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2014/0190 (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 Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part (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 decided¹ 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 this², 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 140/2008 of 19 November 2007 on 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 Montenegro, of the other part, and for applying the Interim Agreement between the European Community, of the one part, and the Republic of Montenegro, of the other part³. The new Regulation will supersede the various acts incorporated in it⁴; 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.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Entered in the legislative programme for 2014.

⁴ See Annex I to this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in 22 official languages, of Regulation (EC) No 140/2008 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 II to the codified Regulation.

↓ 140/2008 (adapted)

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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 Committee⁵,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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- (1) Council Regulation (EC) No 140/2008⁶ has been substantially amended⁷. In the interests of clarity and rationality, that Regulation should be codified.

↓ 140/2008 recital 1 (adapted)

- (2) A Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part

⁵ OJ C [...], [...], p. [...].

⁶ Council Regulation (EC) No 140/2008 of 19 November 2007 on 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 Montenegro, of the other part, and for applying the Interim Agreement between the European Community, of the one part, and the Republic of Montenegro, of the other part (OJ L 43, 19.2.2008, p. 1).

⁷ See Annex I.

(‘SAA’), was signed on 15 October 2007 and entered into force on 1 May 2010 .

140/2008 (adapted)

- (3) It is necessary to lay down the procedures for applying certain provisions of the SAA.
- (4) The SAA stipulates that fishery products originating in Montenegro 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 those tariff quotas.
- (5) Where trade defence measures become necessary, they should be adopted in accordance with the general provisions laid down in Council Regulation (EC) No 260/2009⁸, Council Regulation (EC) No 1061/2009⁹, Council Regulation (EC) No 1225/2009¹⁰ or, as the case may be, Council Regulation (EC) No 597/2009¹¹.
- (6) Where a Member State provides the Commission with information on a possible fraud or failure to provide administrative cooperation, the relevant Union legislation shall apply, in particular Council Regulation (EC) No 515/97¹².
- (7) For the purposes of implementing the relevant provisions of this Regulation the Commission should be assisted by the Customs Code Committee established by Article 285 of Regulation (EU) No 952/2013 of the European Parliament and of the Council¹³.

37/2014 Art. 1 and Annex . 15
(adapted)

- (8) The implementation of the bilateral safeguard clauses of the SAA requires uniform conditions for the adoption of safeguard and other measures. Those measures

⁸ Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports (OJ L 84, 31.3.2009, p. 1).

⁹ Council Regulation (EC) No 1061/2009 of 19 October 2009 establishing common rules for exports (OJ L 291, 7.11.2009, p. 1).

¹⁰ 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).

¹¹ 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).

¹² 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).

¹³ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

should be adopted in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁴.

- (9) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to exceptional and critical circumstances arising within the meaning of Article 41(5)(b) and Article 42(4) of the SAA , imperative grounds of urgency so require,

↓ 140/2008 (adapted)

HAVE 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 the Republic of Montenegro, of the other part ('SAA').

↓ 37/2014 Art. 1 and Annex .
15(1) (adapted)

Article 2

Concessions for fish and fishery products

Detailed rules on the implementation of 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 referred to in Article 9(3) of this Regulation.

↓ 140/2008 (adapted)

Article 3

Tariff reductions

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

¹⁴ 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).

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; or
- (b) EUR 1 or less per individual amount in the case of specific duties.

↓ 37/2014 Art. 1 and Annex .15(2) (adapted)
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Article 4

Technical adaptations

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 TARIC subdivisions, or arising from the conclusion of new or modified agreements, protocols, exchanges of letters or other acts between the Union and Montenegro, shall be adopted in accordance with the examination procedure referred to in Article 9(3).

Article 5

General safeguard clause

Where the Union needs to take a measure as provided for in Article 41 of the SAA, it shall be adopted in accordance with the examination procedure referred to in Article 9(3) of this Regulation, unless otherwise specified in Article 41 of the SAA.

Article 6

Shortage clause

Where the Union needs to take a measure as provided for in Article 42 of the SAA, it shall be adopted in accordance with the examination procedure referred to in Article 9(3) of this Regulation.

↓ 140/2008 (adapted)

Article 7

Exceptional and critical circumstances

Where exceptional and critical circumstances arise within the meaning of Article 41(5)(b) and 42(4) of the SAA, the Commission may take immediate measures as provided for in Articles 41 and 42 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.

↓ 37/2014 Art. 1 and Annex .15(3) (adapted)

The Commission shall take such measures in accordance with the examination procedure referred to in Article 9(3) of this Regulation. In cases of urgency, Article 9(4) of this Regulation shall apply.

↓ 140/2008 (adapted)

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 safeguard measure, as provided for in 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 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 41 of the SAA does not apply; or
- (b) within three days of the end of the 30-day period referred in Article 41(5)(a) of the SAA, where the referral procedure provided for in Article 41 of the SAA applies.

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

↓ 37/2014 Art. 1 and Annex .15(4)

2. The Commission shall take such measures in accordance with the examination procedure referred to in Article 9(3). In cases of urgency, Article 9(4) shall apply.

↓ 37/2014 Art. 1 and Annex .
15(5) (adapted)

Article 9

Committee procedure

1. For the purpose of Article 4, the Commission shall be assisted by the Customs Code Committee established 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 purpose of Articles 5 to 8, the Commission shall be assisted by the Committee on Safeguards established by Article 4(1) 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, Article 5 of Regulation (EU) No 182/2011 shall apply.
4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

↓ 140/2008 (adapted)

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 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 Regulation (EC) No 1225/2009 and/or Regulation (EC) No 597/2009, respectively .

Article 11

Competition

1. In the event of a practice which may justify application by the Union of the measures provided for in 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 whether such practice is compatible with the SAA .

The measures provided for in 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 and, in the other cases, in accordance with the procedure laid down in Article 207 of the Treaty.

2. In the event of a practice which may cause measures to be applied to the ☒ Union ☒ by Montenegro on the basis of 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 SAA. 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.

Article 12

Fraud or failure to provide administrative cooperation

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 46 of the SAA are fulfilled, it shall, without undue delay:

- (a) inform the Council; and
- (b) notify the Stabilisation and Association Committee of its finding together with the objective information, and enter into consultations within the Stabilisation and Association Committee.

Any publication under Article 46(5) of the SAA shall be effected by the Commission in the *Official Journal of the European Union*.

↓ 37/2014 Art. 1 and Annex .15(6) (adapted)

The Commission may decide, in accordance with the examination procedure set out in Article 9(3) of this Regulation, to suspend temporarily the relevant preferential treatment of the products as provided for in Article 46(4) of the SAA.

↓ 140/2008 (adapted)

Article 13

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, as required by the SAA.

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Article 14

Repeal

Regulation (EC) No 140/2008 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 II.

↓ 140/2008 (adapted)

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*.

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