabilisation and Association Council which supervises the implementation of the Agreement, of a Stabilisation and Association Committee and a Stabilisation and Association Parliamentary Committee.

7. The Commission asks the Council to give its final approval to the text of the SAA and to engage the procedures for the signature and conclusion of this Agreement on the basis of the attached two proposals.

8. The procedures for the signature and the conclusion of the Agreement are different for the two European Communities: (the European Community and the European Atomic Energy Community):

a) as regards signature, the first indent, first sentence of Article 300 (2) of the EC Treaty provides for a separate Council Decision concerning the signing of the Agreement on behalf of the European Community; similar acts are not required under the EAEC Treaty

b) as regards conclusion of the Agreement:

– The Council concludes the Agreement on behalf of the European Community, after having received the assent of the European Parliament, by virtue of Article 310 of the Treaty;

– The Council approves the Agreement on behalf of the European Atomic Energy Community by virtue of the second paragraph of Article 101 of the EAEC Treaty and the Agreement is then concluded by the Commission.

9. In line with the above the Commission requests the Council to decide, when Council and Commission will have reached a positive joint review of the political conditionality as referred to in paragraph 5,

(i) to sign the Agreement on behalf of the European Community;

(ii) to conclude the Agreement on behalf of the European Community and to give its approval for conclusion by Euratom.

Ratification by all Member States is a prerequisite for the entry into force of the Agreement.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 310 in conjunction with the first sentence of the first sub paragraph of Article 300 (2) thereof,

Having regard to the proposal from the Commission[4],

Whereas:

(1) Negotiations with Republic of Serbia on the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Serbia, of the other part, have been completed.

(2) The commercial provisions contained in this agreement are of an exceptional nature, connected with the policy implemented within the framework of the Stabilisation and Association Process and will not constitute, for the European Union, any precedent in the commercial policy of the Community with regard to third countries other than those of the Western Balkans.

(3) Subject to a possible conclusion at a later date, the Agreement initialled on 7 November 2007 should therefore be signed on behalf of the European Community,

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to its possible conclusion at a later date, the President of the Council is hereby authorised to designate the persons empowered to sign, on behalf of the European Community, the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part.

Done at Brussels,

For the Council
The President

[4] OJ C , , p. .

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THE COUNCIL OF THE EUROPEAN UNION,
THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 310 in conjunction with Article 300 (2), first subparagraph, last sentence and Article 300 (3), second subparagraph thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the second paragraph of Article 101 thereof,

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament[5],

Having regard to the approval of the Council granted pursuant to Article 101 of the Treaty establishing the European Atomic Energy Community,

Whereas

(1) The Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia of the other part, has been signed on behalf of the European Community, in [Brussels/Luxembourg] on ... 2007, subject to its possible conclusion at a later date, in accordance with Council Decision no… /CE of …[6].

(2) The commercial provisions contained in this agreement are of an exceptional nature, connected with the policy implemented within the framework of the stabilisation and association process and will not constitute, for the European Union, any precedent in the commercial policy of the Community with regard to third countries other than those of the Western Balkans.

(3) This Agreement should be approved,

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[5] OJ C , , p. .
[6] OJ C , , p. .

HAVE DECIDED AS FOLLOWS:

Article 1

The Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, the Annexes and Protocols annexed thereto, as well as the joint declarations and the declaration by the Community attached to the Final Act, are hereby approved on behalf of the European Community and the European Atomic Energy Community.

The texts referred to in the first paragraph are attached to this Decision.

Article 2

1. The position to be taken by the Community within the Stabilisation and Association Council and within the Stabilisation and Association Committee when the latter is empowered to act by the Stabilisation and Association Council shall be determined by the Council, on a proposal by the Commission, or, where appropriate, by the Commission, each in accordance with the corresponding provisions of the Treaties.

2. The President of the Council shall, in accordance with Article 120 of the Stabilisation and Association Agreement, preside over the Stabilisation and Association Council. A representative of the Commission shall preside over the Stabilisation and Association Committee, in accordance with the Rules of Procedure thereof.

3. The decision to publish the decisions of the Stabilisation and Association Council and the Stabilisation and Association Committee in the *Official Journal of the European Communities* shall be taken on a case-by-case basis by the Council and the Commission respectively.

Article 3

The President of the Council is hereby authorised to designate the persons empowered, on behalf of the European Community, to deposit the act of approval provided for in Article 138 of the Agreement. The President of the Commission shall deposit the said act of approval on behalf of the European Atomic Energy Community.

Done at Brussels,

For the Council	*For the Commission*
The President	*The President*