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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, of a Framework Agreement between the European Union and Kosovo* on the general principles for the participation of Kosovo in Union programmes

* 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

1. CONTEXT OF THE PROPOSAL

In its 2009 Communication 'Kosovo* – Fulfilling its European Perspective' the European Commission recommended to examine the opportunity of a Framework Agreement with Kosovo on the general principles of its participation in Union programmes, and on this basis prepare negotiating directives. The European Commission adopted its proposal for negotiating directives in March 2011 and submitted it to the Council. The Foreign Affairs Council adopted the proposal for negotiating directives on 22 October 2012. The General Affairs Council of 11 December 2012 welcomed the European Commission's on-going efforts to negotiate a Framework Agreement with Kosovo concerning its participation in Union programmes and its intention to come back to the Council in the first half of 2013. Kosovo confirmed its agreement with the draft Framework Agreement in writing on 16 January 2013.

2. LEGAL ELEMENTS OF THE PROPOSAL

The legal basis for this proposal is Article 212 of the Treaty on the Functioning of the European Union, in conjunction with Article 218 (5) TFEU. The substantive legal basis is Article 212 TFEU considering that the aim and the content of the measure are to carry out economic, financial and technical cooperation with Kosovo in the sense of that Article.

Proposal for a

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on the signing, on behalf of the European Union, of a Framework Agreement between the European Union and Kosovo* on the general principles for the participation of Kosovo in Union programmes

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 212, in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The December 2007 European Council underlined that the Union stands ready to play a leading role in strengthening stability in the region, stated the Union's readiness to assist Kosovo in the path towards sustainable stability and confirmed that the Union is ready to assist economic and political development through a clear European perspective, in line with the European perspective of the region.
- (2) The December 2009 General Affairs Council welcomed the European Commission's October 2009 communication 'Kosovo – Fulfilling its European Perspective'¹ and invited it to take the necessary measures to support Kosovo's progress towards the Union in line with the European perspective of the region. It attached importance to measures related to trade and visa, and encouraged the European Commission to open up for Kosovo taking part in Union programmes, integrating Kosovo into the economic and fiscal surveillance framework, activating the Instrument for Pre-accession Assistance's second component and strengthening the Stabilisation and Association Process dialogue.
- (3) The December 2010 General Affairs Council looked forward to a European Commission proposal that will allow Kosovo's participation in Union programmes. The European Commission issued its proposal in March 2011.
- (4) The December 2011 General Affairs Council confirmed its commitment to find an agreement on Kosovo's participation in Union programmes, without prejudice to Member States' positions on status.
- (5) On 22 October 2012 the Council authorised the European Commission to open negotiations with Kosovo on its participation in Union programmes. The European Commission has negotiated, on behalf of the Union, a Framework Agreement on the general principles for the participation of Kosovo in Union programmes.
- (6) Kosovo has expressed the wish to participate in a number of Union programmes.

* 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.

¹ COM(2009)534 of 14.10.2009.

- (7) The aim of the agreement is to carry out economic, financial and technical cooperation with Kosovo in the sense of Article 212 TFEU.
- (8) The specific terms and conditions, including the relevant financial contribution, for the participation of Kosovo in each particular programme should be determined by agreement between the European Commission, acting on behalf of the European Union, and the authorities of Kosovo.
- (9) The signature of this Framework Agreement does not prejudice the position of Member States of the Union on the status of Kosovo, which will be decided in accordance with their national practice and international law.
- (10) The Agreement should be signed on behalf of the Union, subject to its conclusion at a later date.

HAS ADOPTED THIS DECISION:

Article 1

The signing, on behalf of the Union, of the Framework Agreement between the European Union and Kosovo on the general principles for the participation of Kosovo in Union programmes ('the Agreement') is hereby approved, subject to the conclusion of the said Agreement.

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 negotiator of the Agreement.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council
The President*

ANNEX

Draft Framework Agreement

between the European Union and Kosovo on the general principles for the participation of Kosovo in Union programmes

THE EUROPEAN UNION, hereinafter referred to as "the Union",

of the one part, and

KOSOVO, hereinafter referred to as "Kosovo",

of the other part, together hereinafter referred to as 'the Contracting Parties',

Whereas:

- (1) The December 2007 European Council underlined that the Union stands ready to play a leading role in strengthening stability in the region, stated the Union's readiness to assist Kosovo in the path towards sustainable stability and confirmed that the Union is ready to assist economic and political development through a clear European perspective, in line with the European perspective of the region.
- (2) The December 2009 General Affairs Council welcomed the European Commission's October 2009 Communication 'Kosovo – Fulfilling its European Perspective'² and invited it to take the necessary measures to support Kosovo's progress towards the Union in line with the European perspective of the region. It attached importance to measures related to trade and visa, and encouraged the European Commission to open up for Kosovo taking part in Union programmes, integrating Kosovo into the economic and fiscal surveillance framework, activating the Instrument for Pre-accession Assistance's second component and strengthening the Stabilisation and Association Process dialogue.
- (3) The December 2010 General Affairs Council looked forward to a European Commission proposal that will allow Kosovo's participation in Union programmes. The European Commission issued its proposal in March 2011.
- (4) The December 2011 General Affairs Council confirmed its commitment to find an agreement on Kosovo's participation in Union programmes, without prejudice to Member States' positions on status.
- (5) The October 2012 Foreign Affairs Council authorised the European Commission to open negotiations on a Framework Agreement on behalf of the Union with Kosovo concerning its participation in Union programmes.
- (6) Kosovo has expressed the wish to participate in a number of Union programmes.
- (7) Article 212 TFEU refers to economic, financial and technical cooperation measures with third countries other than developing countries.
- (8) The specific terms and conditions, including the relevant financial contribution, for the participation of Kosovo in each particular programme should be determined by agreement between the European Commission, acting on behalf of the European Union, and the authorities of Kosovo.

² COM(2009)534 of 14.10.2009.

- (9) The signature and conclusion of this Framework Agreement does not prejudice the position of Member States of the Union on the status of Kosovo, which will be decided in accordance with their national practice and international law.

HAVE AGREED AS FOLLOWS:

Article 1

Kosovo shall be eligible to participate in the following Union programmes:

- (a) existing Union programmes which are listed in the Annex and their successor programmes, which are open to candidate countries and potential candidate countries benefiting from the pre-accession strategy for the Western Balkans, in accordance with the provisions of these programmes, once the Framework Agreement (hereinafter 'the Agreement') enters into force;
- (b) Union programmes established or renewed after the entry into force of the Agreement and which contain an opening clause which provides for the participation of Kosovo.

Kosovo shall be able to participate in step with its commitments to adopt and apply standards in the areas relevant to the programme concerned and the progress made in that respect.

Article 2

Kosovo shall contribute financially to the general budget of the European Union in proportion to the specific programmes in which it participates.

Article 3

Kosovo's representatives shall be allowed to take part, as observers and for the points which concern Kosovo, in the management committees responsible for monitoring the programmes to which Kosovo contributes financially.

Article 4

Projects and initiatives submitted by participants from Kosovo shall, as far as possible, be subject to the same conditions, rules and procedures pertaining to the programmes concerned as are applied to Member States.

Article 5

The specific terms and conditions regarding the participation of Kosovo in each particular programme, in particular the financial contribution payable, will be determined by agreement between the European Commission, acting on behalf of the European Union, and the Kosovo authorities.

If Kosovo applies for European Union pre-accession assistance on the basis of the Instrument for Pre-Accession Assistance³, or pursuant to any similar Regulation providing for European Union external assistance to Kosovo that may be adopted in future, the conditions governing the use by Kosovo of European Union assistance shall be determined in a Financing Agreement.

³ OJ L210 of 31.7.2006.

Article 6

The agreement referred to in the first subparagraph of Article 5 shall stipulate, in accordance with the European Union's Financial Regulation that financial control or audits are to be carried out by, or under the authority of, the European Commission, the European Anti-Fraud Office (OLAF) and the Court of Auditors of the European Union.

Detailed provisions shall be made on financial control and auditing, administrative measures, penalties and recovery enabling the European Commission, OLAF and the Court of Auditors to be granted powers equivalent to their powers with regard to beneficiaries or contractors established in the European Union.

Article 7

The Agreement shall apply for an indeterminate period.

The Agreement may be terminated by either Party by giving six months' notice in writing.

Article 8

The Contracting Parties may review the Agreement for the first time no later than three years after the date of its entry into force, and every three years thereafter, on the basis of the experience gained from Kosovo's actual participation in one or more Union programmes.

Article 9

The Agreement shall apply to the territory in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applicable and to the territory of Kosovo.

Article 10

The Agreement shall enter into force on the day on which the Contracting Parties have notified each other of the completion of their respective procedures for the entry into force.

Article 11

The Agreement is drawn up in duplicate in the Bulgarian, Spanish, Czech, Danish, German, Estonian, Greek, English, French, Irish, Italian, Latvian, Lithuanian, Hungarian, Maltese, Dutch, Polish, Portuguese, Romanian, Slovak, Slovenian, Finnish, Swedish, Albanian and Serbian languages. Each of the language versions is equally authentic.

Done at Brussels on the XXX in the year YYY.

For the European Union

The President

ANNEX

LIST OF CURRENT UNION PROGRAMMES REFERRED TO IN ARTICLE 1

- European Earth monitoring programme (GMES)⁴
- Framework programme on Solidarity and the Management of Migration Flows for the period 2007-2013⁵
- Fiscalis 2013⁶
- Customs 2013⁷
- Entrepreneurship and Innovation Programme⁸
- Community Programme for Employment and Social Solidarity – PROGRESS⁹
- Programme of Community Action in the Field of Consumer Policy¹⁰
- GALILEO Programme¹¹
- SESAR Programme and Joint Undertaking¹²
- Intelligent Energy-Europe Programme¹³
- ICT Policy Support Programme¹⁴
- Interoperability solutions for European public administrations (ISA)¹⁵

⁴ Regulation (EU) No 911/2010 of the European Parliament and of the Council of 22.9.2010 on the European Earth monitoring programme (GMES) and its initial operations (2011 to 2013).

⁵ Communication of the Commission to the Council and the European Parliament establishing a framework programme on Solidarity and the Management of Migration Flows for the period 2007-2013 (COM(2005) 123 of 6.4.2005), and the proposals for decisions of the European Parliament and Council establishing the: - European Fund for the Integration of Third-country nationals for the period 2007-2013; - European Refugee Fund for the period 2008-2013; - External Borders Fund for the period 2007-2013; - European Return Fund for the period 2007-2013.

⁶ Decision No 1482/2007/EC of the European Parliament and of the Council of 11.12.2007 establishing a Community programme to improve the operation of taxation systems in the internal market (Fiscalis 2013), COM (2006) 202 final of 17.5.2006.

⁷ Decision No 624/2007/EC of the European Parliament and of the Council of 23.5.2007 establishing an action programme for customs in the Community (Customs 2013), OJ L 154 of 14.6.2007, p. 25.

⁸ Part of the Competitiveness and Innovation Framework Programme, Decision (EC) No 1639/2006 of the European Parliament and of the Council of 24.10.2006 establishing a Competitiveness and Innovation Framework Programme 2007-2013, OJ L 310 of 9.11.2006, p. 15.

⁹ Decision No 1672/2006/EC of the European Parliament and of the Council of 24.10.2006 establishing a Community Programme for Employment and Social Solidarity, OJ L 315 of 15.11.2006, p. 1.

¹⁰ Decision No 1926/2006/EC of the European Parliament and of the Council of 18.12.2006 establishing a Programme of Community Action in the field of Consumer Policy 2007-2013, OJ L 404 of 30.12.2006, p. 39.

¹¹ Regulation (EU) No 912/2010 of the European Parliament and of the Council of 22.9.2010 setting up the European GNSS Agency, repealing Council Regulation (EC) No 1321/2004 on the establishment of structures for the management of the European satellite radio navigation programmes and amending Regulation (EC) No 683/2008 of the European Parliament and of the Council, OJ L276 of 20.10.2010.

¹² Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR) OJ L 64 of 2.3.2007, p. 1.

¹³ Part of the Competitiveness and Innovation Framework Programme, Decision (EC) No 1639/2006 of the European Parliament and of the Council of 24.10.2006 establishing a Competitiveness and Innovation Framework Programme (2007-2013), OJ L 310 of 9.11.2006, p. 15.

¹⁴ Part of the Competitiveness and Innovation Framework Programme, Decision (EC) No 1639/2006 of the European Parliament and of the Council of 24.10.2006 establishing a Competitiveness and Innovation Framework Programme (2007-2013), OJ L 310 of 9.11.2006, p. 15.

- LIFE+¹⁶
- Public Health¹⁷
- Lifelong Learning¹⁸
- Culture¹⁹
- Europe for Citizens²⁰
- European Audiovisual Sector (MEDIA 2007)²¹
- Pericles (2002-2013)²²
- Youth in Action²³
- Research and Innovation²⁴
- Knowledge for Growth²⁵

¹⁵ Decision No 922/2009/EC of the European Parliament and of the Council of 16 September 2009 on interoperability solutions for European public administrations (ISA), OJ L 260, 3.10.2009, p. 20.

¹⁶ Regulation (EC) No 614/2007 of the European Parliament and of the Council of 23.5.2007 concerning the Financial Instrument for the Environment (LIFE+), OJ L 149 of 9.6.2007, p. 1.

¹⁷ Decision No 1350/2007/EC of the European Parliament and of the Council of 23.10.2007 establishing a second programme of Community action in the field of health (2008-2013), OJ L 301 of 20.11.2007, p. 3.

¹⁸ Decision No 1720/2006/EC of the European Parliament and of the Council of 15.11.2006 establishing an Action Programme in the field of Lifelong Learning, OJ L 327 of 24.11.2006, p. 45.

¹⁹ Decision No 1903/2006/EC of the European Parliament and of the Council of 12.12.2006 establishing the Culture Programme (2007-2013), OJ L 378 of 27.12.2006, p. 22.

²⁰ Decision No 1904/2006/EC of the European Parliament and of the Council of 12.12.2006 establishing for the period 2007-2013 the programme "Europe for Citizens" to promote active European citizenship, OJ L 378 of 27.12.2006, p. 32.

²¹ Decision No 1718/2006/EC of the European Parliament and of the Council of 15.11.2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007), OJ L 327 of 24.11.2006, p. 12.

²² Council Decision 2006/75/EC of 30 January 2006 amending and extending Decision (EC) 2001/923 establishing an exchange, assistance and training programme for the protection of the Euro against counterfeiting (the "Pericles" programme), OJ L 36 of 8.2.2006, p. 40.

²³ Decision No 1719/2006/EC of the European Parliament and of the Council of 15.11.2006 establishing the Youth in Action programme for the period 2007 to 2013, OJ L 327, 24.11.2006, p. 30.

²⁴ The Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013), OJ L 400 of 30.12.2006.

²⁵ The Seventh Framework Programme of European Atomic Energy Community (Euratom) for nuclear research and training activities (2007-2011) as renewed by Council Decision of 19.12.2011 concerning the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012-2013), OJ L 47 of 18.2.2012.