



COMMISSION OF THE EUROPEAN COMMUNITIES

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2008/0072 (ACC)

Proposal for a

### **COUNCIL REGULATION**

**on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, and for applying the Interim Agreement between the European Community, of the one part, and Bosnia and Herzegovina, of the other part**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

A Stabilisation and Association Agreement (SAA) between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, was agreed in [...] on [...]. It will enter into force on the 1<sup>st</sup> day of the second month following the date on which the Parties notify each other that their respective ratification procedures have been completed.

The Interim Agreement between the European Community and Bosnia and Herzegovina, signed on the same date to allow the early application of trade and trade-related provisions of the SAA, will enter into force on the 1<sup>st</sup> day of the second month following the date on which the Parties notify each other that their respective ratification procedures have been completed.

An implementing regulation is required to lay down the procedures to ensure the correct implementation of the said Agreements provisions with reference to: concessions for fish and fishery products, tariff reductions, technical adaptations, general safeguard clause and safeguard clause for agricultural and fisheries products, shortage clauses, exceptional and critical circumstances, dumping and subsidy, competition, fraud and administrative co-operation, management procedures and notification.

It is therefore proposed that the Council adopt the attached regulation.

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## **COUNCIL REGULATION**

**on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, and for applying the Interim Agreement between the European Community, of the one part, and Bosnia and Herzegovina, of the other part**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) A Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part,<sup>1</sup> (hereinafter referred to as ‘SAA’) was signed in [...] on [...].
- (2) On [...] the Council concluded an Interim Agreement on trade and trade-related matters between the European Community, of the one part, and Bosnia and Herzegovina, of the other part,<sup>2</sup> (hereinafter referred to as the ‘Interim Agreement’) which provides for the early entry into force of the trade and trade-related provisions of the SAA. The Interim Agreement will enter into force on the first day of the second month following the date on which the Parties notify each other that their respective approval procedures have been completed and, in case of delay, will provisionally apply as from [...].
- (3) It is necessary to lay down the procedures for applying certain provisions of the Interim Agreement. Since the trade and trade-related provisions of these instruments are to a very large extent identical, this Regulation should also apply to the implementation of the SAA after its entry into force.
- (4) The SAA and the Interim Agreement stipulate that fishery products originating in Bosnia and Herzegovina may be imported into the Community at a reduced customs duty, within the limits of tariff quotas. It is therefore necessary to lay down provisions regulating the management of these tariff quotas.

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<sup>1</sup> OJ C[...], [...]200, p.[...]

<sup>2</sup> OJ L[...], [...]200, p. [...]

- (5) Where trade defence measures become necessary, they should be adopted in accordance with the general provisions laid down in Council Regulation (EC) No 3285/94 of 22 December 1994 on the common rules for imports<sup>3</sup>, Council Regulation (EEC) No 2603/69 of 20 December 1969 establishing common rules for exports<sup>4</sup>, Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community<sup>5</sup> or, as the case may be Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community<sup>6</sup>.
- (6) Where a Member State provides information to the Commission on a possible fraud or failure to provide administrative cooperation, the relevant community legislation shall apply, in particular Council Regulation (EC) No 515/97 of 13 March 1997<sup>7</sup> 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.
- (7) For the purposes of implementing the relevant provisions of this Regulation the Commission should be assisted by the Customs Code Committee established by Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code<sup>8</sup>.
- (8) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>9</sup>,

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### *Subject matter*

This Regulation lays down certain procedures for the adoption of detailed rules for the implementation of certain provisions of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, (hereinafter referred to as 'SAA'), and of the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and Bosnia and Herzegovina, of the other part (hereinafter referred to as 'Interim Agreement').

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<sup>3</sup> OJ L 349, 31.12.1994, p. 53. Regulation as last amended by Regulation (EC) No 2200/2004 (OJ L 374, 22.12.2004, p. 1).

<sup>4</sup> OJ L 324, 27.12.1969, p. 25. Regulation as last amended by Regulation (EEC) No 3918/91 (OJ L 372, 31.12.1991, p. 31).

<sup>5</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

<sup>6</sup> OJ L 288, 21.10.1997, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).

<sup>7</sup> OJ L 82, 22.3.1997, p. 1.

<sup>8</sup> OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 648/2005 (OJ L 117, 4.5.2005, p. 13).

<sup>9</sup> OJ L 184, 17.7.99, p.23

## *Article 2*

### *Concessions for fish and fishery products*

Detailed rules on the implementation of Article 13 of the Interim Agreement, and thereafter Article 28 of the SAA, concerning the tariff quotas for fish and fishery products, shall be adopted by the Commission in accordance with the management procedure set out in Article 12(2).

## *Article 3*

### *Tariff reductions*

1. Subject to paragraph 2, rates of preferential duty shall be rounded down to the first decimal place.
2. Where the result of calculating the rate of the preferential duty in application of 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, or
  - (b) EUR 1 or less per individual amount in the specific duties.

## *Article 4*

### *Technical adaptations*

Amendments and technical adaptations to the provisions adopted pursuant to this Regulation rendered necessary by changes to the Combined Nomenclature codes and to the TARIC subdivisions or arising from the conclusion of new or modified Agreements, Protocols, Exchanges of Letters or other acts between the Community and Bosnia and Herzegovina, shall be adopted in accordance with the procedure set out in Article 12(2).

## *Article 5*

### *General safeguard clause*

Without prejudice to Article 7, where the Community needs to take a measure as provided for in Article 24 of the Interim Agreement, and thereafter Article 39 of the SAA, it shall be adopted in accordance with the conditions and procedures laid down in Regulation (EC) No 3285/94, unless otherwise specified in Article 24 of the Interim Agreement, and thereafter Article 39 of the SAA.

## *Article 6*

### *Shortage clause*

Without prejudice to Article 7, where the Community needs to take a measure as provided for in Article 25 of the Interim Agreement, and thereafter Article 40 of the SAA, it shall be adopted in accordance with the procedures laid down in Regulation (EEC) No 2603/69.

## *Article 7*

### *Exceptional and critical circumstances*

Where exceptional and critical circumstances arise within the meaning of Articles 24(5)(b) and 25(4) of the Interim Agreement, and thereafter Article 39(5)(b) and 40(4) of the SAA, the Commission may take immediate measures as provided for in Articles 24 and 25 of the Interim Agreement, and thereafter Article 39 and 40 of the SAA.

If the Commission receives a request from a Member State, it shall take a decision thereon within five working days of receipt of the request.

The Commission shall notify the Council of its decision.

Any Member State may refer the Commission's decision to the Council within ten working days of receiving notification of the decision.

The Council, acting by a qualified majority, may take a different decision within two months.

## *Article 8*

### *Safeguard clause for agricultural and fishery products*

1. Notwithstanding the procedures provided for in Articles 5 and 6, where the Community needs to take a safeguard measure as provided in Article 24 of the Interim Agreement and thereafter Article 39 of the SAA 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 24 of the Interim Agreement and thereafter Article 39 of the SAA.

If the Commission receives a request from a Member State, it shall take a decision thereon:

- a) within three working days following the receipt of a request, where the referral procedure provided for in Article 24 of the Interim Agreement and thereafter Article 39 of the SAA does not apply; or
- b) within three days of the end of the thirty days period referred to in Articles 24(5)(a) of the Interim Agreement and thereafter Article 39(5)(a) of the SAA where the referral procedure provided for in Article 24 of the Interim Agreement and thereafter Article 39 of the SAA applies.

The Commission shall notify the Council of the measures it decided.

2. Measures decided on by the Commission pursuant to paragraph 1 may be referred to the Council by any Member State within three working days of the date on which they were notified. The Council shall meet without delay. It may, acting by qualified majority, amend or repeal the measures in question within one month following the date on which they were referred to the Council.

#### *Article 9*

##### *Dumping and subsidy*

In the event of a practice which is liable to warrant application by the Community of the measures provided for in Article 23(2) of the Interim Agreement, and thereafter Article 38(2) of the SAA, the introduction of anti-dumping and/or countervailing measures shall be decided upon in accordance with the provisions laid down in, respectively, Regulation (EC) No 384/96 and/or Regulation (EC) No 2026/97.

#### *Article 10*

##### *Competition*

1. In the event of a practice that may justify application by the Community of the measures provided for in Article 36 of the Interim Agreement, and thereafter Article 71 of the SAA, the Commission shall, after examining the case, on its own initiative or on the request of a Member State, decide whether such practice is compatible with the Agreement.

The measures provided for in Article 36(10) of the Interim Agreement, and thereafter Article 71(10) of the SAA, shall be adopted in the cases of aid in accordance with the procedures laid down in Regulation (EC) No 2026/97 and in the other cases in accordance with the procedure laid down in Article 133 of the Treaty establishing the European Community.

2. In the event of a practice that may cause measures to be applied to the Community by Bosnia and Herzegovina on the basis of Article 36 of the Interim Agreement, and thereafter Article 71 of the SAA, the Commission shall, after examining the case, decide whether the practice is compatible with the principles set out in the Interim Agreement, and thereafter the SAA. Where necessary, it shall take appropriate decisions on the basis of criteria which result from the application of Articles 81, 82 and 87 of the Treaty.

#### *Article 11*

##### *Fraud or failure to provide administrative co-operation*

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 29 of the Interim Agreement and thereafter in Article 44 of the SAA are fulfilled, it shall, without undue delay:

a) inform the Council; and

b) notify the Interim Committee, and thereafter the Stabilisation and Association Committee, of its finding together with the objective information, and enter into consultations within the Interim Committee, and thereafter the Stabilisation and Association Committee.

Any publication under Article 29 (5) of the Interim Agreement, and thereafter in Article 44 (5) of the SAA, shall be done by the Commission in the *Official Journal of the European Union*.

The Commission may decide, in accordance with the advisory procedure set out in Article 12(3), to suspend temporarily the relevant preferential treatment of the products as provided for in Article 29(4) of the Interim Agreement, and thereafter Article 44(4) of the SAA.

#### *Article 12*

##### *Committee*

1. The Commission shall be assisted by the Customs Code Committee set up by Article 248a of Regulation (EEC) No 2913/92.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply. The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

#### *Article 13*

##### *Notification*

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

#### *Article 14*

##### *Entry into force*

This Regulation shall enter into force on the 20<sup>th</sup> day following its publication in the *Official Journal of the European Union*.



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

Done at

*For the Council*  
*The President*