



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 January 2012

5610/12

**Interinstitutional File:
2011/0465 (COD)**

COWEB 9

PROPOSAL

from: European Commission

dated: 11 January 2012

No Cion doc.: COM(2011) 938 final

Subject: Proposal for a regulation of the European Parliament and of the Council concerning certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, and for applying the Interim Agreement between the European Community, of the one part, and the Republic of Serbia, of the other part

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2011) 938 final



EUROPEAN COMMISSION

Brussels, 10.1.2012
COM(2011) 938 final

2011/0465 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

concerning certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, and for applying the Interim Agreement between the European Community, of the one part, and the Republic of Serbia, of the other part

EXPLANATORY MEMORANDUM

A Stabilisation and Association Agreement (SAA) between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, was signed in Luxemburg on 29 April 2008. It will enter into force on the 1st 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 (IA) between the European Community and the Republic of Serbia, signed on the same date to allow the early application of trade and trade-related provisions of the Stabilisation and Association Agreement (SAA), entered into force on 1 February 2010.

With the aim of the correct and smooth application of the IA, an Implementing Regulation is proposed, to lay down rules and procedures for the adoption of detailed rules for the implementation of certain provisions of these Agreements, as has been done for previous SAAs and Interim Agreements.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

concerning certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, and for applying the Interim Agreement between the European Community, of the one part, and the Republic of Serbia, 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 ¹,

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

Acting in accordance with the ordinary legislative procedure ²,

Whereas:

- (1) A Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, (hereinafter referred to as 'SAA') was signed on 29 April 2008. The SAA is in the process of ratification.
- (2) On 29 April 2008 the Council concluded an Interim Agreement on trade and trade related matters between the European Community, of the one part, and the Republic of Serbia, of the other part,³ (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 entered into force on 1 February 2010.
- (3) It is necessary to lay down rules for the implementation of certain provisions of the Interim Agreement, as well as the procedures for the adoption of detailed rules of implementation. 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) In order to ensure uniform conditions for the implementation of the Interim Agreement and the SAA, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the

¹ OJ C [], [], p. [].

² OJ C [], [], p. [].

³ OJ L 28, 30.1.2010, p. 1.

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 powers⁴. Given that the implementing measures form part of the common commercial policy, the examination procedure should be used for their adoption. Where the Interim Agreement and the SAA foresee the possibility, in exceptional and critical circumstances, to apply forthwith measures necessary to deal with the situation, the Commission should adopt immediately such implementing acts.

- (5) The SAA and the Interim Agreement stipulate that certain agricultural and fishery products originating in Serbia 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 of these tariff quotas.
- (6) Where trade defence measures become necessary, they should be adopted in accordance with Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports⁵, Council Regulation (EC) No 1061/2009 of 19 October 2009 establishing common rules for exports⁶, Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community⁷ or, as the case may be, Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community⁸.
- (7) 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 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 matters⁹.
- (8) This Regulation contains implementing measures for the Interim Agreement, and should thus apply from the entry into force of the Interim Agreement,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down rules and the 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 the Republic of Serbia, of the other part, (hereinafter referred to as 'SAA'), and of the Interim Agreement on

⁴ OJ L55, 28.2.2011, p. 13.

⁵ OJ L 84, 31.3.2009, p. 1.

⁶ OJ L 291, 7.11.2009, p. 1.

⁷ OJ L 343, 22.12.2009, p. 51.

⁸ OJ L 188, 18.7.2009, p. 93.

⁹ OJ L 82, 22.3.1997, p. 1.

trade and trade-related matters between the European Community, of the one part, and the Republic of Serbia, of the other part (hereinafter referred to as 'Interim Agreement').

Article 2

Concessions for fish and fishery products

Detailed rules on the implementation of Article 14 of the Interim Agreement, and thereafter Article 29 of the SAA, concerning the tariff quotas for fish and fishery products, shall be adopted by the Commission in accordance with the examination procedure set out in Article 13 (3).

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 under Article 218 Treaty on the Functioning of the European Union between the Union and the Republic of Serbia, shall be adopted in accordance with the procedure set out in Article 13(3) or, as the case may be, with respect to agricultural products the procedure set out in Article 14 (2).

Article 5

General safeguard clause

Without prejudice to Article 7, where the Union needs to take a measure as provided for in Article 26 of the Interim Agreement, and thereafter Article 41 of the SAA, it shall be adopted in accordance with the conditions and procedures laid down in Regulation (EC) No 260/2009, unless otherwise specified in Article 26 of the Interim Agreement, and thereafter Article 41 of the SAA.

Article 6

Shortage clause

Without prejudice to Article 7, where the Union needs to take a measure as provided for in Article 27 of the Interim Agreement, and thereafter Article 42 of the SAA, it shall be adopted in accordance with the procedures laid down in Regulation (EC) No 1061/2009.

Article 7

Exceptional and critical circumstances

Where exceptional and critical circumstances arise within the meaning of Articles 26(5)(b) and 27(4) of the Interim Agreement, and thereafter Article 41(5)(b) and 42(4) of the SAA, the Commission may take immediately applicable measures as provided for in Articles 26 and 27 of the Interim Agreement, and thereafter Article 41 and 42 of the SAA, in accordance with the procedure referred to in Article 15(2).

Article 8

Safeguard clause for agricultural and fishery products

Notwithstanding the procedures provided for in Articles 5 and 6, where the Union needs to take a safeguard measure as provided in Article 17(2) or Article 26 of the Interim Agreement and thereafter Article 32(2) or Article 41 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 26 of the Interim Agreement and thereafter Article 41 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 26 of the Interim Agreement and thereafter Article 41 of the SAA does not apply; or
- b) within three days of the end of the thirty days period referred to in Article 26(5)(a) of the Interim Agreement and thereafter in Article 41(5)(a) of the SAA where the referral procedure provided for in Article 26 of the Interim Agreement and thereafter Article 41 of the SAA applies.

The Commission shall adopt those immediately applicable acts in accordance with the procedure referred to in Article 14(3).

Article 9

Surveillance

For the purposes of implementing Article 17(2) of the Interim Agreement and thereafter Article 32(2) of the SAA, a Union surveillance of imports of goods listed in Annex V of

Protocol 3 shall be established. The procedure laid down in Article 308d of the 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 Code¹⁰ shall apply.

Article 10

Dumping and subsidy

In the event of a practice which is liable to warrant application by the Union of the measures provided for in Article 25(2) of the Interim Agreement, and thereafter Article 40(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 1225/2009 and Regulation (EC) No 597/2009.

Article 11

Competition

1. In the event of a practice which the Commission considers not to be compatible with Article 38 of the Interim Agreement and thereafter Article 73 of the SAA, 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 38 of the Interim Agreement, and thereafter in Article 73 of the SAA.

The measures provided for in Article 38 (10) of the Interim Agreement, and thereafter Article 73 (10) of the SAA, shall be adopted in the cases of aid in accordance with the procedures laid down in Regulation (EC) No 597/2009.

2. In the event of a practice that may cause measures to be applied to the Union by the Republic of Serbia on the basis of Article 38 of the Interim Agreement, and thereafter Article 73 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 101, 102 and 107 of the Treaty on the Functioning of the European Union.

Article 12

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 31 of the Interim Agreement and thereafter in Article 46 of the SAA are fulfilled, it shall, without undue delay:

- a) inform the Council and European Parliament; and

¹⁰ OJ L 253, 11.10.1993, p. 1.

- 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 31 (5) of the Interim Agreement, and thereafter in Article 46 (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 referred to in Article 13(2), to suspend temporarily the relevant preferential treatment of the products as provided for in Article 31 (4) of the Interim Agreement, and thereafter Article 46 (4) of the SAA.

Article 13

Committee procedure

1. The Commission shall be assisted by the Customs Code Committee set up by Article 248a of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code¹¹. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 14

Committee procedure concerning agricultural products

1. The Commission shall be assisted by the Management Committee for the Common Organisation of Agricultural Markets established by Article 195 of Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products¹². That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

¹¹ OJ L 302, 19.10.1992, p. 1.

¹² OJ L 299, 16.11.2007, p. 1

Article 15

Committee procedure for measures in case of exceptional and critical circumstances

1. The Commission shall be assisted by the Committee established by Article 4 of Regulation (EC) No 260/2009. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

Article 16

Notification

The Commission, acting on behalf of the Union, 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 17

Entry into force

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

It shall apply as from 1 February 2010.

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