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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on temporary trade-liberalisation measures supplementing trade concessions applicable to Moldovan products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The unprovoked and unjustified military aggression of Russia against Ukraine since 24 February 2022 has had a profound negative impact on the Republic of Moldova's ('Moldova') ability to trade with the rest of the world, notably because of the fact that Moldova's exports relied on transit via the Ukrainian territory and on Ukrainian infrastructure, which are now largely unavailable. In this difficult context, Moldova has asked the Union to facilitate as much as possible the conditions to enable the country to redirect to the EU some of its trade with the rest of the world, in order to further deepen its trade relations with the Union and support its economy. To do so, it is necessary to increase the degree of market liberalisation, in particular for the agricultural products subject to annual duty-free tariff-rate quotas ('TRQs') under Annex XV-A of the Association Agreement between the EU and the Republic of Moldova (hereinafter referred to as 'the Association Agreement')¹ establishing a deep and comprehensive free trade area ('DCFTA').

Therefore, the Commission is proposing a Regulation of the European Parliament and of the Council introducing temporary trade-liberalisation measures in the form of additional tariff-free quotas on some agricultural products still subject to TRQs which shall apply for a period of one year.

Under Annex XV-A of the Association Agreement, seven agricultural products from Moldova are subject to TRQs. These products are: tomatoes, garlic, table grapes, apples, cherries, plums and grape juice. Two of these products (plums and table grapes) were exported by Moldova in large volumes to third markets, in particular to Russia, Belarus and Ukraine. For these products, it is appropriate to introduce additional duty-free quotas to temporarily support the redirection to the Union, if needed, of the sales volumes originally directed to those markets. For the remaining products (tomatoes, garlic, apples, cherries and grape juice), the newly introduced quotas would consist of an additional duty-free volume of the same size as the one foreseen in the Association Agreement.

These temporary and exceptional measures will support and foster the existing trade flows from Moldova to the Union and support Moldova's economy. This is in line with the main objectives of the Association Agreement, namely to establish conditions for enhanced economic and trade relations leading towards Moldova's gradual integration in the EU Internal Market and contribute to the strengthening of democracy and to political, economic and institutional stability in Moldova.

The trade-liberalisation measures provided for under the present proposal for a Regulation are taken in observance of the commitment in Article 2 of the Association Agreement which enshrines as essential elements of the Agreement the respect for democratic principles, human rights and fundamental freedoms as well as the countering of the proliferation of weapons of

¹ The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part (OJ L 240, 30.8.2014, p. 4) was signed by the Parties on 27 June 2014. The Association Agreement, including the Deep and Comprehensive Free Trade Area (DCFTA) has been provisionally applied since 1 September 2014 and is fully in force since 1 July 2016 following ratification by all EU Member States.

mass destruction, related materials and their means of delivery. In addition, under the same Article, the Parties commit in particular to the general principles of respect for the principle of the rule of law and good governance, the fight against corruption, criminal activities, organised or otherwise, including those of transnational character, and terrorism, and the respect for the principles of sustainable development and effective multilateralism. The trade-liberalisation measures themselves would be conditional upon respect for these essential elements and general principles.

Furthermore, the trade-liberalisation measures contained in this proposal aim at ensuring, in accordance with Article 207(1) TFEU, that the Union's common commercial policy is conducted in the context of the principles and objectives of the Union's external action set out in Article 21 TEU.

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

These trade-liberalisation measures would be consistent with the implementation of the Agreement and in particular with Title V establishing a DCFTA, which provides that Parties shall progressively establish a free trade area over a transitional period of a maximum of 10 years starting from the entry into force of that Agreement (Article 143 of the Agreement).

- **Consistency with other Union policies**

The European Union has strongly condemned the Russian aggression against Ukraine and has undertaken significant steps to support Moldova in this exceptional context, including additional humanitarian and border support, macro-financial assistance and measures to facilitate trade in the current difficult context. The proposed Regulation would therefore comply with the Union's obligation under Article 21(3) of the Treaty on European Union to ensure consistency between the different areas of its external action, as well as with Article 207(1) of the Treaty on the Functioning of the European Union which provides that the common commercial policy shall be conducted in the context of the principles and objectives of the Union's external actions.

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)**

The common commercial policy, in accordance with Article 3(1)(e) of the TFEU, is defined as an exclusive Union competence. Therefore, the subsidiarity principle does not apply.

- **Proportionality**

This proposal is necessary in order to implement the common commercial policy and to achieve the objective of supporting Moldova in its current difficulties economically, also in the area of trade with the Union.

- **Choice of the instrument**

This proposal is based on Article 207(2) TFEU and falls within the Union's common commercial policy.

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

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

Not applicable.

- **Stakeholder consultations**

Not applicable.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

In view of the urgency of the economic situation in Moldova, it is important for the Regulation to enter into force as soon as possible. Therefore no impact assessment was carried out for the measure at hand. However, the trade and trade-related provisions of the Association Agreement have been subject to a sustainability impact assessment commissioned by DG Trade and issued in 2012 which fed into the DCFTA negotiation process. That study confirmed that implementation of trade and trade-related provisions would have a positive economic impact for the EU as well as for Moldova.

- **Regulatory fitness and simplification**

The measure does not increase the regulatory burden of companies.

- **Fundamental rights**

These measures would respect the same basic principles as those enshrined in the Association Agreement. In particular, Article 2 of the Association Agreement provides that the respect for democratic principles and human rights and fundamental freedoms constitute essential elements of that Agreement.

The measures would also be in accordance with the European Charter on Fundamental Rights.

4. BUDGETARY IMPLICATIONS

Based on an estimation according to the level of imports from Moldova in 2021, the European Union will see a loss of customs revenue corresponding to around EUR 0.3 million annually. Therefore, the impact on the EU's own resources will be very limited.

5. OTHER ELEMENTS

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

On-line reporting on the evolution of bilateral EU-Moldova trade is available via dedicated websites of the European Commission.

- **Explanatory documents (for directives)**

Not applicable.

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

In view of the crisis situation in Moldova as a result of the Russian invasion of Ukraine, the measure aims at increasing the trade flows from Moldova by granting additional tariff-free imports into the Union for Moldovan agricultural products. The trade-liberalisation measures would be granted in the form of additional tariff-free quotas for some agricultural products still subject to TRQs.

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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 procedure²,

Whereas:

- (1) The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova ('Moldova'), of the other part³ (the 'Association Agreement') constitutes the basis of the relationship between the Union and the Republic of Moldova. In accordance with Council Decision 2014/492/EU⁴, Title V of the Association Agreement, which relates to trade and trade-related matters, has been applied provisionally since 1 September 2014, and entered into force on 1 July 2016 following ratification by all Member States.
- (2) The Association Agreement expresses the desire of the Parties to the Association Agreement (the 'Parties') to strengthen and widen relations in an ambitious and innovative way, to facilitate and achieve gradual economic integration, and to do so in compliance with the rights and obligations arising out of the World Trade Organisation membership of the Parties.
- (3) Article 143 of the Association Agreement provides for the progressive establishment of a free trade area between the Parties in accordance with Article XXIV of the General Agreement on Tariffs and Trade 1994 ('GATT 1994'). To that end, Article 147 of the Association Agreement provides for the progressive elimination of customs duties in accordance with the Schedules included therein and for the possibility of accelerating and broadening the scope of such elimination.

² Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ...

³ OJ L 240 of 30.8.2014, p. 4

⁴ Council Decision 2014/492/EU of 16 June 2014 on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part (OJ L 260, 30.8.2014, p. 1).

- (4) Russia's unprovoked and unjustified war of aggression against Ukraine since 24 February 2022 had a profoundly negative impact on the ability of Moldova to trade with the rest of the world, notably because Moldova's exports relied for that trade on transit via Ukrainian territory and on Ukrainian infrastructure, which are now largely unavailable. To mitigate the negative effects on Moldova's economy, it is necessary to accelerate the development of closer economic relations between the Union and the Republic of Moldova and to provide quick support to Moldova's economy under these critical circumstances. It is therefore necessary and appropriate to stimulate Moldova's trade flows in the form of temporary trade-liberalisation measures granting additional tariff-free quotas for seven agricultural products still subject to annual duty-free tariff-rate quotas ('TRQs'), in line with the acceleration of the elimination of customs duties on trade between the Union and Moldova.
- (5) In accordance with Article 21(3) of the Treaty on European Union (TEU), the Union should ensure consistency between the different areas of its external action. Pursuant to Article 207(1) of the Treaty on the Functioning of the European Union (TFEU), the common commercial policy should be conducted in the context of the principles and objectives of the Union's external action.
- (6) The trade-liberalisation measures established by this Regulation should take the form of temporary additional tariff free quotas on some agricultural products still subject to TRQs. Through these measures the Union will deepen the economic integration between Moldova and the Union and temporarily provide appropriate economic support to the benefit of Moldova and the economic operators that are affected. Under Annex XV-A of the Association Agreement, seven agricultural products from Moldova are subject to TRQs. These products are: tomatoes, garlic, table grapes, apples, cherries, plums and grape juice. Two of these products (plums and table grapes) were exported by Moldova in large volumes to third markets, in particular to Russia, Belarus and Ukraine. For these products, it is appropriate to introduce additional duty-free quotas to temporarily support the redirection to the Union, if needed, of the sales volumes originally directed to those markets. For the remaining products (tomatoes, garlic, apples, cherries and grape juice), the newly introduced TRQ would consist of an additional duty-free volume of the same size as the one foreseen in the Association Agreement.
- (7) In order to prevent fraud, the entitlement to the trade measures established by this Regulation should be conditional upon Moldova having complied with all the relevant conditions for obtaining benefits under the Association Agreement, including the rules of origin of products concerned and the procedures related thereto, as well as Moldova's involvement in close administrative cooperation with the Union, as provided for by the Association Agreement.
- (8) Moldova should abstain from introducing new duties or charges having equivalent effect and new quantitative restrictions or measures having equivalent effect for imports originating in the Union, from increasing existing levels of duties or charges or from introducing any other restrictions, unless clearly justified in the war context. In the event that Moldova fails to comply with any of those conditions, the Commission should be empowered to suspend temporarily all or part of the trade measures established by this Regulation.
- (9) Article 2 of the Association Agreement provides that, among other things, respect for democratic principles, human rights and fundamental freedoms as well as the countering of the proliferation of weapons of mass destruction, related materials and

their means of delivery constitute essential elements of the Association Agreement. Under the same Article, the Parties commit in particular to the following general principles: the respect for the principle of the rule of law and good governance, the fight against corruption, criminal activities, organised or otherwise, including those of transnational character, and terrorism, and the respect for the principles of sustainable development and effective multilateralism. It is appropriate to introduce the possibility of temporarily suspending the trade-liberalisation measures provided for in this Regulation if Moldova fails to respect either the essential elements or the aforementioned general principles of the Association Agreement.

- (10) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to temporarily suspend the trade-liberalisation measures referred to in recital 7 in cases where Union producers of like or directly competing products are or might be seriously affected by imports under this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁵.
- (11) Subject to an investigation by the Commission, it is necessary to provide for the possibility to suspend the trade-liberalisation measures referred to in recital (6) with regards to one or more products falling under the scope of this Regulation which cause, or threaten to cause, serious difficulties to Union producers of like or directly competing products.
- (12) The Commission's annual report on the implementation of the Deep and Comprehensive Free Trade Area, which is an integral part of the Association Agreement, should include a detailed assessment of the implementation of the trade measures established by this Regulation.
- (13) In view of the urgency of the matter related to the situation caused by Russia's war of aggression against Ukraine, it is considered to be appropriate to invoke the exception to the eight-week period provided for in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the TEU, to the TFEU and to the Treaty establishing the European Atomic Energy Community.
- (14) In light of the urgency of the economic situation in Moldova, this Regulation should enter into force on the day following that of its publication in the Official Journal of the European Union,

HAVE ADOPTED THIS REGULATION:

Article 1

Trade-liberalisation measures

In addition to the duty-free tariff-rate quotas established by the Association Agreement in its Annex XV-A, the agricultural products listed in the Annex to this Regulation shall be admitted for import into the Union from the Republic of Moldova within the limits of Union duty-free tariff-rate quotas as set out in that Annex. Those duty-free tariff-rate quotas shall be

⁵ 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)

administered by the Commission in accordance with Articles 49 to 54 of Implementing Regulation (EU) 2015/2447⁶.

Article 2

Conditions for entitlement to the trade-liberalisation measures

The trade-liberalisation measures provided for in Article 1 shall be subject to the following conditions:

- (a) compliance with the rules of origin of products and the procedures related thereto as provided for in the Association Agreement;
- (b) Moldova's abstention from introducing new duties or charges having equivalent effect and new quantitative restrictions or measures having equivalent effect for imports originating in the Union, from increasing existing levels of duties or charges or from introducing any other restrictions, including discriminatory internal administrative measures, unless clearly justified in the war context; and
- (c) Moldova's respect for democratic principles, human rights and fundamental freedoms as well as the countering of the proliferation of weapons of mass destruction, related materials and their means of delivery, respect for the principle of the rule of law and good governance, fight against corruption, criminal activities, organised or otherwise, including those of transnational character, and terrorism, and respect for the principles of sustainable development and effective multilateralism provided for in Articles 2, 9 and 16 of the Association Agreement.

Article 3

Temporary suspension of measures

1. Where the Commission finds that there is sufficient evidence of failure by Moldova to comply with the conditions set out in Article 2, it may, by means of an implementing act, suspend in whole or in part the trade-liberalisation measures provided for in this Regulation. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 5(2).
2. Where a Member State requests that the Commission suspends any of the trade-liberalisation measures provided for in this Regulation on the basis of a failure to comply with the conditions set out in Article 2, point (b), the Commission shall provide a reasoned opinion within four months of the request on whether the claim of Moldova's failure to comply is substantiated. If the Commission concludes that the claim is substantiated, it shall initiate the procedure referred to in paragraph 1 of this Article.

Article 4

Safeguard clause

1. Where a product originating in Moldova is imported on terms which cause, or threaten to cause, serious difficulties to Union producers of like or directly

⁶ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558)

competing products, the trade-liberalisation measure provided for in Article 1 may be suspended at any time with respect to that product.

2. The Commission shall closely monitor the impact of this Regulation, including with regard to the prices on the Union market, taking into account the information on exports, imports and Union production of the products subject to the trade-liberalisation measures established by this Regulation.
3. The Commission shall take a decision to initiate an investigation within a reasonable period of time:
 - (a) at the request of a Member State,
 - (b) at the request of a legal person or an association that does not have legal personality, acting on behalf of the Union producers, meaning all or a major proportion of Union producers of like or directly competing products, or
 - (c) on the Commission's own initiative if it is apparent to the Commission that there is sufficient *prima facie* evidence of serious difficulties to Union producers of like or directly competing products as referred to in paragraph 1.

For the purposes of this paragraph, 'major proportion of Union producers of like or directly competing products' means Union producers whose collective output constitutes more than 50 % of the total Union production of the like or directly competing products produced by that portion of the Union industry which have expressed either support for or opposition to the request, and which represent no less than 25 % of total production of the like or directly competing products produced by the Union industry.

4. Where the Commission decides to initiate an investigation, it shall publish a notice in the Official Journal of the European Union announcing the initiation of the investigation. The notice shall provide a summary of the information received and state that any relevant information should be sent to the Commission. It shall specify the period within which interested parties may submit their views in writing. Such period shall not exceed four months from the date of publication of the notice.
5. The Commission shall seek all information it deems necessary and may verify the information received with Moldova or any other relevant source. It may be assisted by officials of the Member State on whose territory verification might be sought, if that Member State requests such assistance by those officials.
6. In examining whether serious difficulties to Union producers of like or directly competing products as referred to in paragraph 1 exist, the Commission shall take account, among other things, of the following factors concerning Union producers, where relevant information is available:
 - market share,
 - production,
 - stocks,
 - production capacity,
 - capacity utilisation,
 - employment,
 - imports,

- prices.
- 7. The investigation shall be completed within six months of the publication of the notice referred to in paragraph 4 of this Article. In exceptional circumstances, the Commission may extend that period by means of an implementing act adopted in accordance with the examination procedure referred to in Article 5(2).
- 8. Within three months of the completion of the investigation, the Commission shall decide whether to suspend the trade-liberalisation measure provided for in Article 1 with respect to the product subject to the investigation by way of an implementing act adopted in accordance with the examination procedure referred to in Article 5(2). That implementing act shall enter into force within one month of its publication. The suspension shall be as long as necessary to counteract the deterioration in the economic or financial situation of Union producers, or for as long as the threat of such deterioration persists. Where the facts as finally established show that the conditions set out in paragraph 1 of this Article are not met, the Commission shall adopt an implementing act terminating the investigation and proceedings. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 5(2) of this Regulation.
- 9. Where exceptional circumstances requiring immediate action make an investigation impossible, the Commission may, after informing the Customs Code Committee referred to in Article 5(1), take any preventive measure which is necessary.

Article 5

Committee procedure

1. The Commission shall be assisted by the Customs Code Committee established by Article 285 of Regulation (EU) No 952/2013 of the European Parliament and of the Council⁷. 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.

Article 6

Assessment of the implementation of the trade-liberalisation measures

The Commission's annual report on the implementation of the Deep and Comprehensive Free Trade Area shall include a detailed assessment of the implementation of the trade-liberalisation measures provided for in this Regulation and shall include, insofar as appropriate, an assessment of the social impact of those measures in Moldova and in the Union. Information on the imports of products under Article 1 shall be made available via the website of the Commission.

Article 7

Transitory provision

⁷ 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).

The trade-liberalisation measures shall apply to products which on the date of entry into force of this Regulation are under customs control in the Union, subject to the making of a claim to that effect to the responsible customs authorities of the Union within six months of that date.

Article 8

Entry into force and application

1. This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.
2. This Regulation shall apply until ... [one year from the date of entry into force of this Regulation].

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

**LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS HAVING A
BUDGETARY IMPACT EXCLUSIVELY LIMITED TO THE REVENUE SIDE**

1. NAME OF THE PROPOSAL:

Proposal for a Regulation of the European Parliament and of the Council on temporary trade-liberalisation measures supplementing trade concessions applicable to Moldovan products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part

2. BUDGET LINES:

Chapter 12, Article 120

Amount budgeted for the year 2022: 17 912 606 159 €

3. FINANCIAL IMPACT

☐ Proposal has no financial implications

☒ Proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

Budget line	Revenue	Period: part of 2022 - part of 2023* (EUR million to one decimal place)
Article 120 Chapter 12 ⁸	<i>Impact on own resources</i>	0.3
Total		

* One-year period since entry into force of the regulation

The calculations are based on 2021 import volumes of products covered by the proposed Regulation in excess of the annual duty-free quota (i.e. plums).

Based on the above calculations the loss of traditional own resources revenue from this Decision is estimated at EUR 0.366 million (gross amount, including collection costs) x 0,75 = EUR 0.274 million for the period in question.

4. ANTI-FRAUD MEASURES

In order to prevent fraud, the entitlement to the trade measures established by the proposed Regulation should be conditional upon Moldova having complied with all the relevant conditions for obtaining benefits under the Association Agreement, including the rules of

⁸ Regarding traditional own resources (agricultural duties, sugar levies, customs duties) the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % of collection costs.

origin of products concerned and the procedures related thereto, as well as Moldova's involvement in close administrative cooperation with the Union, as provided for by the Association Agreement.