



EUROPEAN PARLIAMENT

2014 - 2019

Committee on International Trade

2014/0197(COD)

2.2.2015

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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1215/2009 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process and suspending its application with regard to Bosnia and Herzegovina (COM(2014)0386 – C8-0039/2014 – 2014/0197(COD))

Committee on International Trade

Rapporteur: Goffredo Maria Bettini

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1215/2009 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process and suspending its application with regard to Bosnia and Herzegovina
(COM(2014)0386 – C8-0039/2014 – 2014/0197(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2014)0386),
 - having regard to Article 294(2) and Article 207(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0039/2014),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on International Trade and the opinion of the Committee on Foreign Affairs (A8-0000/2015),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation Recital 2

Text proposed by the Commission

(2) Regulation (EC) No 1215/2009 does not provide any possibility to temporarily suspend the grant of exceptional trade measures in case of *serious and systematic* violations of the fundamental principles of

Amendment

(2) Regulation (EC) No 1215/2009 does not provide any possibility to temporarily suspend the grant of exceptional trade measures in case of violations of the fundamental principles of human rights,

human rights, democracy and the rule of law by its beneficiaries. It is appropriate to introduce such possibility, so as to ensure that swift action can be taken in case *serious and systematic* violations of the fundamental principles of human rights, democracy and the rule of law would occur in one of the countries and territories participating in or linked to the European Union's Stabilisation and Association process.

democracy and the rule of law by its beneficiaries. It is appropriate to introduce such possibility, so as to ensure that swift action can be taken in case violations of the fundamental principles of human rights, democracy and the rule of law would occur in one of the countries and territories participating in or linked to the European Union's Stabilisation and Association process.

Or. en

Amendment 2

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7)) However, Bosnia and Herzegovina has not yet accepted to adapt trade concessions granted under the Interim Agreement in order to take into account the preferential traditional trade between Croatia and Bosnia and Herzegovina under the Central European Free Trade Agreement (CEFTA). In case, by the time of the adoption of this Regulation, an agreement on the adaptation of the trade concessions set out in the Stabilisation and Association Agreement and in the Interim Agreement has not been signed and provisionally applied by European Union and Bosnia and Herzegovina, the preferences granted to Bosnia and Herzegovina should be suspended as from 1 January 2016. Once Bosnia-Herzegovina and the European Union will have signed and provisionally applied an agreement on the adaptation of trade concessions in the Interim Agreement, those preferences should be re-established.

Amendment

(7)) However, Bosnia and Herzegovina has not yet accepted to adapt trade concessions granted under the Interim Agreement in order to take into account the preferential traditional trade between Croatia and Bosnia and Herzegovina under the Central European Free Trade Agreement (CEFTA). In case, by the time of the adoption of this Regulation, an agreement on the adaptation of the trade concessions set out in the Stabilisation and Association Agreement and in the Interim Agreement has not been signed and provisionally applied by European Union and Bosnia and Herzegovina, the preferences granted to Bosnia and Herzegovina should be suspended as from 1 January 2016. Once Bosnia-Herzegovina and the European Union will have signed and provisionally applied an agreement on the adaptation of trade concessions in the Interim Agreement, those preferences should be re-established. ***Bosnia and Herzegovina and the European Union***

should strive for a mutually acceptable solution in adapting the Interim Agreement, especially in terms of cross-border trade,

Or. en

Amendment 3

Proposal for a regulation Recital 7a (new)

Text proposed by the Commission

Amendment

(7a) It is necessary to take into account the constant progress towards European Union membership by the concerned countries and territories of the Western Balkans, as well the accession of Croatia to the European Union and the consequent need to adapt the Interim Agreement with Bosnia and Herzegovina. In this context, it is also necessary to take into account the Union's unequivocal commitment to Bosnia and Herzegovina's EU perspective for, as set out in the conclusions of the Foreign Affairs Council of 15 December 2014. In those conclusions, the need was reiterated for the political leadership of Bosnia and Herzegovina to anchor the reforms needed for EU integration in the work of all relevant institutions, and the need to establish the functionality and efficiency at all levels of government in order to allow Bosnia and Herzegovina to prepare for future EU membership,

Or. en

Amendment4Proposal for a regulation
Article 1 - paragraph -1 (new)
Regulation (EC) No 1215/2009
Recital 14 a (new)

Present text

Amendment

-1. The following recital is inserted:

"(14 a) In order to allow for a proper democratic oversight of the application of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of necessary amendments and technical adjustments to Annexes I and II following amendments to CN codes and to the TARIC subdivisions, in respect of necessary adjustments following the granting of trade preferences under other arrangements between the Union and the countries and territories covered by this Regulation, and in respect of the suspension of benefits under this Regulation in the event of non-compliance with the condition of effective administrative cooperation in order to prevent fraud, the condition of respect for human rights and the rule of law principles as well as the condition of engaging in effective economic reforms and in regional cooperation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council. The Commission should provide full information and documentation on its meetings with national experts within the framework of its work on the preparation and implementation of delegated acts. In this respect, the Commission should ensure that the European Parliament is duly involved, drawing on best practices

from previous experience in other policy areas in order to create the best possible conditions for future scrutiny of delegated acts by the European Parliament;"

Or. en

Justification

Since its adoption, Regulation (EC) No 1215/2009 has been subject to several amendments. The use of delegated acts was introduced by Regulation 1336/2011 which however did not introduce a recital explaining the use of delegated acts. The rapporteur proposes the use of delegated acts in further cases, in order to assure a proper democratic oversight of the application of the basic Regulation by the Commission. This should be clearly set out in a corresponding recital, in line with the Common Understanding on the use of Delegated acts, agreed between the Parliament and the Council.

Amendment 5

Proposal for a regulation

Article 1 - point 1

Regulation (EC) No 1215/2009

Article 2 - paragraph 1 - point d

Text proposed by the Commission

(d) ***the abstention of*** the countries and territories referred to in Article 1 ***from engaging in serious and systematic violations of human rights, including core labour rights, fundamental principles of democracy and the rule of law.***

Amendment

(d) ***respect for democratic principles, human rights and fundamental freedoms, including core labour rights, and respect for the principle of rule of law by*** the countries and territories referred to in Article 1.

Or. en

*Justification*The COM proposal seeks to fill a gap existing in Regulation 1215/2009, namely the absence of a human rights clause, allowing for the suspension of the trade preferences in case of violations of the fundamental principles of human rights and fundamental freedoms as well as the rule of law. The wording of the Commission's proposals is not entirely satisfactory. A positive formulation of this clause, in line with the Copenhagen criteria, would be preferable.

Amendment 6

Proposal for a regulation

Article 1 - point 1a (new)

Regulation (EC) No 1215/2009

Article 2 - paragraph 3

Present text

3. In the event of non-compliance by a country or territory with paragraphs 1 or 2, the Commission may, by means of implementing acts, suspend, in whole or in part, the entitlement of the country or territory concerned to benefits under this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 8(4).

Amendment

(1a) In Article 2, paragraph 3 is amended as follows:

3. In the event of non-compliance by a country or territory with ***points (a) or (b) of paragraph 1***, the Commission may, by means of implementing acts, suspend, in whole or in part, the entitlement of the country or territory concerned to benefit under this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 8(4).

Or. en

Justification

In amendment 6, the rapporteur proposes to apply the procedure with delegated acts for the suspension of preferences in case of non-compliance with the condition of effective administrative cooperation in order to prevent fraud, the condition of respect for human rights and the rule of law principles as well as the condition of engaging in effective economic reforms and regional cooperation. Therefore, Article 2(3) must be amended to exclude the use of implementing acts in those three cases.

Amendment 7

Proposal for a regulation

Article 1 - point 1b (new)

Regulation (EC) No 1215/2009

Article 7 - point c (new)

Text proposed by the Commission

Amendment

(1b) In Article 7, the following point is inserted:

(c) suspension, in whole or in part, of the entitlement of a country or territory

concerned to benefits under this Regulation, in the event of non-compliance by that country or territory with the conditions set out in points (c) and (d) of Article 2(1) and Article 2(2) of this Regulation.

Or. en

Justification

The rapporteur proposes to apply the procedure with delegated acts for the suspension of preferences in case of non-compliance with the condition of effective administrative cooperation in order to prevent fraud, the condition of respect for human rights and the rule of law principles as well as the condition of engaging in effective economic reforms and in regional cooperation. The rapporteur is of the view that the Commission's margin of discretion in these three cases is too wide and that the involvement of the co-legislators is necessary. (See also the Explanatory statement)

Amendment 8

Proposal for a regulation

Article 1 - point 1c (new)

Regulation (EC) No 1215/2009

Article 10 - paragraph 1 - introductory wording

Present text

1. Where the Commission finds that there is sufficient evidence of fraud or failure to provide administrative cooperation as required for the verification of evidence of origin, or that there is a massive increase of exports into the Community above the level of normal production and export capacity or a failure of compliance with the provisions of Article 2(1) by countries and territories referred to in Article 1, it may take measures to suspend in whole or in part the arrangements provided for in this Regulation for a period of three months, provided that it has first:

Amendment

(1c) In Article 10(1), the introductory wording is amended as follows:

1. Where the Commission finds that there is sufficient evidence of fraud or failure to provide administrative cooperation as required for the verification of evidence of origin, or that there is a massive increase of exports into the Community above the level of normal production and export capacity or a failure of compliance with the provisions ***of points (a) and (b)*** of Article 2(1) by countries and territories referred to in Article 1, it may take measures to suspend in whole or in part the arrangements provided for in this Regulation for a period of three months, provided that it has first:

Justification

Given the proposed use of delegated acts for the suspension of preferences in case of non-compliance with the conditions of effective administrative cooperation in order to prevent fraud as well as the condition of respect for human rights and the rule of law principles by the participating country or territory, the safeguard provision concerning temporary suspension of preferences by means of implementing acts should be amended accordingly.

EXPLANATORY STATEMENT

Background of the Commission proposal

Trade between the EU and the Western Balkans countries is liberalised through a number of Stabilisation and Association Agreements (SAA) and an Interim Agreement (IA) in the case of Bosnia and Herzegovina. In addition, Kosovo (which does not yet have its SAA) and the whole region benefit from Autonomous Trade Measures (ATMs), which the EU grants since 2000. These unilateral preferences allow for unlimited duty free access to the EU for most products. Contrary to the SAAs - in which preferences are granted by each party -, ATMs are a one-sided preferential regime in favour of the Western Balkans. The scope of the tariff liberalisation under the SAAs and the preferences granted under Regulation (EC) No 1215/2009 differ, especially with respect to agricultural products. The level of liberalisation in agriculture products under the ATM regime is greater than under the SAA/IA regime.

The Commission proposal under consideration proposes three main changes to the basic Regulation (EC) No 1215/2009:

1. Prolongation of the current preferences until the end of 2020:

The aim of the prolongation is to give the beneficiary countries additional time to align the preferences under the basic Regulation with those provided by the SAA/IA.

2. Introduction of the so-called 'human rights' clause' in the ATM Regulation

This clause enables for a suspension of preferences in case of serious and systematic violations of fundamental principles of human rights, democracy and the rule of law by any of the beneficiary countries.

3. Possible suspension of ATMs for Bosnia and Herzegovina (BiH) from 1 January 2016

Following the accession of Croatia to the EU on 1 July 2013, BiH has not yet accepted to adapt the Interim Agreement in order to take into account the preferential traditional trade between Croatia and BiH under the Central European Free Trade Agreement (CEFTA) which linked the two countries before 1 July 2013. As a result, the preferential quotas agreed in 2008 in the Interim Agreement for 27 EU-Member States are now being used by 28 Member States (on a first come first serve basis). The EU's methodology for amending its trade agreements after an enlargement of the EU has taken place is established upon the concept of traditional trade between the new member of the EU and the country with the trade agreement with the EU. All Western Balkan countries members of CEFTA except BiH have agreed to this methodology and have concluded negotiations to amend their agreements with the EU.

After three rounds of negotiations with BiH, no agreement could be reached. Contrary to the EU's methodology, BiH considers it could not increase its preference for the amount of traditional trade. According to BiH this could only happened in case the EU would offer further concessions.

As a result of this stalemate and the damage to the EU commercial interest, the Commission proposes that a prolongation of ATMs to BiH would not be automatic, but should depend on BiH accepting the EU methodology regarding the adaptation of the Interim Agreement. Once BiH and EU agree, sign and provisionally apply an agreement on the adaptation of trade concessions, the preferences for BiH will be re-established.

Conditions for entitlement to the preferences

The basic Regulation sets out, namely in its Article 2 (1), several conditions for entitlement to the preferential arrangements:

a) compliance with the definition of 'originating products' as provided for in regulation (EEC) No 2454/93;

b) the abstention of the beneficiaries from introducing new duties or charges having equivalent effect with respect to products originating from the EU;

c) the involvement of the beneficiaries in effective administrative cooperation with the Community in order to prevent any risk of fraud.

The Commission proposal under consideration introduces a fourth condition, the so-called 'human rights' clause'. The entitlement to the preferential arrangements is thereby also subject to:

d) the abstention of the beneficiaries from engaging in serious and systematic violations of human rights, including core labour rights, fundamental principles of democracy and the rule of law.

Moreover, Article 2(2) of the basic Regulation contains a further condition for entitlement to the preferences - *the readiness of beneficiary countries to engage in effective economic reforms and in regional cooperation with other Western Balkans countries, in particular through the establishment of free trade areas.*

According to Art. 2(3) of the basic Regulation, in the event of non-compliance with any of the above conditions, the Commission may, by means of implementing acts adopted under the examination procedure, suspend (in whole or in part), the entitlement to the preferential arrangements.

Proposed amendments:

Delegated acts:

One of the main aims of the amendments proposed by the rapporteur (namely AMs 5, 6 and 7) is to replace the use of implementing acts by the **delegated acts** for the decision on suspension of preferences in cases of non-respect of conditions set out in **Article 2 (1) points c) and d) and Article 2(2)**, i.e.:

Art. 2(1):

c) the involvement of the beneficiaries in effective administrative cooperation with the

Community in order to prevent any risk of fraud

d) the abstention of the countries and territories referred to in Article 1 from engaging in serious and systematic violations of human rights, including core labour rights, fundamental principles of democracy and the rule of law (introduced by the Commission proposal under consideration)

Art. 2(2):

' the readiness of beneficiary countries to engage in effective economic reforms and in regional cooperation with other Western Balkans countries, in particular through the establishment of free trade areas'.

When choosing between the delegated acts (Art. 290 TFEU) and implementing acts (Art. 291 TFEU), the co-legislators should take into account, as the main criterion, the **margin of discretion given to the Commission**, in particular by taking into account the **scope of policy assessment** that is involved.

The rapporteur is of the view that the Commission has, in deciding on suspension of preferences on the grounds described above, an important margin of discretion which goes well beyond a simple execution of the provisions of the basic act on the basis of an objective assessment, namely for the following reasons:

- the precise criteria for assessing whether or not the above conditions have been respected are not laid down in the basic act and therefore inevitably entail a subjective assessment which goes beyond the simple implementation;
- according to Art. 2(3) the scope of the suspension is not clearly defined (preferences to be suspended *in whole or in part*), without having precise criteria on how to establish the scope of the suspension;
- Art. 2(3) further provides that the Commission *may* suspend the preferential arrangements - the Commission can thus also decide not to suspend the preferences at all.

The rapporteur is of the view that a **combination of the above three considerations leads to a very significant margin of discretion available to the Commission** when deciding to suspend the preferences. This entails subjective assessment and exceeds the limits of implementation. **Such a decision should therefore be taken by means of delegated acts which assure for the proper oversight by the co-legislators.**

The margin of discretion with regard to the conditions set out in other provisions of the basic Regulation is more limited, the criteria for the assessment of compliance with these conditions are much more objective as in case of the conditions set out in Article 2(1) c) and d) and in Article 2(2). The rapporteur is therefore satisfied that the use of implementing acts is acceptable in those cases.

Furthermore, AM 3 introduces to the basic Regulation a recital explaining the use of delegated acts. Since its adoption, Regulation (EC) No 1215/2009 has been subject to several

amendments. The use of delegated acts was introduced by Regulation 1336/2011 which however did not introduce a recital explaining the use of delegated acts. The rapporteur proposes the use of delegated acts in further cases, in order to assure a proper democratic oversight of the application of the basic Regulation by the Commission. This should be clearly set out in a corresponding recital, in line with the Common Understanding on the use of Delegated acts, agreed between the Parliament and the Council.

Other amendments:

In AM 1, the rapporteur urges EU and BiH to strive for an agreement regarding the adaptation of the Interim Agreement with the EU following the accession of Croatia, in order to avoid the suspension of preferences for BiH as of 1 January 2016.

In AM 2, the rapporteur reiterates the progress made by the Western Balkans countries towards a deeper integration with the EU as well as the recent Council conclusions with respect to Bosnia and Herzegovina.

In AM 4, the rapporteur introduces changes to the so-called 'human rights' clause' in order to obtain a positive formulation, in line with the Copenhagen criteria.

Conclusions:

The overarching objective of the amendments proposed by the rapporteur is to confirm the real and deep commitment of the EU towards the future European integration of the countries and territories covered by this Regulation by granting unilateral trade preferences. The EU integration process was undoubtedly a challenging process for countries that have undertaken, but it proved being the most effective instrument for the stability of the region. In this perspective, such concessions or their possible suspension must be accepted as an impulse to accelerate the path of political and socio-economic reforms underlined in "Compact Growth", indispensable to the attainment by Western Balkans countries, the requirements of Copenhagen criteria and of *aquis communautaire*. To this end, the rapporteur urges BiH to adapt the Interim Agreement to preferential trade with Croatia following the entry of the latter in the European Union on 1 July 2013 and, at the same time, calls on the parties to take account of the mutual interests in order to reach a satisfactory agreement for both EU Member States and for the members of CEFTA.