

Roadmap

Title of the initiative: Proposal **for a Regulation adjusting decision-making in the field of trade policy in the light of the entry into force of the Treaty of Lisbon**

Type of initiative (cwp/catalogue/comitology): CWP

Lead dg / contact person / details: DG Trade Unit F.2

Expected date of adoption of the initiative (month/year): June/July 2010

Date of modification: 22 March 2010

version no.: 1

Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

The Treaty on the Functioning of the European Union ("the TFEU") creates a new classification of legislation, delegated acts and implementing acts (see articles 290 and 291 thereof). In particular, Article 291 on implementing acts foresees the adoption of implementing acts by the European Commission where uniform conditions for implementing legally binding Union acts are needed. The adoption of such implementing acts is subject to the control of the Member States and the two legislative institutions (the European Parliament and Council) are not, as such, involved in this control.

At the same time, the Treaty on the Functioning of the European Union gives the European Parliament equal rights as the Council as regards the adoption of legislation in the trade field (the ordinary legislative procedure applies) and its consent is required for the approval of all trade agreements. This is an important innovation for the conduct of trade policy making, and significantly increases the role of the European Parliament. The change in relative roles should also be reflected in decision-making for implementing acts.

A number of acts containing decision making for the adoption of implementing acts in the field of trade policy reserve the adoption of such acts to the Council. Such specific procedures are outside the current Council Decision on the exercise of implementing powers by the Commission (the so-called "comitology" Decision) and therefore not covered by the Commission proposal of 9 March 2010 for a Regulation of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (COM(2010) 83 final).

Given the significant changes both to the classification of acts in the TFEU and to the institutional set-up in the conduct of trade policy the Commission takes the view that it is necessary to review existing decision-making procedures for the adoption of implementing measures in the trade field. The Commission's objective will be to align these existing procedures with the general rules on the adoption of implementing measures under the TFEU, as contained in the Commission's proposal of 9 March 2010. In doing so, the Commission aims to minimise if not avoid completely deviations from the standard rules.

The review and alignment of these procedures will not affect previous implementing acts adopted under the instruments before the amendments become effective.

What are the main problems identified?

The main problem relates to the current set-up of decision-making for the adoption of implementing acts in the field of trade policy. The current situation, in which the Council exercises a number of these powers, requires review in light of the entry into force of the Treaty of Lisbon and in particular Article 291 of the Treaty on the Functioning of the European Union.

Who is affected?

This is an institutional issue, affecting the decision-making procedures for a number of instruments of trade policy. Regulations which will be affected include the basic anti-dumping regulation, the basic anti-subsidy regulation etc.

(i) Is EU action justified on grounds of subsidiarity?

Trade policy is an area of exclusive EU competence.

(ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU added value)?

Trade policy is an area of exclusive EU competence and the initiative concerns decision-making in that field.

B. Objectives of EU initiative**What are the main policy objectives?**

The main objective is to review the decision-making procedures for the adoption of implementing acts in the area of trade policy by aligning them on the Regulation which will be adopted pursuant to Article 219 TFEU.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

No.

C. Options**(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered? (iii) Would any legislative initiatives go beyond routine up-date of existing legislation?**

This issue can only be addressed through the adoption of legislation amending various instruments used in the exercise of trade policy. The initiative is nevertheless more than a routine up-date as it will review all instances of specific decision making procedures in current trade policy regulations to update those in light of the entry into force of the TFEU.

The Commission could refrain from acting, but this would not be consistent with the classification of acts in the TFEU, nor the institutional balance set out therein. The Commission could also change the acts one by one when they come up for revision. However, this option would mean that some acts would not be changed for a significant number of years. This would not be an appropriate response to the consistency concerns noted above.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

No. There are links to the Commission's proposal of 9 March 2010 pursuant to Article 291 setting out the rules governing the Commission's adoption of implementing acts. However, the proposed changes would only apply to instruments in trade policy and only those which have not been subject to the previous rules applying to the Commission's exercise of implementing powers (i.e. the Council Decision on comitology, referred to above). Only certain activities in the field of competition policy were similarly exempted.

Explain how the options respect the proportionality principle?

The initiative will provide for a simplification of procedures, and an alignment on the general rules on the adoption of implementing acts which will be set out in the Regulation adopted pursuant to Article 291 TFEU. As a consequence, the proportionality principle will be respected.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pp. 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

Not applicable. The initiative relates only to institutional issues and is general in scope. Direct impacts are therefore a priori limited to decision making procedures and any substantive impact is indirect and flows from the overall changes under the entry into force of the TFEU.

Could the options have impacts on the EU Budget (above 5 Mio €), and/or should the IA also serve as the *ex ante* evaluation, required by the Financial Regulation?

No.

Could the options have significant impacts on (i) simplification (ii) administrative burden or on (iii) relations with third countries?

The initiative will simplify procedures, by aligning more decision-making procedures on the standard rules for the adoption of implementing acts. Since the initiative concerns trade policy it will have an indirect impact on third countries. However, given the initiative will be of general scope there are no specific impacts for third countries.

E. Planning of further impact assessment work

When will the impact assessment work start?

Not necessary, given that the initiative concerns only decision-making procedures.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when? (v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

Not applicable. See above.

Which stakeholders & experts have been/will be consulted, how and at what stage?

Not applicable. See above.