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**PROPOSAL**

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	28 May 2014
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2014) 322 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common rules for exports (codification)

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Delegations will find attached document COM(2014) 322 final.

In accordance with the method approved on 10 June 2003, delegations are invited to send their comments on the codification proposal by 15 September 2014 to the following addresses:

SECRETARIAT.Codification@consilium.europa.eu **AND** sj-codification@ec.europa.eu

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Encl.: COM(2014) 322 final



EUROPEAN  
COMMISSION

Brussels, 28.5.2014  
COM(2014) 322 final

2014/0167 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on common rules for exports (codification)**

## EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying the law of the Union so as to make it clearer and more accessible to citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if the law is to be clear and transparent.

2. On 1 April 1987 the Commission decided<sup>1</sup> to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that their provisions are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this<sup>2</sup>, stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal procedure for the adoption of acts of the Union.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Regulation (EC) No 1061/2009 of 19 October 2009 establishing common rules for exports<sup>3</sup>. The new Regulation will supersede the various acts incorporated in it<sup>4</sup>; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.
5. The codification proposal was drawn up on the basis of a preliminary consolidation, in 22 official languages, of Regulation (EC) No 1061/2009 and the instrument amending it, carried out by the Publications Office of the European Union, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table set out in Annex III to the codified Regulation.

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<sup>1</sup> COM(87) 868 PV.

<sup>2</sup> See Annex 3 to Part A of the Conclusions.

<sup>3</sup> Entered in the legislative programme for 2014.

<sup>4</sup> See Annex II to this proposal.

Proposal for a

## **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

### **on common rules for exports (codification)**

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(2) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>5</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Regulation (EC) No 1061/2009<sup>6</sup> has been substantially amended<sup>7</sup>. In the interests of clarity and rationality, that Regulation should be codified.
- (2) The common commercial policy should be based on uniform principles.
- (3) Common rules should be provided for exports from the Union.
- (4) Exports are almost completely liberalised in all the Member States. It is therefore possible to accept as a Union principle that exports to third countries are not subject to any quantitative restriction, subject to the exceptions provided for in this Regulation and without prejudice to such measures as Member States may take in conformity with the Treaty.
- (5) The Commission should be informed if, as a result of unusual developments on the market, a Member State considers that protective measures might be necessary.
- (6) It is essential that examination should take place at Union level, in particular on the basis of any such information, of export terms and conditions, of export trends,

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<sup>5</sup> OJ C [...], [...], p. [...].

<sup>6</sup> Council Regulation (EC) No 1061/2009 of 19 October 2009 establishing common rules for exports (OJ L 291, 7.11.2009, p. 1).

<sup>7</sup> See Annex II.

of the various aspects of the economic and commercial situation, and of the measures, if any, to be taken.

- (7) It may become apparent from this examination that the ☒ Union ☒ should exercise surveillance over certain exports, or that interim protective measures should be introduced as a safeguard against unforeseen practices.
  - (8) Any protective measures necessitated by the interests of the ☒ Union ☒ should be adopted with due regard for existing international obligations.
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↓ 1061/2009 recital 11 (adapted)

- (9) It is necessary to authorise Member States which are bound by international commitments setting up, in cases of actual or potential supply difficulties, a system for the allocation of oil products between contracting parties to comply with the resulting obligations vis-à-vis third countries, without prejudice to ☒ Union ☒ provisions adopted to the same end. This authorisation should apply until the adoption by ☒ the European Parliament and ☒ the Council of appropriate measures pursuant to commitments entered into by the ☒ Union ☒ or all the Member States.
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↓ 1061/2009 recital 12 (adapted)

- (10) This Regulation should apply to all products, whether industrial or agricultural. Its operation should be complementary to that of the instruments establishing common organisation of agricultural markets, and to that of the special instruments adopted under Article ☒ 352 ☒ of the Treaty for processed agricultural products. Any overlap between the provisions of this Regulation and the provisions of ☒ those ☒ instruments, particularly the protective clauses thereof, must however be avoided.
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↓ 37/2014 Art. 1 and Annex .21  
(adapted)

- (11) ☒ The ☒ implementation ☒ of this Regulation ☒ requires uniform conditions for the adoption of ☒ protective ☒ measures. Those measures should be adopted by the Commission in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>8</sup>,

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<sup>8</sup> 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 L 55, 28.2.2011, p. 13).

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### ***BASIC PRINCIPLE***

#### *Article 1*

The exportation of products from the ☒ Union ☒ to third countries shall be free, that is to say, they shall not be subject to any quantitative restriction, with the exception of those restrictions which are applied in conformity with the provisions of this Regulation.

## CHAPTER II

### ☒ ***UNION*** ☒ ***INFORMATION AND CONSULTATION PROCEDURE***

#### *Article 2*

If, as a result of any unusual developments on the market, a Member State considers that protective measures within the meaning of Chapter III might be necessary, it shall so notify the Commission, which shall advise the other Member States.

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#### *Article 3*

1. The Commission shall be assisted by the Committee on Safeguards, established by Regulation (EU) No [...] of the European Parliament and of the Council<sup>9</sup>. 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.

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<sup>9</sup> Regulation (EU) No [...] of the European Parliament and of the Council of [...] on common rules for imports (OJ L [...], [...], p. [...]).

*Article 4*

For the purpose of assessing the economic and commercial situation as regards a particular product, the Commission may request Member States to supply statistical data on market trends in that product and, to this end, acting in accordance with their national legislation and with a procedure to be specified by the Commission, to exercise surveillance over exports of such product. Member States shall take whatever steps are necessary in order to give effect to requests from the Commission and shall forward to the Commission the data requested. The Commission shall inform the other Member States.

**CHAPTER III**

***PROTECTIVE MEASURES***

*Article 5*

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↓ 37/2014 Art. 1 and Annex .21(3)

1. In order to prevent a critical situation from arising on account of a shortage of essential products, or to remedy such a situation, and where Union interests call for immediate intervention, the Commission, acting at the request of a Member State or on its own initiative, and taking account of the nature of the products and of the other particular features of the transactions in question, may make the export of a product subject to the production of an export authorisation, the granting of which shall be governed by such provisions and subject to such limits as the Commission shall lay down in accordance with the examination procedure referred to in Article 3(2), or, in cases of urgency, in accordance with Article 3(3).

2. The European Parliament, the Council and the Member States shall be notified of the measures taken. Such measures shall take effect immediately.

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↓ 1061/2009 (adapted)

3. The measures may be limited to exports to certain countries or to exports from certain regions of the ☒ Union ☒ . They shall not affect products already on their way to the ☒ Union ☒ frontier.

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↓ 37/2014 Art. 1 and Annex .21(3)

4. Where intervention by the Commission has been requested by a Member State, the Commission shall take a decision pursuant to paragraph 1 within a maximum of five working days of the date of receipt of such request.

5. Where the Commission has acted pursuant to paragraph 1 of this Article, it shall, not later than 12 working days following the date of entry into force of the measure which it has taken,

decide whether to adopt appropriate measures as provided for in Article 6. If, at the end of six weeks following the date of entry into force of the measure, no measures have been adopted, the measure in question shall be deemed revoked.

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↓ 1061/2009

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#### Article 6

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↓ 37/2014 Art. 1 and Annex .21(4)

1. Where the interests of the Union so require, the Commission may, acting in accordance with the examination procedure referred to in Article 3(2), adopt appropriate measures:

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↓ 1061/2009 (adapted)

- (a) to prevent a critical situation from arising owing to a shortage of essential products, or to remedy such a situation;
  - (b) to allow international undertakings entered into by the ☒ Union ☒ or all the Member States to be fulfilled, in particular those relating to trade in primary products.
2. The measures referred to in paragraph 1 may be limited to exports to certain countries or to exports from certain regions of the ☒ Union ☒ . They shall not affect products already on their way to the ☒ Union ☒ frontier.
3. When quantitative restrictions on exports are introduced, account shall be taken in particular of:
- (a) the volume of goods exported under contracts concluded on normal terms and conditions before the entry into force of a protective measure within the meaning of this Chapter and notified by the Member State concerned to the Commission in conformity with its national laws; and
  - (b) the need to avoid jeopardising the achievement of the aim pursued in introducing quantitative restrictions.
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↓ 37/2014 Art. 1 and Annex .21(5)

#### Article 7

1. While any measure referred to in Articles 5 and 6 is in operation, the Commission may, either at the request of a Member State or on its own initiative:

- (a) examine the effects of the measure;
- (b) ascertain whether the application of the measure is still necessary.



Where the Commission considers that the application of the measure is still necessary, it shall inform the Member States accordingly.

2. Where the Commission considers that any measure provided for in Article 5 or 6 should be revoked or amended, it shall act in accordance with the examination procedure referred to in Article 3(2).

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↓ 1061/2009

## CHAPTER IV

### *TRANSITIONAL AND FINAL PROVISIONS*

#### *Article 8*

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↓ 37/2014 Art. 1 and Annex .21(6)

In respect of products listed in Annex I, until the European Parliament and the Council adopt appropriate measures pursuant to international commitments entered into by the Union or all the Member States, Member States shall, without prejudice to rules adopted by the Union in this field, be authorised to implement the emergency sharing system introducing an allocation obligation vis-à-vis third countries provided for in international commitments entered into before the entry into force of this Regulation.

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↓ 1061/2009

Member States shall inform the Commission of measures they intend to adopt. The measures adopted shall be communicated by the Commission to the Council and other Member States.

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↓ 37/2014 Art. 1 and Annex .21(7)

#### *Article 9*

The Commission shall include information on the implementation of this Regulation in its annual report on the application and implementation of trade defence measures presented to the European Parliament and to the Council pursuant to Article 22a of Council Regulation (EC) No 1225/2009<sup>10</sup>.

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<sup>10</sup> 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).

#### *Article 10*

Without prejudice to other ☒ Union ☒ provisions, this Regulation shall not preclude the adoption or application by a Member State of quantitative restrictions on exports on grounds of public morality, public policy or public security, ☒ or of ☒ protection of health and life of humans, animals and plants, of national treasures possessing artistic, historic or archaeological value, or of industrial and commercial property.

#### *Article 11*

This Regulation shall be without prejudice to the operation of the instruments establishing common organisation of agricultural markets, or of the special instruments adopted under Article ☒ 352 ☒ of the Treaty for processed agricultural products. It shall operate by way of complement to those instruments.

However, in the case of products covered by such instruments, Article 5 shall not apply to those in respect of which the ☒ Union ☒ rules on trade with third countries make provision for the application of quantitative export restrictions. Article 4 shall not apply to those products in respect of which such rules require the production of a licence or other export document.

#### *Article 12*

Regulation (EC) No ☒ 1061/2009 ☒ is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

#### *Article 13*

This Regulation shall enter into force on the ☒ twentieth ☒ day following ☒ that of ☒ 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 Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*