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Proposal for a

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

**amending Council Regulation (EC) No 1215/2009 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The proposed autonomous trade measures (ATMs) are one of the instruments to implement the EU's policy towards the Western Balkans as defined within the Stabilisation and Association process launched by the European Commission in May 1999. At its meeting in Lisbon on 23 and 24 March 2000, the European Council concluded that Stabilisation and Association Agreements with Western Balkan parties should be preceded by asymmetrical trade liberalisation. Asymmetrical trade liberalisation has been provided for by means of Council Regulation (EC) No 1215/2009 introducing exceptional trade measures for countries and territories participating in or linked to the Stabilisation and Association process, with a validity period until 31 December 2020.

Stabilisation and Association Agreements have now been concluded between the Union and all concerned Western Balkan parties; the last one with Kosovo\* entered into force on 1 April 2016.

Having regard to differences in the scope of the tariff liberalisation under the contractual regimes which have been developed between the Union and all participants to the Stabilisation and Association process and the preferences granted under Regulation (EC) No 1215/2009, it is suggested to prolong the duration of Regulation (EC) No 1215/2009 until 31 December 2025.

- **Consistency with existing policy provisions in the policy area**

The proposal is consistent with the continued support of the EU towards the region's gradual economic integration into the EU and the individual accession processes.

Even though most of the trade preferences initially granted to the Western Balkans through the autonomous trade regime have now been integrated in their respective Stabilisation and Association Agreement with the Union, the limited preferences granted through this Regulation still provide a valuable support to the regional economy. These preferences allow for the suspension of the specific duties normally applied to fruits and vegetables and for the inclusion of a global wine quota available after exhaustion of the countries' respective national wine quotas.

The ATMs system contributed to the expansion of the total trade between the EU and the Western Balkans which exceeded EUR 54 billion in 2018. The EU is the leading trade partner accounting for over 72% of the region's total trade.

- **Consistency with other Union policies**

This proposal is fully in line with the Sofia Declaration of 17 May 2018 where the EU committed to strengthening and intensifying its engagement at all levels to support the region's political, economic and social transformation. It is also consistent with the political guidelines of the new Commission, which has reaffirmed the European perspective of the Western Balkans and its important role in the continued reform process across the region. The European Union aims to promote peace, stability and economic development in the region and open up the prospect of EU integration.

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

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis for the proposal is Article 207(2) of the Treaty on the Functioning of the European Union.

- **Subsidiarity (for non-exclusive competence)**

Not applicable.

- **Proportionality**

The proposed measures have shown to have had a positive impact on the beneficiary countries by contributing to their economic development notably through the establishment of strong partnerships between EU businesses and the local producers in the Western Balkan region. The proposal to extend the measures for an additional five years is therefore considered the most suitable measure to ensure the sustained economic development of the Western Balkan partners, while avoiding a very long and complex process of amending each individual bilateral trade agreement as part of the Stabilisation and Association Agreements.

- **Choice of the instrument**

Autonomous trade measures allow the European Union -under exceptional circumstances- to grant very specific and targeted preferences, which would otherwise not be granted in the context of a free trade agreement, as they would create precedents not in the interest of the Union.

## **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

No formal ex-post evaluation has been carried out given the very limited scope of the measures.

- **Stakeholder consultations**

No formal stakeholders consultations have taken place but there is a unanimous and repeated interest for the continuation of the measures among the beneficiary parties while no objections have been raised by European economic operators through the various communication platforms set up by the Commission services for the EU industry.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

The better regulation toolbox explicitly exempts prolongation of existing protocols with third countries from impact assessments.

The proposed measures have been in place for nearly twenty years, but are now much reduced as most of the preferences were gradually integrated in the individual Stabilisation and Association Agreements between the EU and the beneficiaries. While the estimated impact is considered minimal in terms of duties foregone by the EU -about EUR 23.5 million for the combined six beneficiaries, based on import value in 2018- the prolongation of the measures

is considered the best guarantee of the EU's commitment to the trade integration of the Western Balkans. It would also contribute to ensuring the stability of market access conditions for economic operators both in the region and in the EU.

Based on the Commission's assessment following field visits in the region, the measures have been shown to benefit a large number of small agricultural producers and many of these local producers have established strong partnerships with businesses in the EU. Should Regulation 1215/2009 not be extended by 31 December 2020, the Western Balkans will be temporarily deprived of this liberalised market access for key agricultural products (fruits and vegetables) which are critically important for this sensitive region.

The EU should by all means avoid a repetition of the situation of 2010 when the extension could not be voted in time thereby creating serious disturbances in the agricultural markets of the Western Balkans. Retroactive application for recovery of customs duties should not be an alternative as it is complicated/takes a lot of red tape and months before operators are reimbursed. Disturbance in the legal framework would not only create immediate economic damage but would also send a signal of unstable and insecure business environment.

- **Regulatory fitness and simplification**

As the proposed measures have already been in place for almost 20 years, the beneficiaries are very well informed and know how to comply with the conditionalities foreseen in the Regulation. In addition, the proposed Regulation also removes the paragraphs that have become obsolete bringing it up to date and removing obsolete provisions.

- **Fundamental rights**

Article 2.1(d) of Regulation (EC) No 1215/2009 makes the entitlement to benefit from the preferences subject to the abstention of the beneficiaries from engaging in serious and systematic violations of human rights, including core labour rights, of fundamental principles of democracy and of the rule of law.

#### **4. BUDGETARY IMPLICATIONS**

The proposed Regulation does not incur additional costs in the EU budget. For the years 2020 to 2025 there will be no additional tariff revenue foregone in respect of products produced by the current beneficiaries. Hypothetical revenue that could have been collected from additional new imports is not considered as a loss of tariff revenue.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

In the context of the sub-committee meetings taking place under the umbrella of the Stabilisation and Association Agreements, monitoring and reporting on the use of bilateral preferences is regularly on the agenda of bilateral discussions with the Western Balkan partners.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

The proposal includes three sets of provisions concerning:

- (1) A change of denomination of two beneficiaries to reflect the latest agreed terminology, namely by replacing “the former Yugoslav Republic of Macedonia” by “North Macedonia” and replacing “the customs territory of Kosovo” by “Kosovo\*”, as used in the Stabilisation and Association Agreement with the EU. On that basis, all references to “countries” or “countries and territories” are replaced by “parties”.
- (2) An update of Article 3 following the amendments introduced in Commission Delegated Regulation (EU) 2017/1464 of 2 June 2017: since the unilateral preferences to Kosovo were included in the EU-Kosovo Stabilisation and Association Agreement, which entered into force on 1 April 2016, the autonomous trade preferences do no longer concern any fishery or beef trade concessions. For the purpose of clarity, it is therefore proposed to remove any references to these two categories of products.
- (3) An extension of the application of the Regulation until 31 December 2025.

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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,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Regulation (EC) No 1215/2009<sup>1</sup> provided for unlimited duty free access to the Union market for nearly all products originating in the participants of the Stabilisation and Association process to the extent and until such time as bilateral agreements with those parties were concluded.
- (2) Stabilisation and Association Agreements have now been concluded with all six parties, the last one between the European Union and the European Atomic Energy Community, of the one part, and Kosovo\*, of the other part, entered into force on 1 April 2016.
- (3) Commission Delegated Regulation (EU) 2017/1464<sup>2</sup> amended Regulation (EC) No 1215/2009 to remove the bilateral preferences granted to Kosovo but maintaining the unilateral preference granted to all Western Balkan beneficiaries in the form of the suspension of all duties for products covered by Chapters 7 and 8 of the Combined Nomenclature and their access to the global wine tariff rate quota of 30 000 hl.
- (4) Having regard to these differences in the scope of the tariff liberalisation under the contractual regimes which have been developed between the Union and all participants to the Stabilisation and Association process and the preferences granted under Regulation (EC) No 1215/2009, it is suggested to extend the period of application of Regulation (EC) No 1215/2009 until 31 December 2025.

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<sup>1</sup> Council Regulation (EC) No 1215/2009 of 30 November 2009 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process (OJ L 328, 15.12.2009, p. 1).

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

<sup>2</sup> Commission Delegated Regulation (EU) 2017/1464 of 2 June 2017 amending Council Regulation (EC) No 1215/2009 as regards trade concessions granted to Kosovo\* following the entry into force 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.

- (5) The extension of the period of application of Regulation (EC) No 1215/2009 is considered the best guarantee of the Union's commitment to the trade integration of the Western Balkans. It should also contribute to ensuring the stability of market access conditions for economic operators both in the region and in the Union.
- (6) In addition, the denomination of two beneficiaries need to be amended to reflect the latest agreed terminology.
- (7) Regulation (EC) No 1215/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EC) No 1215/2009 is amended as follows:

- (1) Article 1 is replaced by the following:

#### *'Article 1*

#### **Preferential arrangements**

1. Products originating in Albania, Bosnia and Herzegovina, Kosovo<sup>\*</sup>, Montenegro, North Macedonia, and Serbia covered by Chapters 7 and 8 of the Combined Nomenclature shall be admitted for import into the Union without quantitative restrictions or measures having equivalent effect and with exemption from custom duties and charges having equivalent effect.
  2. Products originating in Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia shall continue to benefit from the provisions of this Regulation where so indicated. Such products shall also benefit from any concession provided for in this Regulation which is more favourable than that provided for under bilateral agreements between the Union and those parties.'
- (2) Article 2 is amended as follows:
    - (a) In paragraph 1, points (a), (b), (c) and (d) are replaced by the following:

'(a) compliance with the definition of 'originating products' provided for in Commission Delegated Regulation 2015/2446 Title II, Chapter 1, Section 2, Subsections 4 and 5, and Commission Implementing Regulation 2015/2447 Title II, Chapter 2, Section 2, Subsections 10 and 11;

(b) the abstention of the parties referred to in Article 1 from introducing new duties and charges having equivalent effect and new quantitative restrictions or measures having equivalent effect in respect of imports originating in the Union or from increasing existing levels of duties or charges or from introducing any other restrictions from 30 September 2000;

(c) the involvement of beneficiaries in effective administrative cooperation with the Union in order to prevent any risk of fraud; and

(d) The abstention of the parties referred to in Article 1 from engaging in serious and systematic violations of human rights, including core labour rights, of fundamental principles of democracy and of the rule of law.'

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<sup>\*</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

(b) Paragraph 3 is replaced by the following:

‘In the event of non-compliance by a party with point (a), (b) or (c) of paragraph 1 or with paragraph 2, the Commission may, by means of implementing acts, suspend, in whole or in part, the entitlement of the party concerned to benefits under this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 8(4).’

(3) Article 3 is amended as follows:

(a) Paragraph 1 is replaced by the following:

‘For certain wine products, as listed in Annex I, originating in the beneficiaries referred to in Article 1, the customs duties applicable to imports into the Union shall be suspended during the periods, at the levels, within the limits of the Union tariff quota and under the conditions indicated for each product and origin set out in that Annex.’

(b) Paragraph 2 is deleted.

(4) Article 4 is deleted.

(5) In Article 5, the first paragraph is replaced by the following:

‘The tariff quotas referred to in Article 3(1) of this Regulation shall be administered by the Commission in accordance with Commission Implementing Regulation 2015/2447 Title II, Chapter 1, Section 1.’

(6) In Article 7, points (b) and (c) are replaced by the following:

‘(b) Necessary adjustments following the granting of trade preferences under other arrangements between the Union and the parties referred to in Article 1;

(c) Suspension, in whole or in part, of the entitlement of a party concerned to benefits under this Regulation, in the event of non-compliance by that party with the conditions set out in point (d) of Article 2(1).’

(7) Article 10(1) is amended as follows:

(a) the introductory sentence of the first subparagraph is replaced by the following:

‘Where the Commission finds that there is sufficient evidence of fraud or failure to provide administrative cooperation as required for the verification of evidence of origin, or that there is a massive increase in exports into the Union above the level of normal production and export capacity, or a failure of compliance with the provisions of point (a), (b) or (c) of Article 2(1) by the parties referred to in Article 1, it may take measures to suspend in whole or in part the arrangements provided for in this Regulation for a period of three months, provided that it has first:’

(b) points (b) and (c) of the first subparagraph are replaced by the following:

‘(b) called on the Member States to take such precautionary measures as are necessary in order to safeguard the Union’s financial interests and/or to secure compliance by the beneficiary parties with Article 2(1);

(8) (c) published a notice in the *Official Journal of the European Union* stating that there are grounds for reasonable doubts about the application of the preferential arrangements and/or compliance with Article 2(1) by the beneficiary party concerned



which may call into question its right to continue enjoying the benefits granted by this Regulation.’

(9) In Article 12, the second paragraph is replaced by the following:

‘It shall apply until 31 December 2025.’

(10) Annex I is replaced by the text in the Annex to this Regulation.

#### *Article 2*

This Regulation shall enter into force on the seventh 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*

