Basic information

2012/0359(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Exercise of the Union's rights for the application and enforcement of international trade rules Amended by 2019/0273(COD) **Subject** 2.10.02 Public procurement 6.20.01 Agreements and relations in the context of the World Trade Organization (WTO) 6.20.04 Union Customs Code, tariffs, preferential arrangements, rules of origin 7.40.02 Judicial cooperation in civil and commercial matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
INTA International Trade		
	Shadow rapporteur PROUST Franck (PPE) CUTAȘ George Sabin (S&D) JADOT Yannick (Verts/ALE) ZAHRADIL Jan (ECR) SCHOLZ Helmut (GUE/NGL) (THE EARL OF) DARTMOUTH William (EFD)	

Committee for opinion	Rapporteur for opinion	Appointed
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	
JURI Legal Affairs	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Foreign Affairs	3311	2014-05-08

European Commission	Commission DG	Commissioner
	Trade and Economic Security	DE GUCHT Karel

Key events

Date	Event	Reference	Summary
18/12/2012	Legislative proposal published	COM(2012)0773	Summary
15/01/2013	Committee referral announced in Parliament, 1st reading		
17/09/2013	Vote in committee, 1st reading		
26/09/2013	Committee report tabled for plenary, 1st reading	A7-0308/2013	Summary
21/10/2013	Debate in Parliament		
23/10/2013	Decision by Parliament, 1st reading	T7-0439/2013	Summary
23/10/2013	Results of vote in Parliament		
02/04/2014	Decision by Parliament, 1st reading	T7-0264/2014	Summary
02/04/2014	Results of vote in Parliament		
08/05/2014	Act adopted by Council after Parliament's 1st reading		
15/05/2014	Final act signed		
15/05/2014	End of procedure in Parliament		
27/06/2014	Final act published in Official Journal		

Technical information

Procedure reference	2012/0359(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amended by 2019/0273(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 207
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	INTA/7/11538

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE510.834	24/06/2013	
Amendments tabled in committee		PE516.770	29/07/2013	
Committee report tabled for plenary, 1st reading/single reading		A7-0308/2013	26/09/2013	Summary
Text adopted by Parliament, partial vote at 1st reading /single reading		T7-0439/2013	23/10/2013	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0264/2014	02/04/2014	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00027/2014/LEX	15/05/2014	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2012)0773	18/12/2012	Summary
Commission response to text adopted in plenary	SP(2014)471	09/07/2014	
Follow-up document	COM(2017)0373	11/07/2017	Summary
Follow-up document	COM(2019)0639	12/12/2019	Summary
Follow-up document	COM(2022)0074	01/03/2022	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2012)0773	19/04/2013	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Corrigendum to final act 32014R0654R(01)
OJ L 243 18.09.2015, p. 0014

Regulation 2014/0654
OJ L 189 27.06.2014, p. 0050

Exercise of the Union's rights for the application and enforcement of international trade rules

2012/0359(COD) - 11/07/2017 - Follow-up document

In accordance with Regulation (EU) No 654/2014 of the European Parliament and of the Council, the Commission presented an initial review of the scope of the enforcement Regulation.

As a reminder, the Enforcement Regulation ensures that the European Union is able to enforce and defend its rights under international trade agreements by adopting trade policy measures.

The Enforcement Regulation empowers the Commission to adopt such trade policy measures by means of implementing acts in the area of trade in goods, but not in the area of services or intellectual property.

By 18 July 2017, the Commission is required to review the scope of the trade policy measures which it is empowered to adopt by way of implementing acts and must therefore carry out an initial assessment to consider complementary trade policy measures in the field of services.

Based on its **initial assessment**, **the Commission does not envisage proposing an extension of the empowerment under the Enforcement Regulation** to adopt trade policy measures in the area of services.

The Commission observed no new developments within the European Union in respect of the adoption of common rules on services sectors that are capable of altering the conclusion that, at this stage of development of European Union law, it is appropriate to focus on areas other than services for the purposes of the Commission's empowerment to adopt trade policy measures under the Enforcement Regulation.

The Commission will therefore **continue to monitor developments** in order to be able to review the scope of the Enforcement Regulation and report its findings to the to the European Parliament and the Council by 18 July 2019, the date on which the Commission must review the scope of the Enforcement Regulation, particularly with respect to the trade policy measures that may be adopted, as well as its implementation.

The Commission stressed that **services play an increasingly important role in today's economy**. The number of WTO disputes in the field of services is growing. Taking countermeasures in the field of services remains a possibility. The EU has a central role to play in **negotiating the trade in services trade agreement and international trade agreements** with a strong service component.

Lastly, the report noted that should it prove necessary for the European Union to resort to trade policy measures not covered by the Enforcement Regulation, including in the field of trade in services, the Commission could make **proposals for a legislative act** based on Article 207 of the TFEU or resort to other applicable procedures.

Exercise of the Union's rights for the application and enforcement of international trade rules

2012/0359(COD) - 12/12/2019 - Follow-up document

This report concerns Regulation (EU) No 654/2014 of the European Parliament and of the Council concerning the exercise of the Union's rights for the application and enforcement of international trade rules. It provides the rules and procedures to ensure an effective and timely exercise of the European Union’s rights under international trade agreements.

The Enforcement Regulation enables the European Union to suspend or withdraw obligations under the World Trade Organization (WTO) Agreement and other international trade agreements, including regional and bilateral agreements following the adjudication of trade disputes under respective agreements.

The suspension or withdrawal of obligations can lead to EU commercial policy measures including (i) the suspension of tariff concessions and the imposition of new or increased customs duties; (ii) the introduction or increase of quantitative restrictions on imports of goods through quotas, import or export licences or other measures; and (iii) the suspension of concessions regarding goods, services or suppliers in the area of public procurement.

Situations in which the Regulation may be applied

The Enforcement Regulation provides that the EU is entitled to apply countermeasures only in three situations:

(1) Following a binding adjudication of a trade dispute in favour of the EU

In the period subject to review, no such case occurred, however, following the adoption of the Appellate Body report on compliance in the ongoing Boeing dispute at the WTO in April 2019, which confirmed that the United States’ subsidies to Boeing continue to cause significant harm to Airbus, the Commission launched a public consultation on a preliminary list of products from the United States on which the Union may take countermeasures.

WTO arbitration on the level of countermeasures is currently ongoing. Public consultations are the first step towards the imposition of commercial policy measures under the Enforcement Regulation.

As is well known, the WTO Appellate Body is in a crisis situation. The Regulation has been designed, as far as the WTO is concerned, on the premise of a fully functioning dispute settlement mechanism, including WTO Appellate Body review, which leads to a final and binding adjudication. Over the last two years, this certainty has come under increasing threat by the blockage of the appointment of new Appellate Body members. The WTO Appellate Body cannot work on appeals with fewer than three members. As of 11 December 2019, the number of Appellate Body members is down to one. Upcoming panel reports can then be appealed “into the void”, which would deprive the parties of a definitive, binding and enforceable decision.

As the Enforcement Regulation can only be used following binding adjudication, the objective of the Regulation, which is to equip the EU with the instruments necessary to react effectively and swiftly to illegal measures of third countries and to protect the EU’s economic interests, cannot be achieved. This gap needs to be addressed and the Regulation updated so as to face these challenges.

(2) Rebalancing measures in response to a third country's safeguard

So far, the Regulation has been used once for this purpose, namely in response to the import duties on steel and aluminium imposed by the United States in 2018. The EU introduced rebalancing measures in the form of additional tariffs on a number of products imported from the US4. Procedurally, the adoption of the implementing act imposing rebalancing measures took in total two months, which was the deadline imposed by the WTO Agreement. Owing to the Enforcement Regulation, the EU was able to swiftly respond to the US safeguard measures and defend the EU’s economic interests.

(3) Modification of concessions under Article XXVIII of the GATT 1994

In the reviewing period, no such case occurred. The regulation may nevertheless have played a role in this area because the mere existence of the Regulation signals to other WTO members that the EU is capable of availing itself of its rebalancing rights under Article XXVIII if no compensation is agreed, for which a strict deadline applies as well.

Need to review the scope of the Regulation

The Commission considered that although limited, the practice has shown that the EU can react swiftly and effectively, thanks to the existence of the Regulation. Beyond the Regulation's application so far, the mere existence of the Regulation is having an important impact, as it is sending a strong message of the EU’s ability to defend its rights.

The emerging challenges surrounding the institutional crisis at the WTO in relation to dispute settlement as well as possible weaknesses of dispute resolution under other international trade agreements raise concerns as to the effectiveness of the Regulation as currently set up.

The Commission therefore considers it necessary to amend the scope of the situations in which the Enforcement Regulation can be used, so as to ensure that the EU can effectively defend its economic interests also in the future. Accordingly, the report on the review is now presented together with a legislative proposal for the amendment of the Regulation. In line with the proposal for amendment, the Commission will continue to monitor the overall use and utility of the Regulation.

Exercise of the Union's rights for the application and enforcement of international trade rules

2012/0359(COD) - 18/12/2012 - Legislative proposal

PURPOSE: to propose a new framework to enhance the EU's ability to enforce its rights in the international trading system.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: the Union has concluded a number of multilateral, regional and bilateral international trade agreements creating rights and obligations for the mutual benefit of the parties.

The Union may be called on to take unilateral measures to enforce and defend its rights and interests under international trade agreements. This is the case under the dispute settlement rules of the World Trade Organisation (WTO), as well as under bilateral or regional dispute settlement mechanisms.

The Union currently does not have a common legislative framework to enforce its rights under international trade agreements. However, it is essential that the Union possesses appropriate instruments to ensure the effective exercise of the Union's rights under international trade agreements, in order to safeguard its economic interests. This is particularly the case in situations where third countries enact restrictive trade measures that diminish the benefits accruing to the Union's economic operators under international trade agreements. **The Union should be in a position to react swiftly** and in a flexible manner in the context of the procedures and deadlines set out by the international trade agreements which it has concluded.

Prior to the entry into force of the Lisbon Treaty, the Union approached enforcement in an ad hoc manner in the form of Regulations adopted by the Council on the basis of a Commission proposal. **After the entry into force of the Treaty of Lisbon, the Council and the European Parliament are co-legislators** under the ordinary legislative procedure in relation to the measures defining the framework for implementing the common commercial policy. Enforcement of rights under international trade agreements is a **typical executive function** that may require adopting and implementing measures within strict deadlines. It is appropriate for the Council and the European Parliament to establish a clear and predictable framework for the adoption of any such acts.

The present proposal reflects the Union's priority to enforce effectively its trade rights. This objective was set out in the Commission Communication on "Trade, growth and world affairs" and endorsed in the Council conclusions of 21 December 2010.

IMPACT ASSESSMENT: no impact assessment was carried out.

LEGAL BASIS: Article 207 of the Treaty on the Functioning of the European Union (TFEU). The Regulation must be adopted at Union level. The common commercial policy is an exclusive competence of the Union.

CONTENT: this draft Regulation proposes the **creation of a common legislative framework to enforce the Union's rights under international trade agreements**, in line with the Treaty of Lisbon. It lays down rules and procedures in order to ensure an effective exercise of the Union's rights to suspend or withdraw concessions or other obligations under international trade agreements, with the aim of:

- responding to breaches by third countries of international trade rules which affect the interests of the Union, with a view to seeking a satisfactory solution;
- rebalancing concessions or other obligations in the trade relations with third countries, when the import treatment accorded to goods from the Union is altered.

Its objective is **efficient and swift implementation** with a view to safeguarding the Union's interest. Accordingly, on the basis of Article 207 of the TFEU, it proposes to empower the Commission to adopt, suspend, modify or terminate implementing acts to enforce the Union's rights within the structure of the Treaty of Lisbon, i.e. in accordance with Article 291 of the TFEU. The scope of the Regulation extends to the adoption, suspension, modification and termination of implementing acts with regard to:

- enforcement of the Union's rights under binding multilateral and bilateral dispute settlement rules;
- rebalancing measures under multilateral and bilateral safeguard rules;
- rebalancing measures in cases of modifications by a third country of its concessions under Article XXVIII GATT 1994.

Conditions and criteria: implementing acts shall respect the rule that the level of countermeasures should not exceed the level of nullification and impairment, generally intended as the adverse impact on the Union resulting from the third country measure, as defined in the relevant agreement.

In determining the scope of the implementing act to be adopted, the Commission shall also rely on various criteria, such as: (i) the effectiveness of the measures in inducing compliance of third countries with international trade rules; (ii) the potential of the measures to provide relief to economic operators within the Union affected by third country measures; (iii) availability of alternative sources of supply for the products concerned, in order to avoid or minimise any negative impact on downstream industries or final consumers within the Union.

Types of measures: under the present draft Regulation, the Commission may adopt the following types of commercial policy measures: customs duties, quantitative restrictions on imports or exports of goods, and measures in the area of **public procurement**.

Due to the particularities of public procurement, in particular the existence of an administrative procedure that regulates and determines access to specific calls for tenders, it is possible to envisage action as regards the procurement of both goods and services. In this regard, the type of commercial policy measures that may be enacted concern the exclusion from public procurement of tenders the total value of which represents more than 50% of goods or services originating in the third country concerned.

A review clause provides that the Commission shall assess the operation of this Regulation three years after the first instance of its implementation occurred. The Commission shall issue a report and, if the circumstances so warrant, may propose appropriate measures to improve the Regulation’s efficiency. In this context, consideration can be given to the range of commercial policy measures under the Regulation such as trade in services and intellectual property rights, in addition to goods.

Exercise of the Union's rights for the application and enforcement of international trade rules

2012/0359(COD) - 26/09/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on International Trade adopted the report by Niccolò RINALDI (ADLE, IT) on the proposal for a regulation of the European Parliament and of the Council concerning the exercise of the Union's rights for the application and enforcement of international trade rules.

The committee recommended that the European Parliament’s position adopted at first reading, following the ordinary legislative procedure, should amend the Commission proposal as follows:

Including services: Members proposed including services into the array of commercial policy measures at the disposal of the Union as long as international or bilateral trade dispute settlement bodies permits it. Some ongoing WTO cases shows that the Union already requested countermeasure in the field of services.

Trade policy measures: the Commission should duly **justify to the European Parliament** the choice of the specific commercial policy measures adopted. It should also justify to the European Parliament when it envisages suspending, modifying or terminating a measure.

As regards **information gathering**, the Commission should inform the European Parliament of the outcome of such information gathering and outline in its proposal for an implementing act how it has determined the Union's general interest in the specific case in question.

Dispute Settlement and Enforcement dialogue: the Commission should regularly participate in an exchange of views with the European Parliament's Committee responsible for international trade on the management of trade disputes, including ongoing cases, effects on Union industries, envisaged measures, justification and impact of the envisaged measures, and on the implementation of commercial policy measures pursuant to this Regulation.

Review clause: a longer review clause (5 years instead of 3) is suggested as it is expected that the Commission will have the resort to enforcement mechanisms less often.

Exercise of the Union's rights for the application and enforcement of international trade rules

2012/0359(COD) - 23/10/2013 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted **amendments** on the proposal for a regulation of the European Parliament and of the Council concerning the exercise of the Union's rights for the application and enforcement of international trade rules.

The issue has been **sent back to the committee responsible**. The vote has been postponed.

The main amendments adopted in plenary were as follows:

Including services: Parliament proposed including services into the array of commercial policy measures at the disposal of the Union as long as international or bilateral trade dispute settlement bodies permits it.

Trade policy measures: the Commission should duly **justify to the European Parliament** the choice of the specific commercial policy measures adopted. It should also justify to the European Parliament when it envisages suspending, modifying or terminating a measure.

The Commission should keep the European Parliament regularly informed, particularly when the Union has referred a matter to a dispute settlement body.

As regards **information gathering**, the Commission should inform the European Parliament of the outcome of such information gathering and outline in its proposal for an implementing act how it has determined the Union's general interest in the specific case in question.

Procurement: Parliament stated that it should be essential for the Union to have the possibility to **swiftly enforce its rights** in the area of government procurement when a party fails to respect its commitments under the WTO Agreement on Government Procurement or under any bilateral or regional binding agreements. It stressed that the Union's action should be aimed at ensuring the maintenance of a substantially **equivalent level of concessions** in the field of government procurement.

Dispute Settlement and Enforcement dialogue: the Commission should regularly participate in an exchange of views with the European Parliament's Committee responsible for international trade on the management of trade disputes, including ongoing cases, effects on Union industries, envisaged measures, justification and impact of the envisaged measures, and on the implementation of commercial policy measures pursuant to this Regulation.

Review clause: a longer review clause (5 years instead of 3) is suggested as it is expected that the Commission will have the resort to enforcement mechanisms less often.

Exercise of the Union's rights for the application and enforcement of international trade rules

2012/0359(COD) - 02/04/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 596 votes to 17, with 16 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council concerning the exercise of the Union's rights for the application and enforcement of international trade rules.

The report was referred back to the committee at the 23 October 2013 plenary session.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary are the result of an agreement reached between the European Parliament and the Council. They amended the proposal as follows:

Subject matter: it is stated that this Regulation should lay down rules and procedures to ensure an effective and timely exercise of the Union's rights to suspend or withdraw concessions or other obligations under international trade agreements, with the intention of responding to breaches by third countries of international trade rules which affect the Union's interests, **with a view to seeking a satisfactory solution that restores benefits for the Union' s economic operators**.

Public procurement: the Union should have the possibility to **enforce its rights** in the area of public procurement when a trade partner fails to respect its commitments under the WTO Agreement on Government Procurement (GPA) or other international trade agreements. The Union's action should be aimed at **ensuring the maintenance of a substantially equivalent level of concessions**, as laid down in the relevant international trade agreements.

Objective criteria: commercial policy measures adopted under this Regulation should be selected and designed on the basis of objective criteria, including: (i) the effectiveness of the measures in inducing compliance of third countries with international trade rules, (ii) their potential to provide relief to economic operators within the Union affected by third country measures, and: (iii) the aim of minimising negative economic impacts on the Union, including with regard to essential raw materials.

Review: the amended text provides that the Commission should review the scope, functioning and efficiency of this Regulation, including **possible measures in the sector of intellectual property rights and additional measures concerning services,** no later than **three years** after the first instance of its implementation or no later than **five years** from its date of entry into force, whichever is the earlier.

The Commission should report on its assessment to the European Parliament and the Council. The review may be followed up by appropriate legislative proposals.

Exercise of the Union's rights for the application and enforcement of international trade rules

2012/0359(COD) - 15/05/2014 - Final act

PURPOSE: to create a new framework to enhance the EU's ability to enforce its rights in the international trading system.

LEGISLATIVE ACT: Regulation (EU) No 654/2014 of the European Parliament and of the Council concerning the exercise of the Union's rights for the application and enforcement of international trade rules and amending Council Regulation (EC) No 3286/94 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (WTO).

CONTENT: the Union has concluded a number of multilateral, regional and bilateral international trade agreements creating rights and obligations for the mutual benefit of the parties.

This Regulation lays down **rules and procedures to ensure an effective and timely exercise of the Union's rights to suspend or withdraw concessions** or other obligations under international trade agreements, with the intention of:

- **responding to breaches by third countries** of international trade rules which affect the Union's interests, with a view to seeking a satisfactory solution that restores benefits for the Union's economic operators;
- **rebalancing concessions** or other obligations in the trade relations with third countries, when the treatment accorded to goods from the Union is altered in a way that affects the Union's interests.

Enforcement of Union rights: in order to safeguard the Union's interests, the Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to the need to adapt commercial policy measures to the behaviour of the third party concerned, imperative grounds of urgency so require.

Commercial policy measures shall be **determined on the basis of the following criteria**, in light of available information and of the Union's general interest:

effectiveness of the measures in inducing compliance of third countries with international trade rules;

potential of the measures to provide relief to economic operators within the Union affected by third country measures;

availability of alternative sources of supply for the goods or services concerned;

avoidance of disproportionate administrative complexity and costs in the application of the measures.

Measures that may be enacted by means of an implementing act shall consist of: (a) the suspension of tariff concessions and the imposition of new or increased customs duties; (b) the introduction or increase of quantitative restrictions on imports or exports of goods; (c) the suspension of concessions regarding goods, services or suppliers in the area of public procurement.

Rules of origin: the origin of a good shall be determined in accordance with Regulation (EEC) No 2913/92. When enforcing the Union's rights following dispute settlement in the area of public procurement, the origin of a service should be determined on the basis of the origin of the natural or legal person providing it.

Review: the Commission should review the scope, functioning and efficiency of this Regulation, including possible measures in the sector of **intellectual property rights** and additional measures concerning **services**, no later than three years after the first instance of its implementation or no later than 18 July 2019, whichever is the earlier. The Commission should report on its assessment to the European Parliament and the Council. The review may be followed up by appropriate legislative proposals.

ENTRY INTO FORCE: 17.07.2014.