EUROPEAN
COMMISSION

Brussels, 25.9.2013
COM(2013) 653 final

Recommendation for a

COUNCIL DECISION

approving the conclusion by the Commission, on behalf of the European Atomic Energy Community, of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 15 May 2013, the Commission submitted two proposals for Council Decisions related to the EU-Ukraine Association Agreement. The first was on the signing, on behalf of the European Union, and provisional application, of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (*COM(2013)289*). The second was on the conclusion of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (*COM(2013)290*).

Since the European Atomic Energy Community (EAEC) is also a Party to the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, the Commission had said in the explanatory memorandum that it would make a separate recommendation for Council approval of the conclusion by the Commission of the parts of the Agreement which fall under the Treaty establishing the European Atomic Energy Community (EAEC).

Different procedures apply to the signature and conclusion of international agreements by the EAEC. In particular, in accordance with Article 101 EAEC Treaty, such agreements have to be concluded by the Commission with the approval of the Council. It is therefore necessary to adopt separate Decisions for both the signature and conclusion of the Association Agreement by the EU and by the EAEC.

For the conclusion of the Association Agreement on behalf of the EAEC, the Commission recommends that the Council give its approval, pursuant to the second paragraph of Article 101 of the Treaty establishing the EAEC.

In the light of the results of the negotiations mentioned in documents COM(2013)289 and COM(2013)290 and provided that the Ukrainian authorities demonstrate determined action and tangible progress in the three areas identified by the 10 December 2012 Council Conclusions on Ukraine - the Commission proposes that the Council decides that the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, should be signed on behalf of the Union and establishes appointment of the person(s) duly empowered to sign on behalf of the Union.

Given the approval of the Council and the appropriate Commission decision, the Commission will be able to sign and ratify the Association Agreement on behalf of the EAEC.

2. RESULTS AND LEGAL ELEMENTS OF THE PROPOSAL

The Commission recommends that the Council approve, pursuant to the second paragraph of Article 101 of the Treaty establishing the European Atomic Energy Community, the conclusion of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, as regards matters falling proper to the EAEC.

Since the text of the Agreement was already submitted to the Council following the proposal made by the Commission on 15 May 2013 and with a view to facilitate the process, the Agreement itself is not annexed to this proposal, but can be found annexed to COM(2013)289.

On the part of the Union, the legal basis for the conclusion of this Agreement is Article 217, in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8) of TFEU.

For the EAEC, the legal basis for this Agreement is Article 101 of the Treaty establishing the European Atomic Energy Community.

The attached proposal constitutes, together with the Commission decision on conclusion, the legal instrument for conclusion of the Association Agreement on behalf of the EAEC.

The fact that the Commission has submitted its proposal as an agreement between the Union and its Member States and Ukraine is related to the genesis of this agreement under the rules of the Treaty before the entry into force of the Treaty of Lisbon.

According to Article 102 of the Euratom Treaty, an Agreement may not enter into force for the EAEC until the Commission has been notified by the Member States that the agreement has become applicable in accordance with the provisions of their respective national laws.

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THE COUNCIL OF THE EUROPEAN UNION,

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 recommendation from the Commission,

Whereas:

(1) On 22 January 2007, the Council authorised the Commission to open negotiations with Ukraine for the conclusion of a new Agreement between the European Union and Ukraine to replace the Partnership and Cooperation Agreement.

(2) Taking into account the close historical relationship and progressively closer links between the Parties, as well as their desire to strengthen and widen relations in an ambitious and innovative way, the negotiations on the Association Agreement were successfully concluded by the initialling of the Agreement in 2012.

(3) On 15 May 2013, the Commission proposed to the Council that the Agreement should be signed on behalf of the Union and applied on a provisional basis in accordance with Article 486 of the Agreement, pending its conclusion at a later date and approval of the attached Declaration(s).

(4) The signature and conclusion of the Agreement is subject to a separate procedure as regards matters falling under the Treaty on European Union and the Treaty on the Functioning of the European Union.

(5) The Agreement should therefore be concluded, on behalf of the European Atomic Energy Community too, as regards matters falling under the Euratom Treaty.

(6) According to Article 102 of the Euratom Treaty, the Agreement may not enter into force for the European Atomic Energy Community until the Commission has been notified by the Member States that such agreement has become applicable in accordance with the provisions of their respective national laws.

(7) The conclusion of the Agreement by the Commission, acting on behalf of the European Atomic Energy Community, should be approved.

HAS ADOPTED THIS DECISION:

Sole Article

1. The conclusion by the Commission, on behalf of the European Atomic Energy Community, of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, is hereby approved.

2. The text of the Agreement is attached to the Decision of the Council on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part.

Done at Brussels,

For the Council
The President