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ANNEX

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to the

Recommendation for a Council Decision

authorising the opening of negotiations on individual agreements between the European Union and Republic of Albania, Bosnia and Herzegovina, Kosovo*, Montenegro, the Republic of North Macedonia and the Republic of Serbia on roaming on public mobile communications networks

ANNEX

A. NATURE AND SCOPE OF THE AGREEMENTS

These negotiating directives are intended to guide the Commission in the negotiations aiming to conclude six bilateral roaming agreements between the EU and, respectively, the Republic of Albania, Bosnia and Herzegovina, Kosovo*, Montenegro, the Republic of North Macedonia and the Republic of Serbia (the “WB6”), which would provide the framework for integrating these countries in the EU Roam Like at Home area.

The EU relationship with the WB6 is currently governed by the respective Stabilisation and Association Agreements (SAAs). The SAAs focus on achieving the stabilisation in the region and preparing for possible future accession. They provide for each WB6 partners’ progressive alignment of its laws to the EU *acquis* and by liberalising trade between the EU and the WB6. This includes the strengthening of cooperation in the area of electronic communication services and WB6’s alignment with the EU *acquis*. Although the objectives and commitments under the SAAs remain relevant, they need to be complemented with a legal framework which would make it possible to fulfil the broader liberalisation objectives and integrate the Republic of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, the Republic of North Macedonia and the Republic of Serbia in the EU Roam Like at Home area. Such a framework is not provided for under the SAAs as they stand.

In line with the accession process, the objectives of the Growth Plan and gradual integration in the internal market, the EU is offering the possibility of negotiating agreements with each of WB6 in the sector of roaming on public mobile communications networks. The recommended bilateral sectoral agreements would build upon and complement the existing SAAs with the Republic of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, the Republic of North Macedonia and the Republic of Serbia.

The offer to conclude a bilateral agreement will be made to those partners, who are clearly demonstrating that they are firmly committed to the accession path and progressing towards meeting the required conditions. Full compliance with the EU roaming *acquis* is a pre-condition for access to the EU RLAH area.

Democratic principles, human rights and fundamental freedoms, and upholding the rule of law are essential elements of the agreements.

The Commission notes that Common Foreign and Security Policy (CFSP) and upholding the rule of law are particularly important areas for the enlargement process.

B. RECOMMENDED CONTENT OF THE AGREEMENTS

Objectives and scope

The aim of the sectoral agreements will be to ensure that users of public mobile communication networks travelling between any particular WB6 partner and the EU do not pay excessive prices for roaming services. This will be done through reciprocal opening of the roaming market under the conditions set by the EU roaming rules.

* 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.

The agreements will provide for the framework and conditions for the reciprocal opening of the Parties' markets with respect to the sector of roaming on public mobile communications networks. The opening will notably be conditioned on the full implementation of the EU roaming *acquis* by WB6, which will need to be confirmed through a positive comprehensive assessment by the Union to be conducted by the Commission. Once a positive assessment has been made with respect to a WB6 partner, the responsible Joint Body under the Agreement will be empowered to decide on the reciprocal opening.

Regulatory alignment with the EU roaming *acquis*

The applicable provisions of the Union roaming *acquis* and any horizontal or specific adaptations thereto will be listed in an annex to the respective agreements. The agreements will contain the procedure to amend the list of the applicable roaming *acquis* and the rules for incorporation and implementation of the new or amended relevant EU acts.

The agreements will include an obligation for the WB6, respectively, to fully enact and completely and fully implement the EU roaming *acquis* before (as a precondition for) the extension of the EU roaming area and an obligation to maintain dynamic alignment with the EU roaming *acquis* as it evolves in the future following reciprocal market opening. The agreements will include the criteria and procedure for the comprehensive assessment of the state of implementation of the EU roaming *acquis* prior to an eventual decision by a Joint Body under the agreement to reciprocally open markets with respect to the roaming sector.

The agreements will include the criteria and procedure for the continuous monitoring and assessment of the implementation of the EU roaming *acquis* and the possibility, conditions and procedure for the Union to suspend the benefits under the roaming agreements in case of failure by a WB6 to comply with regulatory alignment obligations.

Enforcement

The agreements will provide for an institutional framework and safeguards modelled upon the EU Treaties to protect the autonomy and uniform interpretation of the EU roaming *acquis* and to put the Union in a position effectively to react in case of non-compliance. The willingness and readiness of the WB6 to incorporate key EU law mechanisms into their legal orders will enable them to demonstrate their preparedness to assume the responsibilities of EU membership.

Each of the WB6 partners will have to ensure that EU legal acts specified in the agreements have the same legal effects as they have in the legal order of a Member State pursuant to Article 288 TFEU and the case-law of the Court of Justice. Where the acts in question create rights and obligations that individuals can invoke before national courts of Member States without the need for further implementation by a Member State, such provisions will also have to also create rights and obligations that individuals can invoke before the national courts of each of the Union's partners without the need for further implementation. Furthermore, the questions concerning the EU acts specified in the agreements, will be under the exclusive competence of the Court of Justice of the European Union.

The Agreements will include a reliable mechanism to ensure that legal acts amending the EU roaming *acquis* are dynamically incorporated into the agreement, thus ensuring a common legal framework at all times; The Court of Justice of the European Union will be the ultimate authority for interpreting the respective agreements and providing interpretations for national courts in WB6 when requested. The Court of Justice of the European Union will have

exclusive jurisdiction to review the legality of decisions made by EU institutions under the respective agreements.

Interpretation

The agreements and EU roaming *acquis* will be interpreted in their implementation and application in line with the rulings and decisions of the Court of Justice.

Furthermore, if a question of interpretation arises before a national court or tribunal of a WB6 partner, regarding the agreements or the *national acts* adopted in pursuance thereof which are identical in substance to corresponding rules of the TFEU or to acts adopted pursuant to the TFEU, the national court or tribunal will have the possibility to ask the Court of Justice to decide on the question. When the national court or tribunal is one against whose decision there is no judicial remedy under national law, it will be required to make a referral to the Court of Justice.

Institutional framework

Without prejudice to the involvement of the Commission and the Court of Justice, the administration of the recommended agreements will be to the extent possible in the remit of the Stabilisation and Association Committee set up by the Stabilisation and Association Council of the SAAs, consisting of representatives of the EU and WB6.

Dispute settlement

The Agreements will set out the procedure for settlement of disputes between the parties concerning the application or interpretation of the Agreements. There will be the possibility for the Commission to bring infringement proceedings modelled upon Article 258 TFEU. Similarly, the WB6 will be able to bring a dispute regarding the application or interpretation of the respective agreement before the Court of Justice. The modalities according to which the Court of Justice rules on the disputes and questions of interpretation brought before it will be set out in an annex to the agreements.

Safeguards

Should a WB6 not comply with a ruling of the Court of Justice, the Commission will be empowered to suspend parts of the agreement without further requirements.

Relationships with Other Agreements

The recommended agreements will become an integral part of the overall relations between the Union and Republic of Albania, Bosnia and Herzegovina, Kosovo, Republic of North Macedonia, Montenegro and Republic of Serbia, as established by their respective SAAs, and should form part of a common institutional framework. They will constitute specific agreements, which will give effect to the trade provisions of the SAAs and together with the respective Free Trade Agreement will form a free trade area consistent with Article V of the GATS.

Termination of the Agreements

The Agreements will be concluded for an indefinite period. The Agreements will lay down the conditions and procedures under which the Union may suspend, in whole or in part, the application of the Agreements, as well as the procedure and notice periods for terminating the Agreements.

This Decision is addressed to the Commission.

*For the Council
The President*