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WORKING DOCUMENT

From:	AT Delegation
To:	Working Party on Trade Questions
Subject:	Amended Enforcement Regulation - Comments by Austria

Proposal for an Amendment of 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 (the Enforcement Regulation) - comments from Austria

PUBLIC

General Remarks

Austria fully supports the objective of this regulation. Austria also shares the view that implementing acts are the most appropriate instrument to achieve this objective. However, according to the new sublitera bb) inserted into Article 3 (m.d. 14215/2019), the scope of the regulation should also be extended towards other cases of obstruction of the functioning of a dispute settlement procedure. This would result in a significant rise of potential cases of application, thus strengthening the risk of overlapping competences between this regulation and the Union's other Trade Policy Instruments. Therefore an obligation should be inserted into the regulation to ensure coherence between this regulation and other Trade Poliy instruments in force or under negotiation, such as the International Procurement Instrument / IPI currently under discussion in the Trade Questions' Working Party. Accordingly, the review period needs shortening. This is of particular relevance regarding the public procurement sector with the International Procurement Instrument currently being under negotiation, in order to avoid contradictions in particular parts, such as rules of origin. One possibility would be to eclipse the public procurement sector entirely and refer this competence to the scope of IPI. However, if a fast adoption of the legislative proposal for political reasons prevents major amendments, it would be essential to ensure an immediate adaptation of the Trade Enforcement Regulation after the adoption of IPI by way of a corresponding commitment by the institutions, such as a joint declaration by Commission and Council.

It will have to be very carefully examined how a meaningful set of rules can be designed to secure the enforcement of the EU´s trading rights under the GPA and other agreements covering public procurement taking into account the special nature of these obligations, the interests of procuring authorities and the limited experience the EU has so far gained with retaliation measures in this area.

With regard to the Scope of the regulation it is clear that only measures concerning trade in goods and concerning public procurement may be taken under this regulation. As the DSU in the framework of the WTO Agreement allows for crossretaliation in the areas of trade in goods, trade in services and trade-related intellectual property rights it is not clear, however, if the proposed regulation covers measures in the goods area that "retaliate" against measures in the services or intellectual property area. The aim of the dispute settlement is to find mutually agreed solutions which fit the problem and which must not necessarily result in the suspension of concessions. Solutions agreed upon and measures authorized by the dispute settlement bodies might be of very different types which go far beyond those covered by the proposed Regulation. For this reason such an exhaustive enumeration of possible measures would be much too narrow and would not allow for other measures which might be more appropriate in a given case. Besides the types of measures explicitly mentioned are exactly those also provided for in the proposed IPI Regulation and would cause a lot of different problems including a considerable increase of administrative burden and disadvantages for EU producers or service suppliers under certain circumstances.

Pending further scrutiny by our authorities Austria reserves the right to submit additional comments.