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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**Initial Review of the scope of the Enforcement Regulation**

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## Initial Review of the scope of the Enforcement Regulation

On 15 May 2014, the European Parliament and the Council adopted the Enforcement Regulation<sup>1</sup>, providing the European Union with a legislative framework to enforce and defend the rights it enjoys under international trade agreements in a swift and effective manner and in accordance with the Lisbon Treaty and its international obligations.

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:

- that suspend concessions or other obligations under the WTO Agreement or other international trade agreements, including regional or bilateral agreements, following the adjudication of trade disputes under such agreements; and
- that rebalance concessions or other obligations, by exercising its right under the WTO Agreement on Safeguards or the provisions on safeguards in other international trade agreements to respond to a safeguard measure applied by a WTO Member, or by exercising its right under Article XXVIII of the GATT to respond to modifications of concessions applied by a WTO member.

The Enforcement Regulation empowers the Commission to adopt such trade policy measures by means of implementing acts in the area of trade in goods, by introducing or increasing customs duties or quantitative restrictions on importation or exportation, and in the area of public procurement. The Enforcement Regulation does not empower the Commission to adopt such trade policy measures by means of implementing acts in the area of services or intellectual property.

The Enforcement Regulation requires the Commission to review the scope of the trade policy measures that it is empowered to adopt by means of implementing acts<sup>2</sup>. The Commission must carry out such review in two steps.

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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.

<sup>2</sup> Article 10 of the Enforcement Regulation.

No later than three years after the first instance of the adoption of an implementing act or no later than 18 July 2019, whichever is the earlier, 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, and must report its findings to the European Parliament and the Council. The Commission will carry out such a final review and report its findings to the co-legislators by the agreed deadline.

In the meantime, by 18 July 2017, the Commission must undertake a review to envisage additional trade policy measures in the field of services; examine, *inter alia*, a certain number of aspects as listed in Article 10.2 of the Enforcement Regulation; and report its initial assessment to the European Parliament and the Council. The Commission has carried out such an initial review and its assessment is set out below.

In its initial review of the Enforcement regulation, the Commission has examined: (i) the international developments with regard to the suspension of other obligations under the General Agreement on Trade in Services (GATS); (ii) the developments within the European Union with regard to the adoption of common rules on services sectors; (iii) the effectiveness of possible additional trade policy measures as a means to enforce the European Union's rights under international trade agreements; (iv) the available mechanisms to ensure the practical implementation, in a uniform and efficient manner, of possible additional trade policy measures concerning services; and (v) the implications for service providers present in the European Union at the time of adoption of implementing acts under this Regulation.

Based on its initial assessment, and for the time being, the Commission does not envisage proposing an extension of the empowerment under the Enforcement Regulation to adopt also trade policy measures in the area of services. This is because, as of the entry into force of the Enforcement Regulation on 15 May 2014, the Commission has observed no new developments that would require such an extension of the empowerment.

First, the Commission has observed no new developments at international level in respect of the suspension of concessions or other obligations under the GATS. In particular, the Commission has enquired into whether any WTO Members requested authorisation from the Dispute Settlement Body (DSB) of the WTO to take countermeasures in the area of services. As of 15 May 2014, WTO Members requested DSB authorization to take countermeasures in five disputes: *Colombia – Textiles*, *India – Agricultural Products*, *US – Tuna II (Mexico)*, *US – COOL (Mexico)*, and *US – COOL (Canada)*. None of these requests for DSB authorization to take countermeasures was filed by the EU. None of these requests pertains to trade in services under the GATS.

Second, the Commission has 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.

On 16 May 2017, the Court of Justice of the European Union rendered its Opinion on whether the European Union enjoys exclusive competence to sign and conclude the EU-Singapore free trade agreement. The Court declared that the European Union has exclusive competence *inter alia* on those parts of the agreement relating to market access in goods and services (including all transport services).

Notwithstanding this important clarification by the Court, and notwithstanding the adoption by the European Union of common rules on certain services sectors<sup>3</sup>, the fact remains that rules adopted by the Member States continue to apply in numerous sectors, whether harmonized at European Union-level or not. By way of example, certain rules at Member States level still condition the provision of services in a certain sector to a national authorisation scheme operating through licences, approvals or concessions. The co-existence between common rules and Member States' rules and authorization schemes in services sectors remains important in determining whether a Commission's empowerment to adopt trade policy measures in the area of services under the Enforcement Regulation ought to be envisaged.

Third, the Commission has observed no new developments as to the practical limitations on how workable and effective trade policy measures in the area of services may be, because of the inherent features characterising the provision of services, including the enforceability of restricting their supply. There were also no new developments concerning the conditions – in particular the legal framework under the TFEU – which are relevant for the situation of service providers present in the Union, in case implementing acts would be applied in relation to them.

In conclusion, the Commission's initial assessment has indicated that, since the entry into force of the Enforcement regulation, and for the time being, no international, European or substantive development is capable of justifying a change in an approach that envisages an expansion of Commission's empowerment to adopt additional trade policy measures in the area of services under the Enforcement Regulation.

This said, the Commission will continue monitoring any relevant developments so as to be in a position 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, also in light of its experience in designing and applying trade policy measures suspending or rebalancing concessions or other obligations under international trade agreements.

The Commission would like to underscore the growing importance of services in today's economy. Services are increasingly traded across borders and are tightly interlinked with traditional manufacturing trade and investment. That is why the number of WTO

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<sup>3</sup> On 24 June 2015, for instance, the Commission adopted Implementing Regulation 2015/983, providing rules on the procedure for issuance of the European Professional Card and on the application of the alert mechanism pursuant to Directive 2005/36/EC of the European Parliament and of the Council. As a result, since January 2016, the European Professional Card is available for a number of professions such as nurses, pharmacists, physiotherapists, mountain guides and real estate agents.

disputes in the field of services is growing. Taking countermeasures in the field of services remains a possibility.

The Commission would also like to reconfirm that EU trade policy must strengthen Europe's place in global supply chains by supporting the full range of economic activities through which European companies create and sell value, including services. That is why the European Union has played a central role in negotiating the Trade in Services Agreement and international trade agreements with a strong service component.

The Commission would like to note in this regard 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.