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Proposal for a

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

**implementing the safeguard clause and the anti-circumvention mechanism providing for the temporary suspension of tariff preferences 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.**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

#### **Grounds for and objectives of the proposal**

This proposal concerns the incorporation in the European Union law of the safeguard clause and the anti-circumvention mechanism foreseen in the EU-Moldova Association Agreement.

#### **General context**

The Association Agreement with Moldova, like the majority of our trade Agreements, includes a bilateral safeguard clause. By this instrument preferences can be temporarily suspended in case their application would result in an unexpected and significant increase of imports causing economic damage to the domestic industry of the importing party (i.e. it is possible to either suspend the further tariff liberalization or reintroduce the MFN customs duty rate). Furthermore, this Agreement also includes a so-called anti-circumvention mechanism, which provides for the possibility to reintroduce the MFN customs duty rate when imports of certain agricultural goods from Moldova exceed a given threshold without due justification of their exact origin.

An implementing regulation of the European Parliament and of the Council is necessary to put in place in the EU's internal legislation the necessary instrument to be able to apply the bilateral safeguard clause and the anti-circumvention mechanism.

The attached proposal for a Regulation of the European Parliament and of the Council is largely based on comparable implementing regulation which were discussed and agreed among the three institutions for each of the recent FTAs currently in force: Korea (regulation published in 2011), Central America (regulation published in 2013) and Colombia and Peru (regulation published in 2013).

### **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

This proposal for an implementing Regulation is directly derived from the text of the Agreement negotiated with the Republic of Moldova. Consequently, neither a separate consultation with interested parties nor any impact assessment is necessary.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **Summary of the proposed action**

The attached proposal for a Regulation of the European Parliament and of the Council constitutes the legal instrument for the implementation of the safeguard clause and the anti-circumvention mechanism of the Agreement already concluded with the Republic of Moldova.

#### **Legal basis**

Article 207(2) of the Treaty on the Functioning of the European Union.

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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<sup>1</sup>,

Whereas:

- (1) On 15 June 2009 the Council authorised the Commission to open negotiations with the Republic of Moldova for the conclusion of a new agreement between the Union and the Republic of Moldova.
- (2) Those negotiations have been concluded and 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<sup>2</sup> ('the Agreement') was signed on 24 June 2014 and has been provisionally applied from 1 September 2014.
- (3) It is necessary to lay down the procedures to guarantee the effective application of the safeguard clause that has been agreed with the Republic of Moldova.
- (4) The Agreement includes also an anti-circumvention mechanism for the temporary suspension of tariff preferences on specific products. It is also necessary to lay down the procedures for the application of this mechanism.
- (5) Safeguard measures may be considered only if the product in question is imported into the Union in such increased quantities, in absolute terms or relative to Union production, and under such conditions as to cause, or threaten to cause, serious injury to Union producers of like or directly competing products as laid down in Article 165(1) of the Agreement.
- (6) Certain terms such as 'serious injury', 'threat of serious injury' and 'transitional period' as referred to in Article 169 of the Agreement should be defined.

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<sup>1</sup>

<sup>2</sup> 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).

- (7) The tasks of following up and reviewing the Agreement, carrying out investigations and, if necessary, imposing safeguard measures should be carried out in the most transparent manner possible.
- (8) The Commission should receive information including available evidence from the Member States of any trends in imports which might call for the application of safeguard measures.
- (9) The reliability of statistics on all imports from the Republic of Moldova to the Union is therefore crucial to determining whether the conditions to apply safeguard measures are met.
- (10) If there is sufficient *prima facie* evidence to justify the initiation of proceedings, the Commission should publish a notice in the *Official Journal of the European Union*.
- (11) There should be detailed provisions on the initiation of investigations, access to and inspections by interested parties of the information gathered, hearings for the interested parties involved and the opportunities for those parties to submit their views.
- (12) The Commission should notify the Republic of Moldova in writing of the initiation of an investigation and consult the Republic of Moldova as provided for in Article 166(1) of the Agreement.
- (13) It is also necessary to set time limits for the initiation of an investigation and for determinations as to whether or not safeguard measures are appropriate, with a view to ensuring that such determinations are made quickly, in order to increase legal certainty for the economic operators concerned.
- (14) An investigation should precede the application of any safeguard measure, subject to the Commission being allowed to apply provisional safeguard measures in critical circumstances as referred to in Article 167 of the Agreement.
- (15) Safeguard measures should be applied only to the extent, and for such time, as may be necessary to prevent serious injury and to facilitate adjustment. The maximum duration of safeguard measures should be determined and specific provisions regarding extension and review of such measures should be laid down.
- (16) There should be a possibility to suspend the preferential customs duties for a maximum period of six months when the imports of certain agricultural products and processed agricultural products reach the annual import volumes defined in the Annexes (XV-C) to the Association Agreement.
- (17) For reasons of transparency, the Commission should submit an annual report to the European Parliament and to the Council on the implementation of the Agreement and the application of the safeguard measures and the anti-circumvention mechanism.
- (18) In order to ensure uniform conditions for the adoption of provisional and definitive safeguard measures, for the imposition of prior surveillance measures and for the termination of an investigation without measures provided for in the Agreement, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>3</sup>.

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<sup>3</sup> 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).

- (19) The advisory procedure should be used for the adoption of surveillance and provisional safeguard measures given the effects of those measures and their sequential logic in relation to the adoption of definitive safeguard measures. The advisory procedure should be used for the adoption of implementing acts given that those acts have to be implemented quickly once the relevant threshold has been met and have only a very limited period of application.
- (20) The examination procedure should be used for the adoption of definitive safeguard measures and for the reviews of such measures.
- (21) The Commission should adopt immediately applicable implementing acts where, in duly justified cases a delay in the imposition of provisional safeguard measures would cause damage which would be difficult to repair or in order to prevent a negative impact on the Union market as a result of an increase in imports. Where such immediately applicable implementing acts are applied, the advisory procedure should be used,

HAVE ADOPTED THIS REGULATION:

## **CHAPTER I - SAFEGUARD PROVISIONS**

### *Article 1*

#### *Subject matter and scope*

1. This Regulation lays down provisions for implementing the safeguard clause and the anti-circumvention mechanism providing for the temporary suspension of tariff preferences contained in 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. This Regulation applies to products originating in the Republic of Moldova.

### *Article 2*

#### *Definitions*

For the purposes of this Regulation:

- (a) ‘product’ means a good originating in the Union or in the Republic of Moldova; a product subject to an investigation may cover one or several tariff lines or a sub-segment thereof depending on the specific market circumstances, or any product segmentation commonly applied in the Union industry;
- (b) ‘interested parties’ means parties affected by the imports of the product in question;
- (c) ‘Union industry’ means the Union producers as a whole of the like or directly competitive products, operating within the territory of the Union, or Union producers whose collective output of the like or directly competitive products constitutes a major proportion of the total Union production of those products, or, where a like or a directly competitive product is only one of several products that are made by the Union producers, the Union industry shall be defined in relation to the specific operations that are involved in the production of the like or directly competitive product;

- (d) ‘serious injury’ means a significant overall impairment to the position of Union industry;
- (e) ‘threat of serious injury’ to the position of Union industry means serious injury that is clearly imminent;
- (f) ‘transitional period’ means a period of 10 years from the entry into force of the Agreement;

### *Article 3*

#### *Principles*

1. A safeguard measure may be imposed in accordance with this Regulation where a product originating in the Republic of Moldova is, as a result of the reduction or the elimination of the customs duties on that product, imported into the Union in such increased quantities, in absolute terms or relative to Union production, and under such conditions as to cause or threaten to cause serious injury to the Union industry.
2. A safeguard measure may take one of the following forms:
  - (a) a suspension of a further reduction of the rate of customs duty on the product concerned provided for in the Tariff Elimination Schedule of the Agreement with the Republic of Moldova;
  - (b) an increase in the rate of customs duty on the product concerned to a level which does not exceed the lesser of:
    - the most-favoured-nation ("MFN") applied rate of customs duty on the product concerned in effect at the time the measure is taken; or
    - the base rate of customs duty as specified in the Schedules included in Annex XV pursuant to Article 147 of the Agreement.

### *Article 4*

#### *Initiation of proceedings*

1. A proceeding shall be initiated upon request by a Member State, by any legal person or any association not having legal personality acting on behalf of the Union industry, or on the Commission's own initiative if it is apparent to the Commission that there is sufficient *prima facie* evidence, as determined on the basis of factors referred to in Article 5(5) of this Regulation, to justify such initiation.
2. The request shall generally contain the following information: the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports and changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment regarding the Union industry.
3. A proceeding may also be initiated in the event that there is a surge of imports concentrated in one or several Member States, provided that there is sufficient *prima facie* evidence, as determined on the basis of factors referred to in Article 5(5) of this Regulation, to justify such initiation.

4. A Member State shall inform the Commission if trends in imports from the Republic of Moldova appear to call for safeguard measures. That information shall include the evidence mentioned in paragraphs 1 and 2.
5. The Commission shall inform the Member States when it receives a request to initiate a proceeding or when it considers initiation of a proceeding to be appropriate on its own initiative pursuant to paragraph 1 of this Article.
6. Where it is apparent that there is sufficient *prima facie* evidence to justify the initiation of a proceeding, the Commission shall initiate the proceeding and shall publish a notice thereof in the *Official Journal of the European Union*. Initiation shall take place within one month of receipt by the Commission of the request pursuant to paragraph 1.
7. The notice referred to in paragraph 6 shall:
  - (a) contain a summary of the information received and require that all relevant information be communicated to the Commission;
  - (b) state the period within which interested parties may make known their views in writing and submit information to the Commission, if such views and information are to be taken into account during the proceeding;
  - (c) state the period within which interested parties may apply to be heard orally by the Commission in accordance with Article 5(9).

## *Article 5*

### *Investigations*

1. Following the initiation of a proceeding, the Commission shall commence an investigation. The period as set out in paragraph 3 of this Article shall start on the day the decision to initiate the investigation is published in the *Official Journal of the European Union*.
2. The Commission may request Member States to supply information and Member States shall take whatever steps are necessary in order to give effect to any such request. If that information is of general interest and is not confidential within the meaning of Article 11 of this Regulation, it shall be added to the non-confidential file as provided for in paragraph 8 of this Article.
3. The investigation shall, where possible, be concluded within six months of its initiation. That time limit may be extended by a further period of three months in exceptional circumstances such as the involvement of an unusually high number of interested parties or complex market situations. The Commission shall notify all interested parties of any such extension and explain the reasons therefor.
4. The Commission shall seek all information it considers necessary to make a determination with regard to the conditions set out in Article 3(1) of this Regulation, and, shall, where appropriate, endeavour to verify that information.
5. The Commission shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the Union industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports and changes in the level of sales, production, productivity, capacity utilisation, profits

and losses, and employment. This list is not exhaustive and other relevant factors may also be taken into consideration by the Commission for its determination of the existence of serious injury or threat of serious injury, such as stocks, prices, return on capital employed, cash flow, and other factors which are causing or may have caused serious injury, or threaten to cause serious injury to the Union industry.

6. Interested parties who have submitted information pursuant to point (b) of Article 4(7) of this Regulation and representatives of the Republic of Moldova may, upon written request, inspect all information made available to the Commission in connection with the investigation, other than internal documents prepared by the Union authorities or those of the Member States, provided that that information is relevant to the presentation of their case and not confidential within the meaning of Article 11 of this Regulation and that it is used by the Commission in the investigation. Interested parties may communicate their views on the information made available to the Commission. Where there is sufficient *prima facie* evidence in support of those views, the Commission shall take them into consideration.
7. The Commission shall ensure that all data and statistics which are used for the investigation are representative, available, comprehensible, transparent and verifiable.
8. The Commission shall, as soon as the necessary technical framework is in place, ensure password-protected online access to the non-confidential file (the online platform), which it shall manage and through which all information which is relevant and is not confidential within the meaning of Article 11 of this Regulation shall be disseminated. Interested parties, Member States and the European Parliament shall be granted access to that platform.
9. The Commission shall hear interested parties, in particular where they have made a written application within the period laid down in the notice published in the *Official Journal of the European Union*, showing that they are likely to be affected by the outcome of the investigation and that there are special reasons for them to be heard orally. The Commission shall hear interested parties on further occasions if there are special reasons therefor.
10. Where information is not supplied within the time limits set by the Commission, or where the investigation is significantly impeded, the Commission may make findings on the basis of the facts available. Where the Commission finds that any interested party or any third party has supplied it with false or misleading information, it shall disregard that information and may make use of the facts available.
11. The Commission shall notify the Republic of Moldova in writing of the initiation of an investigation.

## *Article 6*

### *Prior surveillance measures*

1. The Commission may adopt prior surveillance measures in regard to imports from the Republic of Moldova where the trend in imports of a product is such that it could lead to one of the situations referred to in Articles 3 and 4 of this Regulation. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 14(3) of this Regulation.

2. Prior surveillance measures shall have a limited period of validity. Unless otherwise provided, they shall cease to be valid at the end of the second six-month period following the first six months after their introduction.

## Article 7

### *Imposition of provisional safeguard measures*

1. The Commission shall adopt provisional safeguard measures in critical circumstances where a delay would cause damage which would be difficult to repair, pursuant to a preliminary determination on the basis of the factors referred to in Article 5(5) that there is sufficient *prima facie* evidence that imports of a product originating in the Republic of Moldova have increased as a result of the reduction or elimination of a customs duty in accordance with the Schedules included in Annex XV pursuant to Article 147 of the Agreement and such imports cause serious injury, or threat thereof, to the Union industry. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 14(3) of this Regulation.
2. On duly justified imperative grounds of urgency, including the case referred to in paragraph 3 of this Article, the Commission shall adopt immediately applicable provisional safeguard measures. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 14(5) of this Regulation.
3. Where a Member State requests immediate intervention by the Commission and where the conditions set out in paragraph 1 are met, the Commission shall take a decision within five working days of receiving the request.
4. Provisional safeguard measures shall not apply for more than 200 calendar days.
5. Should the provisional safeguard measures be repealed because the investigation shows that the conditions set out in Article 3(1) of this Regulation are not met, any customs duty collected as a result of those provisional safeguard measures shall be refunded automatically.
6. Provisional safeguard measures shall apply to every product which is put into free circulation after the date of entry into force of those measures. However, such measures shall not prevent the release for free circulation of products already on their way to the Union where the destination of such products cannot be changed.

## Article 8

### *Termination of investigations and proceedings without measures*

1. Where the facts as finally established show that the conditions set out in Article 3(1) of this Regulation are not met, the Commission shall adopt and publish in the *Official Journal of the European Union* a decision terminating the investigation and proceeding. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(4) of this Regulation.
2. The Commission shall make public, with due regard to the protection of confidential information within the meaning of Article 11 of this Regulation, a report setting out its findings and reasoned conclusions reached on all pertinent issues of fact and law.

## Article 9

### *Imposition of definitive safeguard measures*

1. Where the facts as finally established show that the conditions set out in Article 3(1) of this Regulation are met, the Commission may adopt definitive safeguard measures. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(4) of this Regulation.
2. The Commission shall make public, with due regard to the protection of confidential information within the meaning of Article 11 of this Regulation, a report containing a summary of the material facts and considerations relevant to the determination.

## Article 10

### *Duration and review of safeguard measures*

1. A safeguard measure shall remain in force only for such period of time as may be necessary to prevent or remedy the serious injury to Union industry and to facilitate adjustment. That period shall not exceed two years, unless it is extended under paragraph 3 of this Article.
2. A safeguard measure shall remain in force, pending the outcome of the review under paragraph 3.
3. The initial period of duration of a safeguard measure may be extended by up to two years provided that the safeguard measure continues to be necessary to prevent or remedy serious injury to Union industry and that there is evidence that the Union industry is adjusting.
4. Any extension pursuant to paragraph 3 of this Article shall be preceded by an investigation upon a request by a Member State, by any legal person or any association not having legal personality acting on behalf of the Union industry, or on the Commission's own initiative if there is sufficient *prima facie* evidence that the conditions laid down in paragraph 3 of this Article are met, on the basis of factors referred to in Article 5(5) of this Regulation.
5. The initiation of an investigation shall be published in the *Official Journal of the European Union* in accordance with Article 4(6) and (7) of this Regulation. The investigation and any decision regarding an extension pursuant to paragraph 3 of this Article shall be made in accordance with Articles 5, 8 and 9 of this Regulation.
6. The total duration of a safeguard measure shall not exceed four years, including the period of application of any provisional safeguard measure, the initial period of application and prorogation thereof.
7. A safeguard measure shall not be applied beyond the expiry of the transitional period, except with the consent of the Republic of Moldova.

## Article 11

### *Confidentiality*

1. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

2. Neither information of a confidential nature nor any information provided on a confidential basis received pursuant to this Regulation shall be disclosed without the express consent of the supplier of such information.
3. Each request for confidentiality shall state the reasons why the information is confidential. However, if the supplier of the information requests that the information is not made public or disclosed, in full or in summary form, and if that request is unjustified, the information concerned may be disregarded.
4. Information shall in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.
5. Paragraphs 1 to 4 of this Article shall not preclude reference by the Union authorities to general information and in particular to reasons on which decisions taken pursuant to this Regulation are based. Those authorities shall, however, take into account the legitimate interest of natural and legal persons concerned that their business secrets should not be divulged.

## *Article 12*

### *Report*

1. The Commission shall submit an annual report to the European Parliament and to the Council on the application, implementation and fulfilment of obligations of Title V of the Agreement and of this Regulation.
2. The report shall include information about the application of provisional and definitive measures, prior surveillance measures, regional surveillance and safeguard measures and the termination of investigations and proceedings without measures.
3. The report shall set out a summary of the statistics and the evolution of trade with the Republic of Moldova.
4. The European Parliament may, within one month of submission of the Commission's report, invite the Commission to an ad hoc meeting of its responsible committee to present and explain any issues related to the implementation of this Regulation.
5. No later than three months after submitting its report to the European Parliament and to the Council, the Commission shall make it public.

## **CHAPTER II – ANTI-CIRCUMVENTION MECHANISM FOR CERTAIN AGRICULTURAL PRODUCTS AND PROCESSED AGRICULTURAL PRODUCTS**

### *Article 13*

1. An average annual import volume is set for imports of products listed in Annex XV-C to the Agreement, which are subject to the anti-circumvention mechanism set out in Article 148 of the Agreement. On duly justified imperative grounds of urgency, once the import volume of one or more categories of products reach the volume indicated in Annex XV-C to the Agreement in any given year starting on 1 January, unless it has received a sound justification from the Republic of Moldova, the Commission shall adopt an immediately applicable implementing act in accordance with the procedure referred to in Article 14(5) of this Regulation. The Commission

may either decide to temporarily suspend the preferential duty applied to the product(s) concerned or that such suspension is not appropriate.

2. The temporary suspension of the preferential duty shall be applicable for a maximum period of six months from the date of publication of the decision to suspend the preferential duty. Before the expiry of that six month period and on duly justified imperative grounds of urgency relating to the suspension of the preferential duties, the Commission may adopt an immediately applicable implementing act in accordance with the procedure referred to in Article 14(5) of this Regulation in order to lift the temporary suspension of the preferential duty if it is satisfied that the volume of the relevant category of products imported in excess of the volume referred to in Annex XV-C of the Agreement results from a change in the level of production and export capacity of the Republic of Moldova for the product(s) concerned.
3. The application of the mechanism set out in this Chapter is without prejudice to the application of any measures defined in Chapter I. Measures taken pursuant to the provisions of both chapters shall not, however, be applied simultaneously to the same product(s).

### **CHAPTER III – COMMITTEE PROCEDURE**

#### *Article 14*

1. The Commission shall be assisted by the Committee established by Article 4(1) of Council Regulation (EC) No 260/2009<sup>4</sup> ('the Committee'). The Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. For the purpose of Article 13, the Commission shall be assisted by the Committee by the Committee for the Common Organisation of the Agricultural Markets, established by Article 229(1) of Regulation (EU) No 1308/2013, and, as regards processed agricultural products, the Commission shall be assisted by the Management Committee on horizontal questions concerning trade in processed agricultural products not listed in Annex I, established by Article 44(1) of Regulation (EU) No 510/2014<sup>5</sup>. These Committees shall be committees within the meaning of Regulation (EU) No 182/2011.
3. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
4. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
5. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 4 thereof, shall apply.
6. Pursuant to Article 3(5) of Regulation (EU) No 182/2011, where recourse is made to the written procedure for adopting measures pursuant to paragraph 3 of this Article such procedure shall be terminated without result where, within the time-limit set

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<sup>4</sup> Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports (OJ L 84, 31.3.2009, p.1).

<sup>5</sup> Regulation (EU) No 510/2014 of the European Parliament and of the Council of 16 April 2014 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations (EC) No 1216/2009 and (EC) No 614/2009 (OJ L 150, 20.5.2014, p. 1).

down by the chair, the chair so decides or a majority of committee members as defined in Article 5(1) of Regulation (EU) No 182/2011 so request.

#### **CHAPTER IV - FINAL PROVISIONS**

##### *Article 15*

##### *Entry into force*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply to imports from the Republic of Moldova from the date of application of the Agreement.

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*