

Tuesday 19 January 2021

P9\_TA(2021)0004

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

**European Parliament legislative resolution of 19 January 2021 on 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 (COM(2019)0623 — C9-0197/2019 — 2019/0273(COD))**

**(Ordinary legislative procedure: first reading)**

(2021/C 456/27)

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2019)0623),
  - having regard to Article 294(2) and Article 207 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0197/2019),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to opinion 2/15 of the European Court of Justice <sup>(1)</sup>,
  - having regard to its resolution on the Crisis of the WTO Appellate Body of 28 November 2019 <sup>(2)</sup>,
  - having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 4 November 2020 to approve Parliament's position, in accordance with Article 294(4) 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 (A9-0133/2020),
1. Adopts its position at first reading hereinafter set out;
  2. Approves the joint statements by Parliament, the Council and the Commission annexed to this resolution;
  3. Takes note of the statements by the Commission annexed to this resolution;
  4. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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**P9\_TC1-COD(2019)0273**

**Position of the European Parliament adopted at first reading on 19 January 2021 with a view to the adoption of Regulation (EU) 2021/... of the European Parliament and of the Council amending Regulation (EU) No 654/2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules**

*(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) 2021/167.)*

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<sup>(1)</sup> ECLI:EU:C:2017:376.

<sup>(2)</sup> Texts adopted, P9\_TA(2019)0083.

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ANNEX TO THE LEGISLATIVE RESOLUTION

**Joint Declaration of the Commission, the Council and the European 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 Union 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 a possible instrument, which could be adopted in order to dissuade or offset coercive actions by third countries and which would allow the expeditious adoption of countermeasures triggered by such actions. 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.

**Joint Declaration of the European Parliament, the 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 Appellate Body.

**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 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 WTO 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 (EU) No 654/2014.

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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 will 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 will 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 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 will 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.

### **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.

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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.

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