



Council of the European Union

A 006786 09.11.2020

SGS 20 / 004652

SGS 20 / 004654

Brussels,

04. 11. 2020

**Mr Bernd LANGE, M.E.P.**

Chairman, European Parliament Committee on International Trade (INTA)

Subject: Proposal for a Regulation of the European Parliament and of the Council amending 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 (2019/0273 (COD))

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Following the informal contacts between the representatives of the three institutions, the Permanent Representatives' Committee today approved the compromise package as contained in Annexes I and II to this letter.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the final compromise text annexed to this letter (subject to the revision by the lawyers-linguists of both institutions), the Council would, in accordance with Article 294 paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in that wording.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this dossier at first reading.

Yours sincerely,

Ambassador Michael CLAUSSE  
Chair of the Permanent Representatives  
Committee (Part 2)

copy to: Mr Valdis DOMBROVSKIS, Member of the European Commission  
Ms Marie-Pierre VEDRENNE, M.E.P., EP Rapporteur

PE-CONS No/YY - 2019/0273 (COD)

**REGULATION (EU) 2020/...**  
**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of ...**

**amending 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**

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,

Whereas:

- (1) Regulation (EU) No 654/2014 of the European Parliament and of the Council<sup>1</sup> establishes a common legislative framework for exercising the Union's rights under international trade agreements in certain specific situations.

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<sup>1</sup> Regulation (EU) No 654/2014 of the European Parliament and of the Council of 15 May 2014 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 (OJ L 189 27.6.2014, p. 50).

- (2) One of those situations relates to the dispute settlement mechanisms set up by the Agreement establishing the World Trade Organization ('WTO') and by other international trade agreements, including regional or bilateral agreements. Regulation (EU) No 654/2014 enables the Union to suspend obligations after dispute settlement proceedings are concluded.
- (3) That Regulation however does not address a situation where the Union has a right of action in response to a measure maintained by a third country, but dispute settlement through adjudication is blocked or otherwise not available for reasons of non-cooperation of the third country having adopted that measure.
- (4) The WTO Dispute Settlement Body has been unable to fill the outstanding vacancies on the Appellate Body. The Appellate Body is no longer able to fulfil its function from the moment when there are fewer than three Appellate Body Members left. Until this situation is resolved and in order to preserve the essential principles and features of the WTO dispute settlement system and the Union's procedural rights in ongoing and future disputes, the Union has sought to agree interim arrangements for appeal arbitration pursuant to Article 25 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes ("WTO Dispute Settlement Understanding"). This approach has been endorsed by the Council of the European Union on 27 May 2019 and 15 July 2019 and supported in a resolution of the European Parliament on 28 November 2019. If a WTO Member refuses to enter into such an arrangement, and files an appeal to a non-functioning Appellate Body, the resolution of the dispute is effectively blocked.
- (5) In the same vein, a similar situation may arise under other international trade agreements, in particular regional or bilateral agreements, where a third country does not cooperate, as necessary, for dispute settlement to function, for example by failing to appoint an arbitrator and where there is no mechanism foreseen to secure the functioning of dispute settlement in this situation.
- (6) In the face of blockage of dispute settlement, the Union will be unable to enforce international trade agreements. Therefore, it is appropriate to extend the scope of Regulation (EU) No 654/2014 to such situations.

- (7) To this end, the Union should be able to expeditiously suspend obligations under international trade agreements, including regional or bilateral agreements, when effective recourse to a binding dispute settlement mechanism is not possible because the third country has rendered it impossible for the Union to do so.
- (7a) *Services and intellectual property rights account for a large and growing share of world trade and are covered by international trade agreements, including regional or bilateral Union agreements. Services and intellectual property rights are therefore included in the scope of the trade policy measures available to the Union to make Regulation (EU) No 654/2014 more consistent and effective.*
- (7b) *Recalling that measures to be adopted pursuant to this regulation relate specifically to international trade, in that they are essentially intended to govern such trade and have direct and immediate effects on it and, therefore, fall within the scope of the Union's exclusive competence pursuant to Article 207 of the Treaty on the Functioning of the European Union (Court of Justice, Opinion 2/15, para. 36)*
- (8) It is also appropriate to set out that where measures are taken to restrict the trade with a third country in the situations at stake, such measures should be commensurate to the nullification or impairment of the Union's commercial interests caused by the measures of that third country, in line with the Union's obligations under international law.
- (8a) *The Regulation should ensure the coherent application of the enforcement mechanism in trade disputes relating to international trade agreements, including regional or bilateral agreements. The enforcement mechanism of the Trade and Sustainable Development chapters of the Union's international trade agreements forms an integral part of the Union's trade policy and this Regulation would apply to the suspension of concessions or other obligations and the adoption of measures in response to breaches of those chapters, if and to the extent that, such measures are permitted and are warranted by the circumstances.*
- (9) Finally, the review clause of Regulation (EU) No 654/2014 should *also* cover the application of the proposed amendment.

(10) Regulation (EU) No 654/2014 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 654/2014 is amended as follows:

**(-1) in Article 1, point (b) is replaced by the following:**

**(b) *rebalancing concessions or other obligations in the trade relations with third countries, when the treatment accorded to goods or services from the Union is altered in a way that affects the Union's interests.***

**(-1a) in Article 2, point (b) is replaced by the following:**

**(b) *"concessions or other obligations" means tariff concessions or other obligations or benefits in the field of trade in goods or services, or concerning trade-related aspects of intellectual property rights, that the Union has committed itself to applying in its trade with third countries by virtue of international trade agreements to which it is a party;***

**(1) Article 3 is amended as follows:**

**(a) the following point (aa) is inserted:**

**“(aa) following the circulation of a WTO panel report upholding, in whole or in part, the claims brought by the European Union, if an appeal under Article 17 of the WTO Dispute Settlement Understanding cannot be completed and if the third country has not agreed to interim appeal arbitration under Article 25 of the WTO Dispute Settlement Understanding;”**

(b) the following point (bb) is inserted:

“(bb) in trade disputes relating to other international trade agreements, including regional or bilateral agreements, if adjudication is not possible because the third country is not taking the steps that are necessary for a dispute settlement procedure to function, *including unduly delaying the proceedings amounting to non-cooperation in the process;*”

(1a) *in Article 3, point (d) is replaced by the following:*

(d) *in cases of modification of concessions or commitments by a WTO member under Article XXVIII of the GATT 1994 or Article XXI of the GATS, where no compensatory adjustments have been agreed and, as regards services, compensatory adjustments are not made in conformity with the findings of the arbitration pursuant to Article XXI of the GATS.*

(2) In Article 4 (2), the following point (bb) is inserted:

“(bb) where measures are taken to restrict the trade with a third country in situations under Article 3(aa) or Article 3(bb), **the level of** such measures shall **not exceed** the nullification or impairment of the Union’s commercial interests caused by the measures of that third country;”

(2a) *in Article 4, paragraph 2, point (d) is replaced by the following:*

(d) *where concessions or commitments are modified or withdrawn in the trade with a third country in connection with Article XXVIII of the GATT 1994 and the related Understanding<sup>2</sup>, or Article XXI of the GATS and the related implementing procedures, they shall be substantially equivalent to the concessions or commitments modified or withdrawn by that third country, in accordance with the terms established in Article XXVIII of the GATT 1994 and the related Understanding or Article XXI of the GATS and the related implementing procedures.*

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<sup>2</sup> Understanding "Interpretation and Application of Article XXVIII".

**(2c) in Article 5(1), the following point is inserted:**

**(ba) the suspension of obligations regarding trade in services and the imposition of restrictions on trade in services;**

**(2d) in Article 5(1), the following point is inserted:**

**(bb) the suspension of obligations with respect to trade-related aspects of intellectual property rights granted by a Union institution or agency and valid throughout the Union, and the imposition of restrictions on the protection of such intellectual property rights or their commercial exploitation, in relation to right-holders who are nationals of the third country concerned;**

**(2da) in Article 5, the following paragraph is inserted:**

**3. Measures adopted pursuant to paragraph 1(ba) and (bb) shall:**

**(a) be subject to an information gathering exercise pursuant to Article 9(1a);**

**■**

**(b) when selecting measures to be adopted pursuant to paragraph 1(ba), the Commission shall always consider measures in the following hierarchy of steps:**

**(i) relating to trade in services requiring an authorisation with Union-wide validity, based on secondary legislation, or, where no such measures are available,**

**(ii) relating to other services in areas where extensive Union legislation exists; or, where no such measures are available,**

**(iii) which the information gathering exercise conducted pursuant to Article 9(1a) has demonstrated would not impose a disproportionate burden on the administration of relevant national regulations.**

- (c) *be adjusted, if necessary, by means of an implementing act pursuant to Article 4(1), where, after a review conducted pursuant to Article 9(1a) the Commission concludes that the measures are of insufficient effectiveness or impose an unreasonable burden on the administration of relevant national regulations. Such review by the Commission shall be first conducted six months after the application of the measures and in intervals of twelve months thereafter;*
- (d) *be subject to an evaluation report, six months after their termination and based inter alia on stakeholder input, which shall examine their effectiveness and operation, and draw possible conclusions for future measures.*

*(2db) in Article 6, the following paragraph is inserted:*

- 3. *Regarding trade-related aspects of intellectual property rights, the term “nationals” shall be understood in the same sense as it is used in the paragraph 3 of Article 1 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.*

*(2e) in the first subparagraph of Article 7(2), point (c) is replaced by the following:*

- (c) *in cases of the withdrawal or modification of concessions or commitments by a WTO member under Article XXVIII of the GATT 1994 or Article XXI of the GATS, when the third country concerned accords adequate and proportionate compensation to the Union after the adoption of an implementing act under Article 4(1).*

*(2f) in Article 9, paragraph 1 is replaced by the following:*

- 1. *The Commission shall seek information and views regarding the Union's economic interests in specific goods or services or in specific sectors, or as regards intellectual property rights, in the application of this Regulation, through a notice in the Official Journal of the European Union or through other suitable public communication means, indicating the period within which input is to be submitted. The Commission shall take the input received into account.*



(2g) *in Article 9, the following paragraph is inserted:*

*1a. When the Commission envisages measures pursuant to Article 5(1)(ba) or Article 5(1)(bb), it shall inform and conduct consultations with stakeholders, in particular industry associations, affected by possible commercial policy measures and Member States' public authorities involved in the formulation or implementation of legislation regulating the affected fields. The Commission shall, in particular, seek, without unduly delaying the process of the adoption of such measures, information on:*

*(a) the impact of such measures on third country service providers or right-holders who are nationals of the third country concerned and on EU competitors, users or consumers of such services or intellectual property rights holders;*

*(b) the interaction of such measures with relevant Member State regulations;*

*(c) the administrative burden which may be occasioned by such measures.*

*The Commission shall take into utmost account the information gathered during consultations. The Commission shall provide an analysis of the envisaged measures to Member States when proposing the draft implementing act pursuant to Article 8.*

(3) Article 10 is amended as follows:

(a) paragraph 1 is replaced by the following:

*At the earliest possible opportunity after ... [the date of entry into force of this amending regulation], but no later than one year after that date, the Commission shall review the scope of this Regulation, taking into account in particular the commercial policy measures that may be adopted, as well as its implementation, and shall report its findings to the European Parliament and the Council. ■*

(b) paragraph 2 is amended as follows:

(i) in the first subparagraph of paragraph 2 the first sentence is replaced by the following:

“In acting pursuant to paragraph 1, the Commission shall undertake a review aimed at envisaging under this Regulation additional commercial policy measures suspending concessions or other obligations in the field of *trade-related aspects of intellectual property rights*.”

(ii) the second subparagraph is deleted.

## 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 European Parliament*

*For the Council*

*The President*

*The President*

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Statements by the Commission

**1. Commission declaration on compliance with international law**

When the Union brings a dispute under the Dispute Settlement Understanding (DSU) against another Member of the World Trade Organization (WTO), the Commission will make every reasonable effort to obtain, as early as possible, the agreement of that Member to resort to arbitration under Article 25 of the DSU as an interim appeal procedure, which preserves the essential features of the appeals before the Appellate Body (the “appeal arbitration procedure”), as long as the Appellate Body is unable to fully resume its functions in accordance with Article 17 of the DSU.

When adopting implementing acts pursuant to Article 3(aa) of the Regulation, the Commission will act in accordance with the requirements of the international law on countermeasures, as codified in the Articles on the Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission.

In particular, before adopting implementing acts pursuant to Article 3(aa), the Commission will call upon the WTO Member concerned to implement the panel’s findings and recommendations, notify that WTO Member of the Union’s intention to take countermeasures and reiterate its openness to negotiate a mutually agreed solution in accordance with the requirements of the DSU.

When implementing acts have already been adopted pursuant to Article 3(aa), the Commission will suspend their application if the Appellate Body resumes its functions in respect to the case concerned in accordance with Article 17 of the DSU, or if an interim appeal procedure is initiated, provided that such procedure is pursued in good faith.

**2. Statement by the Commission**

The Commission welcomes the adoption of the Regulation of the European Parliament and of the Council amending Regulation 654/2014.

The Commission recalls the Statement which it made upon the adoption of the original regulation, inter alia that the implementing acts which the Commission is empowered to adopt would be designed on the basis of objective criteria and subject to the control of the Member States. In exercising that empowerment, the Commission intends to act in accordance with the statement made upon the adoption of the original regulation as well as this Declaration.

When preparing draft implementing acts affecting trade in services or trade-related aspects of intellectual property rights, the Commission recalls its obligations pursuant to Article 9(1a) and confirms that it will undertake intensive prior consultations with a view to ensuring that all relevant interests and implications can be brought to the Commission's attention, shared with Member States and are duly taken into account in the possible adoption of measures. In those consultations, the Commission shall seek and expects to receive input from private stakeholders affected by possible commercial policy measures to be adopted by the Union in those areas. Similarly, the Commission shall seek and expects to receive input from public authorities that may be involved in or affected by the implementation of possible commercial policy measures adopted by the Union.

In the case of measures in the fields of trade in services and trade-related aspects of intellectual property rights, in particular the input from Member States' public authorities involved in the formulation or implementation of legislation regulating the affected fields will be duly taken into account in the preparation of draft implementing acts, inter alia on how possible commercial policy measures would interact with European Union and national legislation. Likewise, other stakeholders affected by such commercial policy measures will be given an opportunity to formulate their recommendations and concerns with respect to the choice and design of measures to be adopted. The observations shall be shared with the Member States when measures are adopted pursuant to Article 8 of the Regulation. The regular review of any such measures imposed during their application or after their termination will likewise take into account the input from Member State authorities and private stakeholders in relation to the operation of such measures, and allow for adjustments to be made if problems have arisen.

Finally, the Commission reaffirms that it attaches great importance to ensuring that the Regulation is an effective and efficient tool for the enforcement of the Union's rights under international trade agreements, including in the field of trade in services and trade-related aspects of intellectual property rights. Therefore, the measures to be chosen in these fields must also ensure effective enforcement in line with the rights of the Union, such that they induce compliance by the third country concerned and are consistent with the applicable international rules on the type of enforcement measures allowed.

**Joint Declaration of the Commission, the Council and the Parliament on an instrument to  
deter and counteract coercive actions by third countries**

The Commission takes note of the concerns of the Parliament and Member States as to the practices of certain third countries to seek to coerce the EU and/or its Member States to take or withdraw particular policy measures. The Commission shares the view that such practices raise significant concerns. The Commission confirms its intention to further examine possible measures, which could be adopted in order to dissuade or offset such actions and which would be triggered by such actions and which would allow for the expeditious adoption of countermeasures. The Commission intends to continue its assessment and on the basis of that assessment, taking into account all relevant circumstances, adopt a legislative proposal providing for a mechanism allowing to dissuade or offset such actions in a manner consistent with international law. As announced in the Letter of Intent of the President of the Commission to the President of the Parliament and President in office of the Council of 16 September 2020 the Commission shall adopt the proposal in any case no later than the end of 2021, or earlier, should the need arise as a result of coercive action taken by a third country.

The Council and the European Parliament take note of the intention of the Commission to submit a proposal for an instrument to deter and counteract coercive actions by third countries. Both institutions are committed to fulfil their institutional role as co-legislators and to consider the proposal in a timely manner, taking into account the Union's obligations under public international law and WTO law as well as relevant developments in international trade.

## Declaration of the Commission

Upon the adoption of the Regulation in 2014, the Commission committed to an effective communication and exchange of views with the European Parliament and the Council on trade disputes that may lead to the adoption of measures under the Regulation, and on enforcement actions in general. Mindful of the overarching objective of effective and efficient enforcement of Union's rights under the Union's international trade agreements, the Commission will continue to promote and streamline its interactions with the European Parliament and the Council to the mutual benefit.

In particular, the Commission undertakes to examine, as part of its enhanced enforcement system, alleged violations of the Union's international trade agreements when raised by the Parliament, its Members, or its Committees, or by the Council on the understanding that such requests be accompanied by supporting evidence. The Commission will keep the Parliament and the Council informed of the output of its enhanced enforcement work.

In deploying the enhanced enforcement system, the Commission will pay equal attention to alleged breaches of the trade and sustainable development provisions of EU trade agreements as to alleged breaches of market access systems. The processing of alleged breaches of trade and sustainable provisions will be fully integrated into the system. The Commission will prioritise those cases which are particularly serious in terms of their effect on workers or the environment in a trade context, which have systemic importance and which are legally sound.

The Commission will continue to fully engage in dedicated sessions with the responsible Parliamentary committee to exchange views on trade disputes and enforcement actions, including with regard to impacts on Union industries. In this context, the Commission will continue its reporting practice by providing periodically a state of play on all pending disputes and instant information for major developments in relation to disputes at the same time such information is shared with Member States. This reporting and information sharing will take place through the responsible committees in the Council and in the Parliament.

At the same time, the Commission will continue keeping the Parliament and the Council regularly informed of international developments that may lead to situations requiring the adoption of measures under the Regulation.

Finally, the Commission reaffirms its commitments under Regulation (EU) No 182/2011 of the European Parliament and of the Council to promptly transmit to the Parliament and to the Council draft implementing acts that it submits to the committee of Member States as well as final draft implementing acts following the delivery of opinions in the committee. This is managed via the comitology register.



## **Declaration of the Parliament, Council and the Commission**

The Union remains committed to a multilateral approach to international dispute settlement, rules-based trade, and international cooperation to achieve the Sustainable Development Goals of the United Nations. The Union will cooperate in all endeavours aiming to reform the WTO Dispute Settlement Mechanism which can ensure the effective functioning of the WTO's Appellate Body.

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**From:** POLCOM (RELEX 1) <polcom@consilium.europa.eu>  
**Sent:** 05 November 2020 18:41  
**To:** LANGE Bernd; LANGE Bernd OFFICE  
**Cc:** VEDRENNE Marie-Pierre; INTA-Secretariat; NARDELLI Stefania; LABULYTE Diana; DOMBROVSKIS Valdis (EC); BROWN Colin (EC); BERENDS Gijs (EC); 'Christian.Forwick@bmwi.bund.de'; 'anke.raloff@bmwi.bund.de'; 'corinna.schmiege@diplo.de'; 'nike.boennen@diplo.de'; 'Georg.Junger@bmwi.bund.de'; 'wi-aw-9-eu@brue.auswaertiges-amt.de'; 'Ernst.Roeder-Messell@bmwi.bund.de'; MARTINUSZ Zoltan (CONSILIUM); RELEX 1 Director; RELEX Director-General; BALSELLS TRAVER Maria Luisa (CONSILIUM); GRILLET Frederic (CONSILIUM); VOLOSSOV Victoria (CONSILIUM); FROIS FIDALGO Fernando (CONSILIUM); MARCOS FRAILE Helena (CONSILIUM)  
**Subject:** Enforcement Regulation - 1st Reading EN letter to EP  
**Attachments:** Enforcement Regulatoin - 1st Reading EN letter.pdf

Dear Mr Lange,

Please find attached a scanned copy of the letter that was sent to you by mail today concerning the *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending 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 2019/0273(COD)*.

Best regards,

**Secretariat POLCOM**



**General Secretariat of the Council**

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