Council of the European Union

Brussels, 20 March 2024
(OR. en)

7875/24

**Interinstitutional File:**
**2024/0028 (COD)**

**LIMITE**

**POLCOM 109**
**COEST 181**
**AGRI 234**
**CODEC 824**

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**NOTE**

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| From: | General Secretariat of the Council |
| To: | Permanent Representatives Committee |
| No. prev. doc.: | 7392/24 |
| Subject: | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part<br>(First reading)<br>- Analysis of the final compromise text with a view to agreement |

## I. INTRODUCTION

1. On 31 January 2024, the European Commission submitted the above-mentioned proposal (ST 5998/24) to the Council.

2. Regulation (EU) 2023/1077[1] entered into force on 6 June 2023 and applies until 5 June 2024. The above-mentioned proposal aims to renew the suspension of import duties and quotas on Ukrainian exports to the EU for another year, while reinforcing protection for some sensitive agricultural products.

[1] Regulation (EU) 2023/1077 of the European Parliament and of the Council of 31 May 2023 on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part (OJ L 144, 5.6.2023, p. 1)

3. The Trade Policy Committee (Deputies and Full Members) examined the proposal at its meetings on 5, 8 and 15 February 2024. During those discussions, a large number of delegations expressed their support for the proposal without any modifications and called for a rapid adoption of the legal act. Some delegations, however, expressed concerns and suggested certain modifications in respect of the proposal. Further to these discussions, the Presidency proposed to approve the proposal without any modifications.

4. On 21 February 2024, the Permanent Representatives Committee approved the text of the Commission's proposal without any modifications, with a view to reaching an agreement at first reading with the European Parliament (ST 6298/24).

5. On 7 March 2024, the European Parliament's Committee on International Trade (INTA) approved the Commission's proposal without any amendments.

6. On 13 March, the plenary session of the European Parliament adopted several amendments to the Commission's proposal. The plenary decided to refer the file back to the INTA Committee for interinstitutional negotiations.

7. On 14 March, The Trade Policy Committee examined the outcome of the European Parliament plenary vote. Coreper discussed the outcome of the European Parliament plenary vote on 15 and 18 March 2024, with a view to prepare the informal trilogue.

8. At the trilogue meeting on 19 March 2024, the co-legislators reached a provisional political agreement on an overall compromise text, as set out in the Annex to this Note.

9. The main elements of this compromise text are set out in Section II below. The Presidency considers that this compromise text reached with the European Parliament is balanced and respects the mandate it has received.

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## II. MAIN ELEMENTS OF THE COMPROMISE

10. The main elements of the compromise concern:

- The extension of the scope of the automatic safeguard mechanism to four additional products - oats, maize, groats and honey (Article 4(7) and related recital);
- shortening of the time period for the activation of the automatic safeguard from 21 to 14 days and related administrative procedures (Article 4(7) and related recital);
- specific reference to wheat and other cereals (recital 11);
- enhanced monitoring of imports of cereals and oilseeds (recital 11a);
- the Commission's statement on enhanced monitoring of imports of wheat and other cereals and use of the tools at its disposal in the event of market disruptions as set out in ADD 1 to this note.

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## III. CONCLUSION

11. The Permanent Representatives Committee is invited to:

- confirm the final compromise text, as set out in the Annex to this note (changes compared to the Commission proposal are marked with ***bold italic*** and strikethrough for deletions); and

- authorise the Presidency to send a letter to the Chair of the INTA Committee of the European Parliament confirming that, should the Parliament adopt its position at first reading in accordance with Article 294(3) TFEU and in the exact form set out in Annex I to this Note – subject to legal-linguistic revision – the Council would, in accordance with Article 294(4) TFEU, approve the European Parliament's position and the act would be adopted in the wording which corresponds to the European Parliament's position.

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**ANNEX**

2024/0028 (COD)

Proposal for a

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

**on temporary trade-liberalisation measures supplementing trade concessions**

applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community

and their Member States, of the one part, and Ukraine, 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(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[2],

Whereas:

[2] Position of the European Parliament of dd.mm.2024 (not yet published in the Official Journal) and decision of the Council …

(1) The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part[3] (the 'Association Agreement') constitutes the basis of the relationship between the Union and Ukraine. In accordance with Council Decision 2014/668/EU[4], Title IV of the Association Agreement, which relates to trade and trade-related matters, has been applied provisionally since 1 January 2016, and entered into force on 1 September 2017, 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 Organization membership of the Parties.

(3) Article 25 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 29 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.

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3 OJ L 161, 29.5.2014, p. 3.

4 Council Decision 2014/668/EU of 23 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 Ukraine, of the other part, as regards Title III (with the exception of the provisions relating to the treatment of third-country nationals legally employed as workers in the territory of the other Party) and Titles IV, V, VI and VII thereof, as well as the related Annexes and Protocols (OJ L 278, 20.9.2014, p. 1).

(4) Russia's unprovoked and unjustified war of aggression against Ukraine since 24 February 2022 has had a profoundly negative impact on the ability of Ukraine to trade with the rest of the world, both because of the destruction of production capacity and the unavailability of a significant proportion of means of transport due to, for example, the restriction and uncertainty of access to the Black Sea. Under such exceptional circumstances and to mitigate the negative economic impact of Russia's war of aggression against Ukraine, it is necessary to accelerate the development of closer economic relations between the Union and Ukraine in order to provide continued support to the Ukrainian authorities and population. It is therefore necessary and appropriate to continue stimulating trade flows and granting concessions in the form of trade-liberalisation measures for all products, in line with the acceleration of the elimination of customs duties on trade between the Union and Ukraine.

(5) In accordance with Article 21(3) of the Treaty on European Union (TEU), the Union is to 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 is to be conducted in the context of the principles and objectives of the Union's external action.

(6) Regulation (EU) 2023/1077 of the European Parliament and of the Council[5] expires on 5 June 2024.

[5] Regulation (EU) 2023/1077 of the European Parliament and of the Council of 31 May 2023 on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part (OJ L 144, 5.6.2023, p. 1-6).

(7) The temporary trade-liberalisation measures established by this Regulation should take the following form: (i) the suspension of the application of the entry price system to fruit and vegetables; (ii) the suspension of tariff-rate quotas and import duties; and (iii) the suspension of the application of Chapter V and Article 24 of Regulation (EU) 2015/478 of the European Parliament and of the Council[6]. Through those measures, the Union will, in effect, temporarily provide appropriate economic and financial support to the benefit of Ukraine and the economic operators that are affected.

(8) In order to prevent fraud, the preferential arrangements established by this Regulation should be conditional upon Ukraine complying 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 Ukraine's involvement in close administrative cooperation with the Union, as provided for by the Association Agreement.

(9) The preferential arrangements established by this Regulation should also be conditional upon Ukraine abstaining from introducing new duties or charges having equivalent effect and new quantitative restrictions or measures having equivalent effect, from increasing existing levels of duties or charges, or from introducing any other restrictions on trade with the Union, unless clearly justified in the context of Russia's war of aggression.

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[6] Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (OJ L 83, 27.3.2015, p. 16).

(10) The preferential arrangements established by this Regulation should also be conditional upon Ukraine's continued respect for the general principles of the Association Agreement. In this regard, Article 2 of the Association Agreement provides, among other things, that respect for democratic principles, human rights and fundamental freedoms, the promotion of respect for the principles of sovereignty and territorial integrity, inviolability of borders, and independence as well as countering the proliferation of weapons of mass destruction, related materials and their means of delivery constitute essential elements of the Association Agreement. Furthermore, Article 3 of the Association Agreement states that the rule of law, good governance, the fight against corruption, the fight against the different forms of trans-national organised crime and terrorism, the promotion of sustainable development and effective multilateralism are central to enhancing the relationship between the Parties.

(11) Subject to an assessment by the Commission carried out in the context of the regular monitoring of the impact of this Regulation and launched either following a duly substantiated request from a Member State or on the Commission's own initiative, it is necessary to provide for the possibility to take any necessary measures for imports of any products falling under the scope of this Regulation***, for instance wheat and other cereals,*** which are adversely affecting the Union market or the market of one or several Member States for like or directly competing products. There is a particularly precarious situation in the markets for poultry, eggs, ***sugar, oats, maize, groats and honey***~~and sugar~~ that may harm Union agricultural producers if imports from Ukraine were to increase. It is appropriate to introduce an automatic safeguard for ~~eggs, poultry, and sugar~~ ***these*** products***,*** that is activated if quantities imported pursuant to this Regulation exceed the arithmetic mean of quantities in 2022 and 2023.

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***(11a) Imports from Ukraine, including cereals and oilseeds, can be made subject to surveillance under Chapter IV of Regulation (EU) 2015/478 of the European Parliament and the Council of 11 March 2015 on common rules for imports, which includes the option to require the production of a surveillance document as condition for free circulation (import licensing), if the trend in imports threatens to cause injury to Union producers and if the interests of the Union so require.***

(12) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to temporarily suspend the preferential arrangements provided in Article 1(1) if the conditions for entitlement to those preferential arrangements are no longer complied with and to introduce safeguards in cases where the Union market or the market of one or several Member States of like or directly competing products are adversely 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 Council[7]. ***The*** advisory procedure should be used for the adoption of provisional safeguard measures, given the effects and nature of those measures and their sequential logic in relation to the adoption of definitive safeguard measures. ***In addition, the advisory procedure should be used for the adoption of modalities to monitor the import volumes of eggs, poultry, sugar, oats, maize, groats and honey from Ukraine to guarantee the effective functioning of the automatic safeguard.***

(13) 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-liberalisation measures established by this Regulation.

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[7] 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).

(14) 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.

(15) In light of expiry of Regulation (EU) 2023/1077 on 5 June 2024, this Regulation should enter into force on 6 June 2024,

HAVE ADOPTED THIS REGULATION:

*Article 1*

**Trade-liberalisation measures**

1. The following preferential arrangements are introduced:

   (a) the application of the entry price system shall be suspended for those products to which it applies as specified in Annex I-A to the Association Agreement. No customs duties shall apply to imports of those products;

   (b) all the tariff-rate quotas established under Annex I-A to the Association Agreement shall be suspended and the products covered by those quotas shall be admitted for importation into the Union from Ukraine without any customs duties.

2. The application of Chapter V and Article 24 of Regulation (EU) 2015/478 shall be temporarily suspended with regard to imports originating in Ukraine.

PUBLIC

*Article 2*

**Conditions for entitlement to the preferential arrangements**

The preferential arrangements provided in Article 1(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) Ukraine'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 on trade with the Union, including discriminatory internal administrative measures, unless clearly justified in the war context; and

(c) Ukraine's respect for democratic principles, human rights and fundamental freedoms and respect for the principle of the rule of law as well as continued and sustained efforts with regard to the fight against corruption, and illegal activities provided for in Articles 2, 3 and 22 of the Association Agreement.

*Article 3*

**Temporary suspension**

1. Where the Commission finds that there is sufficient evidence of Ukraine's failure 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 preferential arrangements provided for in Article 1(1). That implementing act shall be adopted in accordance with the examination procedure referred to in Article 5(3).

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2. Where a Member State requests that the Commission suspends any of the preferential arrangements on the basis of Ukraine's 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 Ukraine'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 measures**

1. If a product covered by Article 1(1) originating in Ukraine is imported under conditions which adversely affect the Union market or the market of one or several Member States for like or directly competing products, the Commission may impose any measure which is necessary by means of an implementing act. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 5(3).

   These measures may be imposed for as long as necessary to counteract the adverse effects on the Union market or the market of one or several Member States for like or directly competing products.

2. The Commission shall regularly monitor the impact of this Regulation, taking into account the information on exports, imports, prices on the Union market or the market of one or several Member States and Union production of the products subject to the trade-liberalisation measures under Article 1(1), point (b).

   The Commission shall inform the Member States of the results of the regular monitoring every two months, starting from the entry into force of this Regulation.

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3. The Commission shall carry out an assessment of the situation of the Union market or the market of one or several Member States for like or directly competing products to impose measures in accordance with paragraph 1. That assessment shall be launched:

(a) following a duly substantiated request from a Member State including sufficient prima facie evidence reasonably available to that Member State pursuant to paragraph 4 of imports adversely affecting the market referred to in paragraph 1, or

(b) on its own initiative, after it has become apparent to the Commission that there is sufficient prima facie evidence of imports adversely affecting the market that is referred to in paragraph 1.

The assessment referred to in the first subparagraph shall be concluded within four months of its launch.

4. In carrying out the assessment pursuant to paragraph 3, the Commission shall take into consideration all relevant market developments, including the impact of the imports concerned on the situation of the Union market or the market of one or several Member States for like or directly competing products. That assessment shall include factors such as:

(a) the rate and amount of the increase in imports from Ukraine of the product concerned in absolute and relative terms,

(b) the effect of the imports concerned on production and prices in the Union or in one or several Member States, whilst taking into consideration the development of imports from other sources.

This list is not exhaustive and other relevant factors may also be taken into consideration.

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5. In critical circumstances where delay would cause damage that would be difficult to repair, the Commission may provisionally impose any measure which is necessary by means of an implementing act. Such measures may only be imposed upon a duly substantiated request from a Member State pursuant to paragraph 3(a) of this Article and shall be adopted within 21 days after the request has been received. The implementing act shall be adopted in accordance with the advisory procedure referred to in Article 5(4). The duration of a provisional safeguard measure shall not exceed 120 days.

6. Where, as a result of the assessment referred to in paragraph 3, the Commission considers that the Union market or the market of one or several Member States for like or directly competing products has been adversely affected and intends to impose a definitive measure pursuant to paragraph 1, it shall publish a notice in the Official Journal of the European Union announcing the introduction of such measures. The notice shall provide a summary of the main results of the assessment and specify the period within which interested parties may submit their views in writing. Such period shall not exceed 10 days from the date of publication of the notice.

7. If, during the period 6 June to 31 December 2024, cumulative import volumes of either eggs, poultry***, sugar, oats, maize, groats or honey*** ~~or sugar~~ since 1 January 2024 reach the respective arithmetic mean of import volumes recorded in 2022 and 2023, the Commission shall, within ~~21~~***14*** days and after informing the Committee on Safeguards established by Article 3(1) of Regulation (EU) 2015/478:

   (a) reintroduce for that product the corresponding tariff-rate quota suspended by Article 1(1), point b, until 31 December 2024; and

   (b) introduce from 1 January 2025 either a tariff-rate quota equal to five twelfths of that arithmetic mean or the corresponding tariff-rate quota suspended by Article 1(1), point b, whichever is higher.

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If, during the period 1 January to 5 June 2025, cumulative import volumes of either eggs, poultry***, sugar, oats, maize, groats or honey*** ~~or sugar~~ for the period since 1 January 2025 reach five twelfths of the respective arithmetic mean of import volumes recorded ***in*** 2022 and 2023, the Commission shall, within ~~21~~***14*** days and after informing the Committee on Safeguards, reintroduce for that product the corresponding tariff-rate quota suspended by Article 1(1), point b.

For the purposes of this paragraph, the terms eggs, poultry***, sugar, oats, maize, groats and honey*** ~~and sugar~~ refer to all products covered by the tariff-rate quotas in the Appendix to Annex I-A of the Association Agreement for, respectively, eggs and albumins, poultry meat and poultry meat preparations, ***sugars, oats, maize, flours and pellets, barley groats and meal; cereal grains otherwise worked, and honey.*** ~~and sugars, and~~ The arithmetic mean ***referred to in this paragraph*** shall be calculated by dividing the sum of import volumes in 2022 and 2023 by two.

***The Commission may adopt an implementing act laying down the modalities for monitoring the import volumes referred to in this paragraph. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 5(4).***

8. If the Commission imposes a measure pursuant to paragraph 1, 5, or 7 which reintroduces a tariff-rate quota suspended by Article 1(1), point b, the quantity imported during the calendar year the Commission imposes that measure shall be taken into account in the management of that tariff rate quota.

PUBLIC

*Article 5*

**Committee procedure**

1. The Commission shall be assisted by the Customs Code Committee established by Article 285(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council[8] with regard to Article 3(1) of this Regulation. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. The Commission shall be assisted by the Committee on Safeguards established by Article 3(1) of Regulation (EU) 2015/478 with regard to Article 4(1) of this Regulation. 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 4 of Regulation (EU) No 182/2011 shall apply.

*Article 6*

**Assessment of the implementation of the trade-liberalising 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 Ukraine and in the Union. Information on imports of products under Article 1(1), point (b), shall be made available via the website of the Commission and shall be updated on a monthly basis.

[8] 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).



PUBLIC

*Article 7*

**Entry into force and application**

This Regulation shall enter into force on 6 June 2024.

This Regulation shall apply until 5 June 2025.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

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| *For the European Parliament* | *For the Council* |
| *The President* | *The President* |

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