

Brussels, 18.7.2016
COM(2016) 460 final

2016/0218 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on certain procedures for applying the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo* of the other part

* This designation is without prejudice to positions on status, and in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence

EXPLANATORY MEMORANDUM

The Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo^{*}, of the other part ('the Agreement') was signed on 27 October 2015 and entered into force on 1 April 2016.

It is now necessary to lay down rules for the implementation of certain provisions of the Agreement, as well as the procedures for the adoption of detailed rules of implementation.

In order to ensure uniform conditions for the implementation of the Agreement, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers¹. Given that the implementing acts form part of the common commercial policy, the examination procedure should be used for their adoption.

Where the Agreement provides for the possibility, in exceptional and critical circumstances, to apply urgent measures necessary to deal with the situation, the Commission should adopt such implementing acts immediately. For measures concerning agricultural and fishery products, the Commission, in cases of duly justified imperative grounds of urgency, should adopt such implementing acts immediately.

The Agreement stipulates that certain agricultural and fishery products originating in Kosovo may be imported into the Union at a reduced customs duty, within the limits of tariff quotas. It is therefore necessary to lay down provisions regulating the management and review of these tariff quotas in order to allow for their thorough assessment.

This Regulation contains implementing measures for the Agreement, and should thus apply from the entry into force of the Agreement, in order to ensure the effective application and management of the tariff quotas granted under the Agreement, as well as to ensure legal certainty and equal treatment with regard to the levying of duties.

^{*} This designation is without prejudice to positions on status, and in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence

¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L55, 28.2.2011, p. 13).

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on certain procedures for applying the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo* of the other part

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) A Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo* of the other part, ('the Agreement') was signed on 27 October 2015. The Agreement entered into force on 1 April 2016.
- (2) It is necessary to lay down rules for the implementation of certain provisions of the Agreement, as well as the procedures for the adoption of detailed rules of implementation.
- (3) In order to ensure uniform conditions for the implementation of the Agreement, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council². Given that the implementing acts form part of the common commercial policy, the examination procedure should be used for their adoption. Where the Agreement provides for the possibility, in exceptional and critical circumstances, to apply urgent measures necessary to deal with the situation, the Commission should adopt such implementing acts immediately. For measures concerning agricultural and fishery products, the Commission, in cases of duly justified imperative grounds of urgency, should adopt such implementing acts immediately.
- (4) The Agreement stipulates that certain agricultural and fishery products originating in Kosovo may be imported into the Union at a reduced customs duty, within the limits of tariff quotas. It is therefore necessary to lay down provisions regulating the

* This designation is without prejudice to positions on status, and in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence

² Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L55, 28.2.2011, p. 13).

management and review of these tariff quotas in order to allow for their thorough assessment.

- (5) Where trade defence measures become necessary, they should be adopted in accordance with Council Regulation (EC) No 260/2009³, Council Regulation (EC) No 1225/2009⁴ or, as the case may be, Council Regulation (EC) No 597/2009⁵.
- (6) Where a Member State provides information to the Commission on a possible case of fraud or failure to provide administrative cooperation, the relevant Union legislation is to apply, in particular Council Regulation (EC) No 515/97⁶.
- (7) This Regulation contains implementing measures for the Agreement, and should thus apply from the entry into force of the Agreement.
- (8) In order to ensure the effective application and management of the tariff quotas granted under the Agreement, as well as to ensure legal certainty and equal treatment with regard to the levying of duties, certain provisions of this Regulation should apply from the date of entry into force of the Agreement,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the rules and procedures for the adoption of detailed rules for the implementation of certain provisions of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo^{*}, of the other part ('the Agreement').

Article 2

Concessions for fish and fishery products

The Commission shall adopt detailed rules on the implementation of Article 31 of the Agreement, concerning the tariff quotas for fish and fishery products, by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13(3) of this Regulation.

Article 3

Tariff reductions

1. Subject to paragraph 2, rates of preferential duty shall be rounded down to the first decimal place.

³ Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports (OJ L 84, 31.3.2009, p. 1).

⁴ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

⁵ Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community (OJ L 188, 18.7.2009, p. 93).

⁶ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

^{*} This designation is without prejudice to positions on status, and in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence

2. Where the result of calculating the rate of preferential duty pursuant to paragraph 1 is one of the following, the preferential rate shall be considered a full exemption:
 - (a) 1 % or less in the case of *ad valorem* duties;
 - (b) EUR 1 or less per individual amount in the case of specific duties.

Article 4

Technical adaptations

The Commission shall adopt amendments and technical adaptations to the provisions adopted pursuant to this Regulation which are necessary following changes to the Combined Nomenclature codes and to the Integrated Tariff of the European Communities (TARIC) subdivisions or arising from the conclusion of new or modified agreements, protocols, exchanges of letters or other acts between the Union and Kosovo by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13(3).

Article 5

General safeguard clause

Where the Union needs to take a measure as provided for in Article 43 of the Agreement, the Commission shall adopt that measure by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13(3) of this Regulation, unless otherwise specified in Article 43 of the Agreement.

Article 6

Shortage clause

Where the Union needs to take a measure provided for in Article 44 of the Agreement, the Commission shall adopt that measure by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13(3) of this Regulation.

Article 7

Exceptional and critical circumstances

Where exceptional and critical circumstances arise within the meaning of Article 43(5)(b) and Article 44(4) of the Agreement, the Commission may take immediately applicable measures as provided for in Articles 41 and 42 of the Agreement, in accordance with the procedure referred to in Article 13(4) of this Regulation.

Article 8

Safeguard clause for agricultural and fishery products

1. Notwithstanding the procedures provided for in Articles 5 and 6 of this Regulation, where the Union needs to take a measure as provided for in Article 34(2) or Article 43 of the Agreement, concerning agricultural and fishery products, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures after, where applicable, having had recourse to the referral procedure provided for in Article 41 of the Agreement. Those measures shall

be adopted by the Commission by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13(3) of this Regulation.

On duly justified imperative grounds of urgency, including the case referred to in paragraph 2, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 13(4) of this Regulation.

2. If the Commission receives the request referred to in paragraph 1 from a Member State, it shall take a decision thereon:
 - (a) within three working days following the receipt of that request, where the referral procedure provided for in Article 43 of the Agreement does not apply; or
 - (b) within three days of the end of the 30-day period referred to in Article 43(5)(a) of the Agreement, where the referral procedure provided for in Article 43 of the Agreement applies.

The Commission shall notify the Council of the measures upon which it has decided.

Article 9

Surveillance

For the purposes of implementing Article 34 of the Agreement, a Union surveillance of imports of goods listed in Annex V of Protocol 3 to the Agreement shall be established. The procedure laid down in Article 308(d) of Commission Regulation (EEC) No 2454/93⁷ shall apply.

Article 10

Dumping and subsidy

In the event of a practice that may cause the Union to take the measures provided for in Article 42(2) of the Agreement, the introduction of anti-dumping or countervailing measures, or both, shall be decided in accordance with the provisions laid down in Regulation (EC) No 1225/2009 and Regulation (EC) No 597/2009, respectively.

Article 11

Competition

1. In the event of a practice which the Commission considers to be incompatible with Article 75 of the Agreement, the Commission shall, after examining the case on its own initiative or on the request of a Member State, decide upon the appropriate measure provided for in Article 75 of the Agreement.

The measures provided for in Article 75(9) of the Agreement shall be adopted in the cases of aid in accordance with the procedures laid down in Regulation (EC) No 597/2009.

⁷ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

2. In the event of a practice that may cause measures to be applied to the Union by Kosovo on the basis of Article 75 of the Agreement, the Commission shall, after examining the case, decide whether the practice is compatible with the principles set out in the Agreement. Where necessary, the Commission shall take appropriate decisions on the basis of criteria which result from the application of Articles 101, 102 and 107 of the Treaty on the Functioning of the European Union.

Article 12

Fraud or failure to provide administrative co-operation

1. Where the Commission, on the basis of information provided by a Member State or on its own initiative, finds that the conditions laid down in Article 48 of the Agreement are fulfilled, it shall, without undue delay:
 - (a) inform the European Parliament and the Council; and
 - (b) notify the Stabilisation and Association Committee of its finding together with the objective information it is based on, and enter into consultations within the Stabilisation and Association Committee.
2. Any publication under Article 48(5) of the Agreement shall be done by the Commission in the *Official Journal of the European Union*.
3. The Commission may decide, by means of implementing acts adopted in accordance with the examination procedure referred to in Article 13(3) of this Regulation, to suspend temporarily the relevant preferential treatment of the products as provided for in Article 48(4) of the Agreement.

Article 13

Committee procedure

1. For the purposes of Articles 2, 4 and 12 of this Regulation, the Commission shall be assisted by the Customs Code Committee set up by Article 285 of Regulation (EU) No 952/2013. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. For the purposes of Articles 5 to 8 of this Regulation, the Commission shall be assisted by the Committee set up by Article 4 of Regulation (EC) No 260/2009. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
3. Where reference is made to this paragraph, the examination procedure pursuant to Article 5 of Regulation (EU) No 182/2011 shall apply.
4. Where reference is made to this paragraph, paragraphs 1 to 4 of Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

Article 14

Notification

The Commission, acting on behalf of the Union, shall be responsible for notification to the Stabilisation and Association Council and the Stabilisation and Association Committee, respectively, as required by the Agreement.

Article 15

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 April 2016.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President