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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.10.2009  
COM(2009) 280 final

Proposal for a

**DECISION OF THE COUNCIL AND OF THE COMMISSION**

**on the Community position within the Stabilisation and Association Council on the transition to the second stage of the Association between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, pursuant to article 5 of the Stabilisation and Association Agreement**

## **EXPLANATORY MEMORANDUM**

### **1. INTRODUCTION**

The Stabilisation and Association Agreement (SAA), establishing an Association between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, entered into force on 1 April 2004.

Article 5 paragraph 1 of the SAA states that the "Association shall be realised over a maximum of ten years divided into two successive stages". The purpose of this division into successive stages is to "implement progressively the provisions of the SAA".

Paragraph 3 of the same article stipulates that "four years after the entry into force of this Agreement, the Stabilisation and Association Council shall evaluate the progress made and decide about the passage into the second phase and its duration, as well as on any possible changes to be brought about as regards the content of the provisions governing the second stage.

In February 2008, following a letter from the government of the former Yugoslav Republic of Macedonia informing the Commission of its readiness to initiate preparations for the passage into the second stage, the Commission started to assess the progress made by the country in this respect.

The Commission asked the former Yugoslav Republic of Macedonia to provide up-to-date information concerning the areas where specific provisions of the SAA govern the second stage, i.e. establishment, supply of services and current payments and movement of capital.

### **2. IMPLEMENTATION OF THE OBLIGATIONS UNDER THE FIRST STAGE OF THE SAA**

The Commission's analysis of the country's answers has led to the conclusion that the country is ready to comply with the obligations deriving from the transition to the second stage. In its 2008 Progress Report<sup>1</sup>, the Commission stated that "the country fulfils all the commitments foreseen under the first stage of implementation of Title V (Movement of workers, establishment, supply of services, capital) of the SAA".

### **3. OBLIGATIONS UNDER THE SECOND STAGE OF THE SAA**

The transition to the second stage of the Association has the following implications:

#### ***Establishment***

- Following article 48 paragraph 5(c) of the SAA, the Stabilisation and Association Council shall:

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<sup>1</sup> SEC (2008) 2695 final, The former Yugoslav Republic of Macedonia - 2008 Progress Report , 5. 11. 2008, Brussels

- examine the possibility to extend the right to acquire and enjoy ownership rights over real property to branches of Community companies, where these rights are necessary for the conduct of economic activities for which they are established.

Pursuant to this article, both Parties shall discuss the extension to branches of Community companies of the rights that are during the first stage enjoyed only by subsidiaries of Community companies.

Nevertheless, the former Yugoslav Republic of Macedonia has already taken some steps to liberalise its real estate market. A Community company can already freely acquire ownership rights over apartments and residential buildings through its branches following the adoption of the following legislation:

- Law amending the Law on Ownership and Other Real Rights (enacted in July 2008, Official Gazette No. 92/08), laid down provisions ensuring that natural persons and legal entities of the Community shall enjoy equal rights as citizens of the country as regards ownership of real estate, including construction land, and long-term lease of agricultural land.
- Law on Construction land (enacted in July 2008, Official Gazette No. 82/08), which further specifies rights and obligations with respect to construction land.

The right of ownership of construction land by Community companies requires prior authorization, and restrictions on acquisition of agricultural land remain in place.

- Following article 54 of the SAA, the former Yugoslav Republic of Macedonia shall:
  - have the possibility to introduce or maintain measures, which derogate from the provisions of the Chapter Establishment of the SAA as regards establishment of Community companies and nationals of certain industries, only with the authorization of the Stabilisation and Association Council and under conditions determined by the latter.

These measures shall be reasonable and necessary to remedy the situation and shall cease to apply at the latest two years after the end of the first stage.

Article 54 applies to industries, which are undergoing restructuring (or facing serious difficulties), face the elimination (or a drastic reduction of the total market share) or to newly emerging industries in the country.

Although during the first stage of the Association, the former Yugoslav Republic of Macedonia is free to apply these measures without the authorization by the Stabilisation and Association Council, it has never used this possibility.

### *Supply of services*

- Following article 55 of the SAA, the Stabilisation and Association Council shall:
  - as from the second stage, take the measures necessary to implement progressively the provisions in paragraph 1 of this article, where the SAA foresees to allow progressively the supply of services by Community or the former Yugoslav

Republic of Macedonia companies or nationals which are established in a Party other than that of the person for whom the services are intended.

Article 55 paragraph 2 provides that, in step with the liberalization process foreseen in the paragraph above, the Parties shall permit the temporary movement of natural persons providing the service or who are employed by the service provider as key personnel (as defined in Art 53). This includes natural persons who are representatives of a Community or the former Yugoslav Republic of Macedonia company or national and are seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service provider, where those representatives will not be engaged in making direct sales to the general public or in supplying services themselves.

In taking the aforementioned measures, account will be taken of the progress achieved by the Parties in the approximation of their laws. The Stabilisation and Association Council may further discuss specific details as regards implementation of these measures, following progress made by the country in this area.

In the light of Article 55 paragraph 3 of the SAA, the Parties to the Agreement should continue the ongoing review and simplification of requirements and procedures that apply to the provision of services in their territory.

#### ***Current payments and movement of capital***

- Following article 59 paragraph 2 of the SAA, the former Yugoslav Republic of Macedonia shall:
  - ensure free movement of capital relating to portfolio investment and financial loans and credits with a maturity shorter than a year.

The former Yugoslav Republic of Macedonia has already ensured that, upon entry into the second stage, the above-mentioned provisions will be implemented, through the following legislation:

- Law on Foreign Exchange Operations (Official Gazette No: 34/2001; 49/2001 and 103/2001, latest amendments to the law enacted in July 2008, Official Gazette No.81). Article 59 of this law (transitional provisions) explicitly stipulates that "upon the expiry of the first stage of the Stabilization and Association and Agreement" the current restrictions on portfolio investments in securities by residents "shall cease to have effect".
- Abolishment of Decision on the manners and the conditions of non-residents operations with securities (abolished in December 2007, Official Gazette No. 159/07), by which the country ensured liberalization of portfolio investments, with the exception of certain restrictions to residents, which will automatically be repealed with the passage to the second stage (as foreseen by Article 59 of the Law on Foreign Exchange Operations, see above).
- Following article 60 of the SAA, the Stabilisation and Association Council shall:
  - examine ways of enabling Community rules on the movement of capital to be applied in full.

Pursuant to this article, both Parties shall discuss further gradual approximation of the former Yugoslav Republic of Macedonia's legislation with the *acquis* in the area of movement of capital, aiming to achieve full alignment.

Under this provision, the Stabilisation and Association Council could discuss, during the second stage, the issue of opening and holding of bank accounts abroad by the residents of the former Yugoslav Republic of Macedonia. The current legislation of the country foresees certain limitations in this regard. This might in practice prevent residents of the country from undertaking portfolio investments in EU Member States, notwithstanding the fact that this right has been granted to them by Article 59 paragraph 2 of the SAA.

### ***Gradual approximation of laws***

- According to article 68 of the SAA, the former Yugoslav Republic of Macedonia shall endeavour to ensure that its laws will be gradually made compatible with those of the Community. This gradual approximation should concern primarily internal market-related *acquis* as well as "other trade-related areas" in the first stage.

However, the ongoing process of gradual approximation of legislation of the former Yugoslav Republic of Macedonia with the EU *acquis* has covered all areas already in the first stage, similarly as with all other candidate countries, including those where approximation was foreseen to take place only in the second stage. This gradual process of approximation will therefore be continued.

Proposal for a

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**on the Community position within the Stabilisation and Association Council on the transition to the second stage of the Association between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, pursuant to article 5 of the Stabilisation and Association Agreement**

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), 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,

Whereas:

- (1) The Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, entered into force on 1<sup>st</sup> April 2004.
- (2) Article 5 of the Stabilisation and Association Agreement provides for a transition period of a maximum of ten years divided into two successive stages.
- (3) The first stage began on 1<sup>st</sup> April 2004, date of entry into force of the Stabilisation and Association Agreement.
- (4) Pursuant to Article 5, paragraph 3, of the Stabilisation and Association Agreement, four years after the entry into force of this agreement, the Stabilisation and Association Council shall evaluate the progress made and decide about the passage into the second phase and its duration, as well as on any possible changes to be brought about as regards the content of the provisions governing the second stage.
- (5) The parties are determined to comply with the obligations deriving from the transition to the second stage of the Association.
- (6) The former Yugoslav Republic of Macedonia has taken the measures necessary to ensure compliance with all obligations resulting from the transition to the second stage,

HAVE ADOPTED THIS DECISION:

*Single Article*

The decision to be taken by the Community within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, concerning the transition to the second stage of the Association, is the attached draft decision of the Stabilisation and Association Council.

Done at Brussels,

*For the Council*  
*The President*

*For the Commission*  
*The President*

**ANNEX**

**DRAFT DECISION NO. .../09 OF THE STABILISATION AND ASSOCIATION  
COUNCIL,**

**OF ... 2009**

**ON THE TRANSITION TO THE SECOND STAGE OF THE ASSOCIATION BETWEEN  
THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES, OF THE ONE  
PART, AND THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, OF THE OTHER  
PART, PURSUANT TO ARTICLE 5 OF THE STABILISATION AND ASSOCIATION  
AGREEMENT**

The Stabilisation and Association Council,

Having regard to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, and in particular its Article 5, paragraph 3, thereof,

Whereas:

- (1) Article 5, paragraph 1, of the Stabilisation and Association Agreement provides for a transition period of a maximum of ten years divided into two successive stages.
- (2) The first stage began on 1<sup>st</sup> April 2004, date of entry into force of the Stabilisation and Association Agreement.
- (3) Pursuant to Article 5, paragraph 3, of the Stabilisation and Association Agreement, the Stabilisation and Association Council shall evaluate the progress made and decide about the passage into the second phase and its duration, as well as on any possible changes to be brought about as regards the content of the provisions governing the second stage.
- (4) The parties are determined to comply with the obligations deriving from the transition to the second stage of the Association.
- (5) The former Yugoslav Republic of Macedonia has taken the measures necessary to ensure compliance with all obligations resulting from the transition to the second stage,

HAS DECIDED AS FOLLOWS :

**Article 1**

The transition to the second stage referred to in Article 5 (3) of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, hereby takes effect.

## **Article 2**

This decision shall enter into force on the day of its adoption by the Stabilisation and Association Council.

Done at Brussels, .... 2009.

*For the Stabilisation and Association Council*

*The President*