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Proposal for a

COUNCIL REGULATION

amending Annex I to Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The purpose of the present proposal for a Regulation is to modify Annex I to Council Regulation (EEC) No 2658/87[1] of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, in order to increase the customs duties applicable to imports of cereals, oilseeds and derived products that are currently classified under Chapters 10, 12, 14, 15 and 23 of the Combined Nomenclature (CN), originating in or exported from the Russian Federation or the Republic of Belarus. The proposal increases import tariffs for those cereals, oilseeds and derived products from the Russian Federation or the Republic of Belarus for which, at present, importers pay no or low tariffs. In addition, those goods originating in or exported from the Russian Federation or the Republic of Belarus would be barred from access to the Union's tariff rate quotas.

Last year, EU imports of cereals, oilseeds and derived products from the Russian Federation reached 4.2 million tonnes, worth EUR 1.32 billion, according to Eurostat data. While today the Russian Federation is a relatively small supplier of cereals, oilseeds and derived products to the European Union (EU) market directly[2], the Russian Federation is a very large producer of those products and a leading exporter at the global level, with about 55 million tonnes exported to the world in the period 2020-2022[3]. The EU's *erga omnes* tariffs – i.e. the currently applied most-favoured-nation (MFN) tariffs on cereals, oilseeds and derived products – differ widely. Depending on the product, they are either set at zero or they are very low; or they are already high and no trade takes place. Therefore, importers of cereals, oilseeds and derived products from the Russian Federation currently pay either no MFN tariffs, or pay low MFN tariffs to enter the EU market and those tariffs do not represent a significant hindrance for the products to enter the EU.

Considering that the Russian Federation is producing very large volumes of cereals, oilseeds and derived products, at present, exporters from the Russian Federation could easily and quickly re-orient significant volumes of supplies to the EU, thereby generating important export revenue for the Russian Federation's economy while disrupting the Union's market for those products. Moreover, the Russian Federation is currently illegally appropriating large portions of cereals and oilseeds produced in the territories of Ukraine, which it currently illegally occupies, and is routing these supplies to its export markets as allegedly "Russian" products. These exports, while illegal to import into the EU[4], are often first brought into the Russian Federation and given false documentation, making it very difficult to subsequently determine their origin. It is therefore necessary to take appropriate tariff measures to prevent cereals, oilseeds and derived products from the Russian Federation from continuing to enter in the EU market on terms that are equally favourable to those applied to those products from other non-preferential origins.

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1 Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, OJ L 256, 7.9.1987.

2 Only 1% of EU consumption is imported from Russia, according to EU official trade and production data (2023).

3 OECD/FAO data

4 Council Regulation (EU) 2022/263 of 23 February 2023 concerning restrictive measures to the illegal recognition, occupation or annexation by Russia of certain non-government-controlled areas of Ukraine.

Such tariff measures should help to prevent the Russian Federation from instrumentalising its exports of cereals, oilseeds and derived products to politically and economically weaken the EU by disturbing the EU market creating tensions and frictions within the EU and also threatening the proper functioning of the Customs Union. Furthermore these tariff measures would ensure that the Russian Federation would not benefit commercially from such exports to the EU. Such effects would run directly counter to the EU's interests and are not consistent with the EU's law and policies.

The Republic of Belarus exports limited quantities of cereals, oilseeds and derived products to the EU – 610 000 tonnes in 2023, with a value of EUR 246 million – and is not an important producer or exporter of those products. However, the proposed Regulation also covers the Republic of Belarus in view of its close political and economic ties with Russia and in order to prevent the illegal channelling of imports from the Russian Federation through the Republic of Belarus should the EU tariffs on imports of relevant goods originating in or exported from the Republic of Belarus remain unchanged. Given the continuous rapprochement and increasing trade between Belarus and Russia, it is appropriate to apply to products from the Republic of Belarus the same treatment as products from the Russian Federation.

The proposed Regulation establishes new tariffs for cereals, oilseeds and derived products originating in or exported from the Russian Federation or the Republic of Belarus at a level high enough to suppress current imports. In nearly all cases tariffs on Russian and Belarussian exports to the EU would increase to either EUR 95 per tonne or to an *ad valorem* duty of 50%, depending on the product. They would affect EU imports from the Russian Federation and the Republic of Belarus of goods that in 2023 represented 4.8 million tonnes of imports, with a commercial value of EUR 1.6 billion in the same year. To avoid the entering of cereals, oilseeds and derived products originating in or exported from the Russian Federation or the Republic of Belarus into the EU market at the low rates provided for under EU tariff rate quotas, it is also necessary to exclude the Russian Federation and the Republic of Belarus from those quotas, for the products that fall within the scope of this Regulation.

The proposed Regulation is not expected to negatively affect global food security. First of all, the increase in EU tariffs would not affect the transit of the Russian and Belarussian products concerned through the EU territory to third countries. Secondly, the historical trade flows of cereals, oilseeds and derived products from the Russian Federation to the EU are very modest compared to the size of the world's market exchanges and will not have any appreciable impact on the EU food processing industry and livestock farming when it comes to feed supplies. Finally, the increase in the EU's import duties is expected to substantially reduce these flows of imports into the EU, thereby actually increasing the available quantities of cereals, oilseeds and derived products for exportation to third countries, notably to developing countries.

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

Currently, Ukraine is the third largest supplier to the EU of the products subject to the proposed tariff increase. Those exports occur under the preferential terms of the EU-Ukraine Association Agreement and in particular its Title IV establishing a Deep and Comprehensive Free Trade Area (DCFTA), and reinforced with the temporary trade-liberalising measures adopted by the EU following the Russian Federation's illegal and unprovoked invasion of Ukraine. As the Russian Federation's illegal war of aggression against Ukraine severed significantly the ability of Ukraine to continue exporting to the world what was previously its main source of economic revenues – cereals, oilseeds and derived products – the EU market

remained the main accessible export outlet to goods from Ukraine due to the disturbance of other export routes. Increasing substantially the customs duties applicable to goods originating in or being exported from the Russian Federation, which is a key competitor of Ukraine in the EU market, is consistent with the paramount market access opportunities that the Union offered to Ukrainian exports of cereals, oilseeds and derived products in the Union market. Other significant third country suppliers exporting cereals, oilseeds and derived products to the EU are Brazil, Argentina, the United States and Canada.

- **Consistency with other Union policies**

The increases in customs duties on cereals, oilseeds and derived products from the Russian Federation and the Republic of Belarus that are set out in this proposal ensure that the Union's Customs policy, as expressed in this Regulation through the applied rates of the Union's Common Customs Tariff, is conducted consistently with the principles and objectives of the Union's external action as set out in Article 21(3) of the Treaty on European Union, which provides that the Union is to ensure consistency between the different areas of its external action and between these and its other policies. Therefore, it is considered appropriate to impose increased tariffs on cereals, oilseeds and derived products originating in or exported from the Russian Federation and the Republic of Belarus as such an increase would be consistent with the restrictive measures taken by the Union against these countries following the Russian Federation's unprovoked and unjustified military aggression against Ukraine and the support the Republic of Belarus continues to provide to the Russian aggression.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This Regulation amends Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff.

The amendment is based on Article 31 of the Treaty on the Functioning of the European Union (TFEU), which provides that the Common Customs Tariff duties is to be fixed by the Council on a proposal from the Commission.

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

The subsidiarity principle does not apply, as the proposal falls under the exclusive competence of the Union.

- **Proportionality**

The proposal is consistent with the principle of proportionality and does not go beyond what is necessary to meet the objectives of the Treaties, in particular the need to ensure that cereals, oilseeds and derived products from the Russian Federation and the Republic of Belarus do not disturb the EU market for those products and the proper functioning of the Customs Union. Therefore, those products should not have access to the EU market on terms equally favourably to those terms that apply to imports of grain from other third countries and origins. Proportionality is ensured by the fact that the proposal provides for raising the Common Customs Tariff duties applicable to imports from the Russian Federation and the Republic of Belarus for the tariff lines of cereals, oilseeds and derived products where those tariffs are currently set at zero, or are low. Simultaneously, the increase is expected to reduce the ability of the Russian Federation and the Republic of Belarus to disrupt the correct functioning of EU food markets. The proposed increase of tariffs and barring the access to the Union's tariff rate quotas limits fundamental rights only to the extent necessary to achieve its objectives.

- **Choice of the instrument**

This proposal provides for amending Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff.

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 light of the ongoing invasion of Ukraine by the Russian Federation and the current ability of the Russian Federation to use its export of cereals, oilseeds and derived products in order to undermine the EU's unity in supporting Ukraine and to destabilise the EU market of those products, as well as in light of the Republic of Belarus' support to the Russian Federation's actions, it is important for the Regulation to enter into force urgently in order to increase as soon as possible the duty rates applicable to concerned products from the Russian Federation and the Republic of Belarus. Therefore, no impact assessment was carried out for this Regulation. However, it is expected that the proposed measure will significantly reduce the importation into the EU of the concerned products originating in or exported from the Russian Federation and the Republic of Belarus and that this will result in further diversification away from the Russian Federation and the Republic of Belarus when it comes to the importation of those products.

- **Regulatory fitness and simplification**

The measure does not disproportionately increase the regulatory burden of companies.

- **Fundamental rights**

The proposal is coherent with the Union's human rights policy and consistent with the Charter of Fundamental Rights. Where the imposition of import duties affects, in the Union, the freedom to engage in international trade as part of the freedom of professional activity, the right of property or other fundamental rights including equal treatment, this is considered a legitimate action by the Union under the Charter of Fundamental Rights. This is because this action is taken in conformity with the requirements that the action is to be taken on the basis of a proper legal basis, by the competent authorities, in pursuit of a legitimate objective of placing at a commercial disadvantage imports of certain products from the Russian Federation and the Republic of Belarus to avoid serious disturbances of the relevant markets and to ensure the proper functioning of the Customs Union consistent with current measures of the Union's external action, and in line with the principle of proportionality. Specifically, with regard to equal treatment, increased import duties are imposed on importers of cereals, oilseeds and derived products originating in or exported from the Russian Federation or the Republic of Belarus, but not on importers of products that neither originate in nor are exported from the Russian Federation or the Republic of Belarus. This responds to a

legitimate policy objective of the Union of protecting the Union markets against a possible use of the trade in concerned products by the Russian Federation and the Republic of Belarus to destabilise the EU.

4. BUDGETARY IMPLICATIONS

This proposal has no financial impact on expenditure and has a very limited financial impact on revenue. The collection of increased customs duties corresponding to the proposed increases are expected to be minimal, close to zero. This is because current imports of cereals, oilseeds and derived products from the Russian Federation and the Republic of Belarus are to a very large extent concentrated on products with zero or very low MFN duty, whilst the proposed increase in duties is likely to reduce the import flows from the Russian Federation and the Republic of Belarus to negligible volumes.

Conversely, some losses can be expected compared to the most recent own resources generated to the EU budget – EUR 15.77 million, in 2023. The exact value of budget losses will depend on how the imports from the Russian Federation will be replaced. Namely, the imports replaced by EU domestic production or by preferential imports, notably from Ukraine, will result in own resources losses, whereas the imports replaced by increased imports from third countries other than the Russian Federation or the Republic of Belarus that are not preferential partners, will continue to generate the same level of Common Customs Tariffs as those currently generated by imports from the Russian Federation and the Republic of Belarus, and thus will not result in a loss of own resources. Therefore, the effect on the EU budget's traditional own resources is estimated at a loss of maximum EUR 15.77 million (i.e. 75 % of the total tariff revenue of EUR 21 million) in the scenario of full replacement of existing EU imports from the Russian Federation and the Republic of Belarus by the EU's domestic production and imports from preferential partners. The loss of revenue in traditional own resources will be compensated by Member States' Gross National Income (GNI) based on resource contributions.

The legislative financial statement sets out the budgetary implications of the proposal in a greater detail.

5. OTHER ELEMENTS

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

On-line reporting on the evolution of EU imports of cereals, oil seeds and derived products from the Russian Federation and the Republic of Belarus is available via dedicated websites of the European Commission (Eurostat).

- **Explanatory documents (for directives)**

Not applicable.

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

The proposed Regulation prevents cereals, oilseeds and derived products from the Russian Federation and the Republic of Belarus from accessing the EU market on equally favourable terms as products from other origins, by raising import duties on all those cereals, oilseeds and derived products for which today EU imports tariffs are set at zero or are very low, to a higher level of either EUR 95/t or an *ad valorem* duty of 50%, depending on the nature of the product (EUR 95/t for cereals; an *ad valorem* duty of 50% for oilseeds and for derived products which are a result of a concentration of the basic product). In addition, those goods

originating in or exported from the Russian Federation and the Republic of Belarus would also be barred from access to the Union's tariff rate quotas. Those tariff rate quotas provide access to the EU market at a lower tariff level than the proposed new tariffs.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 31 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Union imports of cereals, oilseeds and derived products have significantly increased since the Russian Federation's full-scale invasion of Ukraine on 22 February 2022.

(2) At present the Russian Federation remains a relatively small supplier of cereals, oilseeds and their derived products to the Union market. However, the Russian Federation is a leading world-wide producer and exporter of cereals, oilseeds and derived products. Given its current volumes of exports to the world, the Russian Federation could easily and quickly reorient significant volumes of supplies to the EU, causing a sudden inflow of products from its large existing stocks, thereby disrupting the Union's cereals, oilseeds and derived products markets. Moreover, there is evidence that the Russian Federation is currently illegally appropriating large portions of cereals and oilseeds produced in territories of Ukraine, which it illegally occupies and is routing them to its export markets as allegedly Russian products.

(3) The Union's *erga omnes* common customs duties are the currently applied most-favoured-nation (MFN) tariffs on imports of cereals, oilseeds and derived products and they differ widely. Depending on the product, those tariffs are either set at zero or very low, or they are already high and no trade takes place.

(4) It is necessary to take appropriate tariff measures in order to prevent cereals, oilseeds and derived products from the Russian Federation from continuing to enter the Union market on terms that are equally favourable to those applied to those products from other non-preferential origins. Those tariff measures are expected to contribute to preventing the Russian Federation from using its exports of cereals, oilseeds and derived products to the Union to politically and economically weaken it by directing significant quantities of the products in question towards the Union, thereby disturbing the Union market for those products, creating societal tensions and frictions within the Union and threatening the proper functioning of the Customs Union. Such threats should be considered under Article 32(d) of the Treaty on the Functioning of the European Union and, therefore, measures to avoid serious disturbances in the economies of Member States should be taken under Article 31 thereof.

(5) The same tariff measures should be taken simultaneously in respect of the Republic of Belarus in order to prevent imports to the Union from the Russian Federation from

being diverted through the Republic of Belarus, given its close political and economic ties with Russia, should the EU tariffs on imports of relevant goods from the Republic of Belarus remain unchanged.

(6) Accordingly, imports of cereals, oilseeds and derived products originating in or exported from the Russian Federation and the Republic of Belarus should be subject to higher customs duties than imports from other third countries, whenever the currently applicable customs duties are set at zero or are not sufficiently high.

(7) In addition, the Russian Federation and the Republic of Belarus should not benefit from the Union's tariff rate quotas on terms of most-favoured-nation treatment. Therefore, the reduced rates set out in the Union's tariff rate quotas for the products set out in the Annex to this Regulation should not apply to products originating in or exported from the Russian Federation or the Republic of Belarus into the Union.

(8) The envisaged increase in customs duties is not expected to negatively affect global food security as it would not affect the transit of the products concerned through the Union territory to third countries of final destination; to the contrary, the increase in Union import duties may lead to the exportation of those products to third countries and increase the availability of supplies.

(9) The increase in customs duties is consistent with the Union's external action in other areas, as required by Article 21(3) of the Treaty on European Union. The state of relations between the Union and the Russian Federation has developed very negatively over the past years, with a particular deterioration during the last two years given the Russian Federation's blatant disregard for international law and, in particular, its unprovoked and unjustified full-scale invasion of Ukraine. Since July 2014, the Union has progressively imposed restrictive measures against the Russian Federation.

(10) While the Russian Federation is a Member of the World Trade Organization, the Union is relieved, by virtue of the exceptions that apply under the Agreement Establishing the World Trade Organization, and in particular Article XXI of the GATT 1994 (security exemptions), from the obligation to accord to products imported from the Russian Federation the advantages granted to like products imported from other countries (most-favoured-nation treatment).

(11) The situation between the Union and the Republic of Belarus has also deteriorated over the past years, because of the regime's disregard for international law, fundamental freedoms and human rights and its support of the Russian military aggression against Ukraine. Since October 2020, the Union has progressively imposed restrictive measures against the Republic of Belarus.

(12) As the Republic of Belarus is not a Member of the World Trade Organization, the Union is not obliged, by virtue of the Agreement Establishing the World Trade Organization, to accord to products from the Republic of Belarus most-favoured-nation treatment. In addition, existing trade agreements allow actions justified on the basis of applicable exception clauses, in particular security exceptions.

(13) In accordance with the principle of proportionality it is necessary and appropriate, for the achievement of the basic objective of ensuring that cereals, oilseeds and derived products from the Russian Federation and the Republic of Belarus do not disturb the EU market for those products and the proper functioning of the Customs Union, to lay down rules increasing tariffs on those products with immediate effect. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued in accordance with Article 5(4) of the Treaty on European Union,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EEC) No 2658/87 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 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 Council
The President
[…]

LEGISLATIVE FINANCIAL STATEMENT

NAME OF THE PROPOSAL:

Proposal for a Council Regulation amending Annex I to Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.

BUDGET LINES:

Chapter and Article: Chapter 12, Article 120

Amount budgeted for the year 2024: 24 620 400 000 €

FINANCIAL IMPACT:

☐ Proposal has no financial implications

X Proposal has no financial impact on expenditure but has a financial impact on the traditional own resources revenue, for the following reasons:

In 2023, the total value of imports from the Russian Federation and the Republic of Belarus of CN codes under the scope of this Regulation and that which are subject to the proposed increase, was over EUR 1.57 billion. Of these, imports on dutiable lines were EUR 338 million. Most of those imports (EUR 83.4 million) took place under CN code 1514 11 90 which is subject to a 6.4% tariff. Significant imports also took place for CN code 1518 00 95 (EUR 77.3 million) that is subject to a duty of 2% and CN code 2309 90 91 (EUR 76.4 million) which is subject to a 12% *ad-valorem* tariff. A further EUR 32.4 million were imported under CN code 2308 00 90 which is subject to a 1.6% *ad-valorem* tariff. In addition, for CN code 1008 10 00 the EU imported 14 760 tonnes in 2023, subject to a tariff of EUR 37/t, whereas for CN code 1008 29 00 EU imports amounted to 10 005 tonnes, subject to a tariff of EUR 56/t. Imports under CN code 1003 90 00 represented 54 706 tonnes, subject to a WTO in-quota rate of EUR 62.25/t Other CN codes are also subject to duties, but for much lower values, and maximum duties foregone for these CN codes are computed below, at the last parcel.

Upon the increase of tariffs by this Regulation, these trade flows are expected to considerably decrease or even stop. As regards the collection of increased customs duties corresponding to the proposed increases on those goods that today are subject to zero or very low tariffs, they are expected to be minimal, close to zero, as no trade flows are expected to subsist, given the increased tariff levels.

On the basis of the above, the impact on the loss of revenue for the EU budget resulting from this Regulation is estimated at a maximum of EUR 15.77 million per year: [(EUR 6.7 million + EUR 2.11 million + EUR 9.17 million + EUR 0.88 million + EUR 0.52 million + EUR 0.53 million + EUR 0.55 million + EUR 0.56 million) = EUR 21.03 million gross amount, including collection costs) x 0.75][5].

For 2024 the impact on the loss of traditional own resources revenue for the EU budget is estimated as half of the above amount. i.e. EUR 7.9 million.

The loss of revenue in traditional own resources will be compensated by Member States Gross National Income (GNI) based on resource contributions.

[5] Each parcel corresponds to the foregone duties of the CN codes listed above, by order of appearance.