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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the protection of the Union and its Member States from economic coercion by third countries

{SEC(2021) 418 final} - {SWD(2021) 371 final} - {SWD(2021) 372 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The aim of the present proposal for a Regulation of the European Parliament and of the Council is to protect the interests of the Union and its Member States by enabling the Union to respond to economic coercion. Economic coercion refers to a situation where a third country is seeking to pressure the Union or a Member State into making a particular policy choice by applying, or threatening to apply, measures affecting trade or investment against the Union or a Member State. The Union response, or its mere availability, aims to dissuade third countries from engaging in economic coercion, in the first place, or to dissuade them from continuing the economic coercion, if economic coercion occurs. As a last resort, the Union may counteract the economic coercion. The Union response may take the form of a broad range of measures, following a determination of an act as coercive, including efforts to enter in consultations with the third country concerned to facilitate an agreed or adjudicated solution, where possible, a variety of countermeasures and international cooperation.

The present proposal aims to remedy a legislative gap to address the evolving issue of economic coercion. The Union currently does not have a legislative framework for acting against economic coercion. None of the existing legal instruments addresses the issue of economic coercion.

At the same time, there is an increasing and significant use of economic coercion by third countries that threatens to undermine the rights and interests of the Union and Member States. The sources of economic coercion are multiple and are of a broad concern.

The European Parliament, the Council and the Commission adopted a Joint Declaration in which they recognised that actions by third countries that seek to coerce the Union or a Member State to take or withdraw particular policy measures were of concern.[1] The Joint Declaration contains the Commission's commitment to make a legislative proposal for an instrument to deter and counteract economic coercion by the end of 2021 at the latest. The European Parliament and the Council committed to consider the proposal in a timely manner.

The Commission President announced the initiative in her Letter of Intent to the President of the Parliament and President in office of the Council of 16 September 2020 under the heading "An economy that works for people". The Commission Work Programme 2021 identifies the initiative as a key one for the referenced period.

• Consistency with existing policy provisions in the policy area

The issue of economic coercion features in the Union's current trade policy agenda. The Trade Policy Review Communication of February 2021[2] aims at shaping a new consensus for an open, sustainable and assertive trade policy in a challenging economic and geopolitical context. It specifically refers to a future Commission proposal for an anti-coercion instrument. The Communication discusses the need to navigate rising global tensions with trade being

[1] OJ C 49, 12.2.2021, p.1. The Joint Declaration was adopted in the context of the legislative process during 2020 to amend the EU Trade Enforcement Regulation where the European Parliament and a number of Member States raised concerns about the issue of economic coercion, and these concerns were shared by the Commission.

[2] Communication from the Commission of February 2021 on the Trade Policy Review - An Open, Sustainable and Assertive Trade Policy, COM(2021) 66 final.

increasingly weaponised in a geo-economic context while highlighting the interconnected nature of the Union's economy with third country economies, the need for global cooperation and the need to strengthen the Union's resilience.

- **Consistency with other Union policies**

The present proposal is complementary to other, more structural initiatives to enhance the resilience of the Union economic and financial system to various forms of external pressure. The update of the Union Industrial Strategy of May 2021 aims at strengthening the single market's resilience and at addressing strategic dependencies.[3] This strategy plays a key role in the recovery and the green and digital transitions, as well as in reinforcing the Union resilience supported by robust competition and trade policies. The Vice-President in charge of external relations will ensure consistency with the different areas of the external action within the Commission.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the proposed regulation is Article 207(2) TFEU. Article 207(2) TFEU provides for the adoption of measures defining the framework for implementing the common commercial policy. Article 207(1) TFEU defines the scope of the common commercial policy, which refers to, inter alia, trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, export policy and measures to protect trade. The initiative is concerned with foreign countries' measures that take the form of measures affecting trade or investment towards the Union. The initiative provides a response, in the area of the common commercial policy but also in other areas, to foreign countries' measures of economic coercion. In full compliance with the Treaties, the application of this Regulation shall be consistent with the Union's overall external policy.

- **Subsidiarity (for non-exclusive competence)**

Article 5(3) TEU provides that the principle of subsidiarity applies in areas which do not fall within the exclusive competence of the Union. Article 3(1)(e) TFEU provides that the Union has exclusive competence in the area of common commercial policy. Article 207(2) TFEU falls into the category of exclusive competences. Therefore, the question of subsidiarity does not arise insofar as the third countries' measures of economic coercion and/or the Union response falls under the common commercial policy.

In any event, only an action at Union level would ensure a uniform solution to a problem of concern to the Union as a whole. Member States remain responsible for and are able to act in the defence of their rights under international law. This includes their right to counteract international economic coercion, as long as they do so without taking measures for which the Union is exclusively competent. However, it is not possible for a Member State to put in place national legislation in order to cover economic coercion that is targeted against the Union and not against that Member State. Furthermore, national legislation would not be capable of providing an effective solution in the situation of concern to the Union as a whole or across the Member States. Union action remains the sole option under which the Union can

[3] Communication from the Commission "Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery" of May 2021, COM(2021) 350 final.

implement its obligation to define and conduct the common commercial policy, and Member States cannot act in that area.

For completeness, it is considered that the added value of an action at Union level lies in the achievement of benefits that cannot be achieved sufficiently, if at all, at Member State level. These benefits relate to deterrence and counteraction against economic coercion by third countries to preserve the Union's and Member States' autonomy in policy-making and shield trade and investment from weaponisation.

- **Proportionality**

The proposal respects the principle of proportionality. The envisaged instrument would be a comprehensive framework for action against economic coercion. Its structures imply restraint in action in order first to try to investigate and resolve issues without resorting to countermeasures (deterrence effect, efforts towards agreed or adjudicated solutions). This instrument explicitly prioritises a non-interventionist approach (agreed solutions versus countermeasures). However, where the need arises, the Union would be able to respond with countermeasures. The selection criteria explicitly include a requirement that any Union response, and in particular countermeasures, must be commensurate to the injury that they respond to in individual cases, in line also with the requirements of international law. The selection criteria further prescribe that collateral damage and administrative burden be as small as possible. Therefore, not only the instrument itself, but also measures adopted under it, would be proportionate.[4]

- **Choice of the instrument**

On the basis of Article 207(2) TFEU, it is proposed to empower the Commission to take action on behalf of the Union to respond to third countries in individual cases of economic coercion, including through implementing acts in accordance with Article 291 TFEU, and to supplement the range of possible countermeasures and adapt applicable rules on origin through delegated acts in accordance with Article 290 TFEU. Currently, the Union does not have a dedicated legislative framework to protect the Union's and Member States' interests in the specific situation of economic coercion. Accordingly, the proposal remedies this gap.

The proposed single and comprehensive legislative instrument best achieves the specific objective of deterring economic coercion, in the first place. Second, it ensures an effective, efficient and swift Union response to individual cases of economic coercion, should economic coercion occur, which is equally important for the deterrence effect. Third, it is the most suitable choice to provide for uniformity of rules and procedures in relation to the Union's response.

More generally, such a dedicated legislative instrument setting out rules and procedures for Union action corresponds to the Union's adherence to a rules-based approach, also internationally. It is a signal to international partners that the Union is not willing to accept economic coercion. It highlights the assertiveness and the resilience of the Union, and supports the efforts to ensure open strategic autonomy.

[4] Section 9 of the impact assessment report contains a discussion on the compliance with the principle of proportionality of the preferred option.

3. RESULTS OF STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENT

- **Stakeholder consultations**

The Commission carried out extensive consultations with stakeholders in relation to the issue of economic coercion, a potential legislative instrument and its possible impact:[5]

– on 17 February 2021, it published the inception impact assessment for feedback by stakeholders until 17 March 2021;[6]

– on 23 March 2021, it launched an open public consultation on EUSurvey in all EU official languages, for 12 weeks, until 15 June 2021;[7]

– on 16 April 2021, an online stakeholder meeting took place;

– throughout March-July 2021, targeted consultations with specific groups took place, including businesses, academia, Member States and governments of third countries; additionally, stakeholders submitted ad hoc input.

The public consultations revealed the common recognition that economic coercion is increasingly posing a problem for the Union and Member States, which should not be left unaddressed. It showed solid support for the creation of a legislative instrument to address the issue of economic coercion. More specifically, stakeholders attach particular value to the deterrence objective of such an instrument, connecting it with the credibility and effectiveness of the instrument. They prioritise efforts to encourage third countries to stop the economic coercion through non-interventionist measures (such as diplomacy), and predominantly regard the use of countermeasures as a last resort whose collateral damage must be weighed before action. Another area of support is that the triggers for the use of the instrument should be sufficiently broad to cover informal economic coercion, and that in order to ensure an effective response, the Union should be able to choose from a range of options in individual cases. On the other hand, stakeholders referred to the value of international cooperation against economic coercion. The present proposal contains all these elements.

Stakeholder input as regards the existence and evolution of the problem of economic coercion contributed to the justification and design of the proposal. Stakeholders put forward inter alia a number of examples of measures of economic coercion taking place from multiple sources and reported on the negative impact and costs caused by those measures.

At the same time, stakeholders raise possible risks associated with a legislative instrument such as escalation through retaliation and negative consequences for international cooperation, multilateralism and respect for the rules-based order. The impact assessment accompanying the proposal covers these risks and they are duly taken into account in the design of the proposed instrument.

The views are mixed as regards the possible creation of a financial compensation scheme for operators affected by measures of economic coercion – an option which is not included in the

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5 The consultation strategy is available at the link: Towards an EU anti-coercion instrument - Trade - European Commission (europa.eu). A synopsis report contained in Annex 2 to the impact assessment report discusses the results of all consultation activities.

6 The received feedback is available at the link: Trade – mechanism to deter & counteract coercive action by non-EU countries (europa.eu).

7 A summary factual report is available at the link: Trade – mechanism to deter & counteract coercive action by non-EU countries (europa.eu).

proposed instrument as explained in the impact assessment. Roughly half of the respondents across the groups favour such a scheme (mostly businesses), while the other half either disagreed or showed no interest. Businesses in favour also pointed to potential issues, such as the complexity of determining the compensation, budgetary implications and the appropriateness for this instrument.

Finally, a few business associations and public authorities raise the idea of creating a "resilience office" to, amongst other things, investigate cases and manage the new instrument. The impact assessment report explains why this option is not pursued at this stage.

- **Collection and use of expertise**

In addition to the impact assessment supporting the proposal (discussed below), the Commission carried out the consultation activities described in the preceding section. In-house expertise and input from experts in the field from academia[8] further contributed to the design of the proposal.

- **Impact assessment**

The proposal is supported by an impact assessment.[9] The Regulatory Scrutiny Board examined the impact assessment and, on 27 September 2021, issued a positive opinion. The Board's recommendations and an explanation of how they are taken into account are included in Annex 1 to the impact assessment report.

In light of the objectives of the initiative, namely the protection of the interests of the Union and of the Member States from economic coercion, the impact assessment report considered three options. It retained the option of the creation of a new legal instrument that would fill an identified gap in the current legislative framework. The report analysed a number of design parameters for the instrument and options for them, namely: triggers and threshold for action; possible action; selection conditions for countermeasures; decision-making; activating the instrument; and stakeholder involvement. Within this option, the report identified a preferred solution in terms of effectiveness, efficiency and coherence. It discarded the options of no policy change and of a "resilience office" as unsuitable for reasons stated in the impact assessment report.

The preferred option is the basis for the present proposal. Notably, it represents a framework regulation of the European Parliament and the Council allowing action by the Union, in compliance with public international law, with the following main elements:

- A two-step response by the Union. The first step involves deploying non-interventionist measures, such as formally identifying that an act falls within the scope of the instrument and efforts to engage with the third country, with the primary aim being to de-escalate the economic coercion and encourage the third country to end its measures. If this step is not successful, a broad range of possible countermeasures becomes available in the second step, as a last resort. Several criteria would guide the narrowing down of the possibilities in terms of proportionality, the Union's interest, avoiding or limiting as far as possible collateral costs and administrative burdens.

[8] See Annexes 1 and 2 to the impact assessment report.

[9] The impact assessment report and an executive summary are published together with the present proposal.

- A broad scope of possible third-country measures of economic coercion can trigger a Union response including explicit, disguised and silent economic coercion and their variations. A qualitative threshold for action would apply.
- The decision-making process under the instrument falls under the standard framework of delegated and implementing acts, which includes avenues for swift action. Stakeholders should have the opportunity to share their views and data regarding the use of the instrument.

The benefits of the preferred option are considerable. They arise in the first place from the deterrence effect at the level of the scope of application, broadly capturing measures of economic coercion, as well as at the level of the range of measures, which allows for a calibrated and effective response. A successful deterrence effect will result in no or limited use of the instrument, in the best-case scenario. Benefits also arise from the two-step process that prioritises a non-interventionist approach (agreed solutions versus countermeasures), and openness to engage with the third country, but also from the ability to quickly respond with countermeasures, where necessary for the protection of the interests of the Union and its Member States. No significant costs arise from the existence of the instrument, as such. Potential varying costs may arise from the use of the instrument in individual cases, in particular if the Union deploys countermeasures. Any costs would be taken into account in the design of the particular measure. The impact of the preferred option on different categories of stakeholders is set out in Annex 3 to the impact assessment report.

In the present proposal, some elements are further developed. The proposal elaborates the decision-making process in comparison to the description of the preferred option. It specifies the conferral of implementing and delegated powers on the Commission for the respective actions under the instrument and provides for detailed rules and procedures of decision-making. It refines the range of countermeasures. It focuses on the prospects of international cooperation by establishing a distinct procedural step for that purpose.

- **Fundamental rights**

The proposal is coherent with the Union's human rights policy and consistent with the Charter of Fundamental Rights. The existence of the instrument itself would positively affect fundamental rights, in accordance with the Union's positive obligation to protect the rights of its citizens against infringements from other sources, in this case foreign governments, when the existence or use of the instrument can make a contribution towards deterring their acts of economic coercion which could negatively affect those rights. Where the use of the instrument results in restrictions that affect fundamental rights because they restrict the freedom to engage in international trade or investment as part of the freedom of professional activity, the right of property including intellectual property or other fundamental rights including equal treatment, this would be a legitimate action by the Union under the Charter of Fundamental Rights. This is because this action would be taken in conformity with the requirements that the action be taken on the basis of a proper legal basis, by the competent authorities, in pursuit of a legitimate objective, and in line with the principle of proportionality.

4. BUDGETARY IMPLICATIONS

The adoption of the instrument will not have any direct budgetary implications for the European Union beyond the administrative budget of the Union. The administration of the instrument, in particular the gathering of information, conduct of investigations, preparation of determinations, efforts at agreed solutions, preparing Union response measures and

monitoring of any economic coercion entails a substantial administrative burden for the Commission, in particular, but not exclusively, for the Directorate-General for Trade. The extent of that burden will depend on the frequency of economic coercion to which the Union and the Member States are subject and the extent of the use of the instrument. Whilst it is hoped that the presence of the instrument will lead to a reduction in measures of economic coercion, there is no such guarantee. It is estimated that the operation of the instrument will require five full-time equivalent posts.

5. OTHER ELEMENTS

• Implementation plans, monitoring, evaluation and reporting arrangements

The Commission services will monitor the functioning of the instrument, including engaging with stakeholders to monitor their experiences and views regarding the impact of the instrument. They will collect data on third countries' measures as well as on the Union response considered and adopted.

The proposal provides for a review as regards the functioning and application of the instrument, with reporting obligations to the European Parliament and the Council.

• Internal coordination

The Directorate General for Trade will manage the functioning of the instrument, under the responsibility of the Commissioner responsible for Trade whilst ensuring a collegiate process within the Commission. The European External Action Service will support the High Representative in her/his function, as Vice-President of the Commission, to coordinate the Union's external action within the Commission. Union delegations under the authority of the High Representative will exercise their functions as external representatives of the Union and assist, as relevant, in fact-finding and external dialogues.

• Detailed explanation of the specific provisions of the proposal

Article 1 defines the subject matter of the proposed Regulation, that is an effective protection of the interests of the Union and its Member States from certain third-country measures, which is the general objective of the instrument. It further sets out that a Union action would be permitted to that end, and that the protection is to be achieved through deterrence, or having the third country end its measures, or counteraction. Article 1 also recalls, consistent with the EU Treaties, that any action taken under the Regulation must comply with international law.

Article 2 establishes the scope of application. The first paragraph sets out the situation in which the Regulation applies, notably where two cumulative conditions related to the third-country's action are met. The second paragraph further guides the Commission in determining the existence of economic coercion in any concrete case, by referring to a number of considerations related to the third-country measure and conduct.

Articles 3, 4 and 5 establish a first set of steps with regard to the Commission's actions under the Regulation that start with an examination, leading to a determination of the existence of economic coercion, followed by possible engagement with the third country concerned. This set of steps reflects the preferred approach of only adopting response measures when necessary and aims at dissuading the third country from continuing with its economic coercion without having to resort to countermeasures.

- First, the Commission would examine the third-country measure in question in light of the conditions under Article 2(1) (Article 3), and would be guided by the criteria outlined in Article 2(2), on its own initiative or when relevant information is brought to its attention.
- Second, the Commission would determine whether the conditions of economic coercion are fulfilled, via a Commission decision (Article 4). The Commission may inform the third country in question ahead of the determination, in order to give it an opportunity to respond. In any event, the Commission would communicate any affirmative determination to the third country in question and request that the economic coercion cease and, where appropriate, that any injury be repaired.
- At the same time, the Commission would be ready to engage, on behalf of the Union, with the third country concerned with a view to obtaining the cessation of the economic coercion (Article 5). The Commission would also raise the matter in any relevant international forum in order to increase the chances of a cessation of the economic coercion.

Article 6 introduces a step of engagement in international cooperation on the matter with other third countries affected by the same or similar measures of economic coercion. The aim remains the cessation of the economic coercion, but also the promotion of a multilateral solution.

Articles 7, 8, 9, 10 and 11 concern the second, and last, set of steps, that is the resort to the Union response measures. This set of steps is characterised by a more interventionist approach. It is optional and would only apply where the third country does not cease the measures of economic coercion following the first set of steps. While the aim is to counteract the economic coercion, the underlying objective is for the Union response measures to induce the third country to cease its economic coercion, in line with international law.

- Article 7 defines the conditions for the resort to Union response measures, which must be present for the Union to proceed, sets out the steps to be taken for the Commission to adopt an implementing act to introduce such measures and to deal with related events, including issuing notices for related events. There would be the possibility of adoption of immediately applicable implementing acts to accommodate the need for urgency, where justified. Article 7 refers to the available measures of Union response.
- Article 8 provides that the Commission may designate natural or legal persons subject to conditions and procedural guarantees and apply measures to them.
- Article 9 sets out selection and design criteria for the Union response measures and envisages that such measures would be selected and designed based on the available information, taking into account the determination of the measures of economic coercion and the Union's interest. Article 9(3) provides that certain such measures can be applied on an intra-Union basis. This will be possible in particular as regards Union response measures available pursuant to points (d) to (l) of Annex I.
- Article 10 introduces the procedures, criteria and conditions for the amendment, suspension and termination of Union response measures. The Commission would act via implementing acts, and via immediately applicable implementing acts in urgent cases. Article 10(1) underlines that the

Commission would continuously assess the matter after the imposition of Union response measures.

- Article 11 introduces the procedure for an information gathering in relation to the adoption, amendment, suspension and repeal of Union response measures. The procedure is optional before a suspension and repeal since such actions would involve the lifting of Union response measures. In the event of urgency, the Commission would seek information and views from affected stakeholders in a targeted manner, to the extent possible and needed.

Articles 12, 13, 14 and 15 are supporting horizontal provisions. Article 12 provides for the rules on treatment of confidential information. Article 13 refers to the applicable rules of origin and nationality for goods, services, investments and intellectual property rightholders which are relevant to determining the Union response measures. Articles 14 and 15 provide for the conditions and procedures applicable to the exercise of delegated and implementing powers conferred on the Commission, respectively, in addition to other provisions.

Article 16 establishes an obligation on the Commission to evaluate any adopted Union response measures shortly following their termination. It also establishes a review and reporting obligation on the Commission as regards the functioning of the proposed instrument and sets an appropriate timeframe.

Article 17 sets out the date of entry into force of the Regulation and that the Regulation would be binding in its entirety and directly applicable in all Member States.

Annex I lists the possible Union response measures. The Commission may amend this list by adding other available measures, via a delegated act, subject to conditions.

Annex II sets out the rules of origins and nationality for goods, services, investments and intellectual property rightholders. The Commission may amend those rules via a delegated act, subject to conditions.

This proposal is accompanied by a Communication from the Commission to the European Parliament and Council setting out the actions that could be taken by the Commission, within its powers, when Union response measures are required.

2021/0406 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the protection of the Union and its Member States from economic coercion by third countries

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Pursuant to Article 3(5) of the Treaty on European Union, in its relations with the wider world, the Union is to uphold and promote its values and interests and contribute to the protection of its citizens and, among other things, to solidarity and mutual respect among peoples and the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

(2) Pursuant to Article 21(1) of the Treaty on European Union, the Union's action on the international scene is to be guided by principles such as the rule of law, equality and solidarity, and respect for the principles of the United Nations Charter and international law. It also states that the Union is to promote multilateral solutions to common problems.

(3) Pursuant to Article 1 of the United Nations Charter, the purposes of the United Nations include the purpose to develop friendly relations among nations based on respect for the principle of equal rights.

(4) Article 21(2) of the Treaty on European Union requires the Union to define and pursue common policies and actions, and work for a high degree of cooperation in all fields of international relations, among other things in order to safeguard its values, fundamental interests, independence and integrity, consolidate and support the rule of law, and the principles of international law.

(5) The modern interconnected world economy creates an increased risk of, and opportunity for, economic coercion, as it provides countries with enhanced, including hybrid, means to deploy such coercion. It is desirable that the Union contribute to the creation, development and clarification of international frameworks for the prevention and elimination of situations of economic coercion.

(6) Whilst always acting within the framework of international law, it is essential that the Union possess an appropriate instrument to deter and counteract economic coercion by third countries in order to safeguard its rights and interests and those of its Member States. This is particularly the case where third countries take measures affecting trade or investment that interfere in the legitimate sovereign choices of the Union or a

Member State by seeking to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State. Such measures affecting trade or investment may include not only actions taken on, and having effects within, the territory of the third country, but also actions taken by the third country, including through entities controlled or directed by the third country and present in the Union, that cause harm to economic activities in the Union.

(7) This Regulation aims to ensure an effective, efficient and swift Union response to economic coercion, including deterrence of economic coercion of the Union or a Member State and, in the last resort, countermeasures.

(8) The objectives of this Regulation, in particular counteracting third countries' economic coercion of the Union or a Member State, cannot be sufficiently achieved by Member States acting on their own. This is because Member States as distinct actors under international law may not be entitled under international law to respond to economic coercion directed against the Union. Additionally, because of the exclusive competence conferred on the Union by Article 207 of the Treaty on the Functioning of the European Union, Member States are prevented from taking common commercial policy measures as a response to economic coercion. Therefore, those objectives can be achieved with greater effectiveness at Union level.

(9) In accordance with the principle of proportionality, it is necessary and appropriate, for creating an effective and comprehensive framework for Union action against economic coercion, to lay down rules on the examination, determination and counteraction with regard to third countries' measures of economic coercion. In particular, the Union's response measures should be preceded by an examination of the facts, a determination of the existence of economic coercion, and, wherever possible, efforts to find a solution in cooperation with the third country concerned. Any measures imposed by the Union should be commensurate with the injury caused by the third countries' measures of economic coercion. The criteria for defining the Union response measures should take into account in particular the need to avoid or minimise collateral effects, administrative burdens and costs imposed on Union economic operators as well as the Union's interest. Therefore, this Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with Article 5(4) of the Treaty on European Union.

(10) Any action undertaken by the Union on the basis of this Regulation should comply with the Union's obligations under international law. International law allows, under certain conditions, such as proportionality and prior notice, the imposition of countermeasures, that is to say of measures that would otherwise be contrary to the international obligations of an injured party vis-à-vis the country responsible for a breach of international law, and that are aimed at obtaining the cessation of the breach or reparation for it.[1] Accordingly, response measures adopted under this Regulation should take the form of either measures adhering to the Union's international obligations or measures constituting permitted countermeasures. Under international law, and in accordance with the principle of proportionality, they should not exceed a level that is commensurate with the injury suffered by the Union or a Member State due to the third country's measures of economic coercion, taking into account the

[1] See Articles 22 and 49-53 of the Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the United Nations' International Law Commission at its fifty-third session, in 2001, and taken note of by the United Nations General Assembly in resolution 56/83.

gravity of the third country's measures and the Union's rights and interests in question. In this respect, injury to the Union or a Member State is understood under international law to include injury to Union economic operators.

(11) Coercion is prohibited under international law when a country deploys measures such as trade or investment restrictions in order to obtain from another country an action or inaction which that country is not internationally obliged to perform and which falls within its sovereignty, when the coercion reaches a certain qualitative or quantitative threshold, depending on both the ends pursued and the means deployed. The Commission should examine the third-country action on the basis of qualitative and quantitative criteria that help in determining whether the third country interferes in the legitimate sovereign choices of the Union or a Member State and whether its action constitutes economic coercion which requires a Union response.

(12) Acts by third countries are understood under customary international law to include all forms of action that are attributable to a State under customary international law. International law qualifies as an act of a State, in particular: the conduct of any State organ, of a person or entity which is not an organ of the State but which is empowered by the law of that State to exercise elements of governmental authority, an organ placed at the disposal of a State by another State, a person or group of persons that are acting on the instructions of, or under the direction or control of, that State in carrying out the conduct, a person or group of persons that are exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority, and conduct that the State acknowledges and adopts as its own.[2]

(13) The Commission should examine whether third-country measures are coercive, on its own initiative or following information received from any source, including legal and natural persons or a Member State. Following this examination, the Commission should determine in a decision whether the third-country measure is coercive. The Commission should communicate any affirmative determination to the third country concerned, together with a request that the economic coercion cease and a request, where appropriate, that any injury be repaired.

(14) The Union should support and cooperate with third countries affected by the same or similar measures of economic coercion or other interested third countries. The Union should participate in international coordination in bilateral, plurilateral or multilateral fora that are geared towards the prevention or elimination of the economic coercion.

(15) The Union should only impose countermeasures when other means such as negotiations, mediation or adjudication do not lead to the prompt and effective cessation of the economic coercion and to reparation of the injury it has caused to the Union or its Member States, and where action is necessary to protect the interests and rights of the Union and its Member States and it is in the Union's interest. It is appropriate that the Regulation sets out the applicable rules and procedures for the imposition and application of Union response measures and permits expeditious action where necessary to preserve the effectiveness of any Union response measures.

(16) Union response measures adopted in accordance with this Regulation should be selected and designed on the basis of objective criteria, including: the effectiveness of

[2] See Articles 2(a) and 4-11 of the Articles on Responsibility of States for Internationally Wrongful Acts, footnote 1 above.

the measures in inducing the cessation of coercion by the third country; their potential to provide relief to economic operators within the Union affected by the third-country measures of economic coercion; the aim of avoiding or minimising negative economic and other effects on the Union; and the avoidance of disproportionate administrative complexity and costs. It is also essential that the selection and design of Union response measures take account of the Union's interest. Union response measures should be selected from a wide array of options in order to allow the adoption of the most suitable measures in any given case.

(17) It is appropriate to set out rules on the origin or nationality of goods, services and service providers, investment and holders of intellectual property rights, for the purposes of determining the Union response measures. The rules of origin or of nationality should be determined in the light of the prevailing rules for non-preferential trade and investment that are applicable under Union law and the Union's international agreements.

(18) In pursuing the objective of obtaining the cessation of the measure of economic coercion, Union response measures consisting of restrictions on foreign direct investment or on trade in services should only apply with regard to services supplied, or direct investments made, within the Union by one or more legal persons established in the Union which are owned or controlled by persons of the third country concerned where necessary to ensure the effectiveness of Union response measures and in particular to prevent their avoidance. The decision to impose any such restrictions will be duly justified in implementing acts adopted pursuant to this Regulation in the light of the criteria specified in this Regulation.

(19) After the adoption of Union response measures, the Commission should continuously assess the situation in relation to the third-country measures of economic coercion, the effectiveness of the Union response measures and their effects, with a view to adjusting, suspending or terminating the response measures accordingly. It is therefore necessary to set out the rules and procedures for amending, suspending and terminating Union response measures and the situations in which these are appropriate.

(20) It is essential to provide for opportunities for stakeholder involvement for the purposes of adoption and amendment of Union response measures, and as relevant for the purposes of suspension and termination, in view of the potential impact on such stakeholders.

(21) It is important to ensure an effective communication and exchange of views and information between the Commission on the one hand and the European Parliament and the Council on the other, in particular on efforts to engage with the third country concerned to explore options with a view to obtaining the cessation of the economic coercion and on matters that may lead to the adoption of Union response measures under this Regulation.

(22) In order to allow the update of the range of Union response measures under this Regulation and the adjustment of the rules of origin or of other technical rules, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend the list of Union responses set out in Annex I and technical rules necessary for the application of the Regulation, including rules of origin laid down in Annex II. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted

in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making.[3] In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(23) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.[4]

(24) The examination procedure should be used for the adoption of Union response measures and their amendment, suspension or termination given that those acts determine the Union's responses to economic coercion falling within the scope of this Regulation.

(25) The Commission should adopt immediately applicable implementing acts of limited duration where, in duly justified cases relating to the adoption, amendment, suspension or termination of Union response measures, imperative grounds of urgency so require.

(26) The Commission should evaluate measures adopted under this Regulation as to their effectiveness and operation and as to possible conclusions for future measures. The Commission should also review this Regulation after gaining sufficient experience with the existence or application of this Regulation. This review should cover the scope, functioning, efficiency and effectiveness of this Regulation. The Commission should report on its assessment to the European Parliament and the Council,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject-matter

1. This Regulation lays down rules and procedures in order to ensure the effective protection of the interests of the Union and its Member States where a third country seeks, through measures affecting trade or investment, to coerce the Union or a Member State into adopting or refraining from adopting a particular act. This Regulation provides a framework for the Union to respond in such situations with the objective to deter, or have the third country desist from such actions, whilst permitting the Union, in the last resort, to counteract such actions.

2. Any action taken under this Regulation shall be consistent with the Union's obligations under international law and conducted in the context of the principles and objectives of the Union's external action.

Article 2

Scope

1. This Regulation applies where a third country:

[3] OJ L 123, 12.5.2016, p. 1.

[4] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

– interferes in the legitimate sovereign choices of the Union or a Member State by seeking to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State

– by applying or threatening to apply measures affecting trade or investment.

For the purposes of this Regulation, such third-country actions shall be referred to as measures of economic coercion.

2. In determining whether the conditions set out in paragraph 1 are met, the following shall be taken into account:

(a) the intensity, severity, frequency, duration, breadth and magnitude of the third country's measure and the pressure arising from it;

(b) whether the third country is engaging in a pattern of interference seeking to obtain from the Union or from Member States or other countries particular acts;

(c) the extent to which the third-country measure encroaches upon an area of the Union's or Member States' sovereignty;

(d) whether the third country is acting based on a legitimate concern that is internationally recognised;

(e) whether and in what manner the third country, before the imposition of its measures, has made serious attempts, in good faith, to settle the matter by way of international coordination or adjudication, either bilaterally or within an international forum.

Article 3

Examination of third-country measures

1. The Commission may examine any measure of a third country in order to determine whether it meets the conditions set out in Article 2(1). The Commission shall act expeditiously.

2. The Commission may carry out the examination referred to in paragraph 1 on its own initiative or following information received from any source. The Commission shall ensure the protection of confidential information in line with Article 12, which may include the identity of the supplier of the information.

3. The Commission may seek information about the impact of the measures of the third country concerned.

The Commission may publish a notice in the Official Journal of the European Union or through other suitable public communication means with an invitation to submit information within a specified time limit. In that event, the Commission shall notify the third country concerned of the initiation of the examination.

Article 4

Determination with regard to the third-country measure

Following an examination carried out in accordance with Article 3, the Commission shall adopt a decision determining whether the measure of the third country concerned meets the conditions set out in Article 2(1). The Commission shall act expeditiously.

Prior to adopting its decision, the Commission may invite the third country concerned to submit its observations.

Where the Commission decides that the measure of the third country concerned meets the conditions set out in Article 2(1), it shall notify the third country concerned of its decision and request it to cease the economic coercion and, where appropriate, repair the injury suffered by the Union or its Member States.

Article 5

Engagement with the third country concerned

The Commission shall be open to engage on behalf of the Union with the third country concerned, to explore options with a view to obtaining the cessation of the economic coercion. Such options may include:

– direct negotiations;

– mediation, conciliation or good offices to assist the Union and the third country concerned in these efforts;

– submitting the matter to international adjudication.

The Commission shall seek to obtain the cessation of the economic coercion by also raising the matter in any relevant international forum.

The Commission shall keep the European Parliament and the Council informed of relevant developments.

The Commission shall remain open to engage with the third country concerned after the adoption of Union response measures pursuant to Article 7. The Commission may pursue these efforts, as the case may be, in conjunction with a suspension, pursuant to Article 10(2), of any Union response measures.

Article 6

International cooperation

The Commission shall enter into consultations or cooperation, on behalf of the Union, with any other country affected by the same or similar measures of economic coercion or with any interested third country, with a view to obtaining the cessation of the coercion. This may involve, where appropriate, coordination in relevant international fora and coordination in response to the coercion.

Article 7

Union response measures

1. The Commission shall adopt an implementing act determining that it shall take a Union response measure where:

   (a) action pursuant to the Articles 4 and 5 has not resulted in the cessation of the economic coercion and reparation of the injury it has caused to the Union or a Member State within a reasonable period of time;

   (b) action is necessary to protect the interests and rights of the Union and its Member States in that particular case, and

   (c) action is in the Union’s interest.

In the implementing act, the Commission shall also determine the appropriate Union response from among the measures provided for in Annex I. Such measures may also apply with regard to natural or legal persons designated in accordance with Article 8. The Commission may also adopt measures which it can take pursuant to other legal instruments.

The implementing act shall be adopted in accordance with the examination procedure referred to in Article 15(2).

2. The Union response measures shall apply from a specified date after the adoption of the implementing act referred to in paragraph 1. The Commission shall set this date of application, taking into account the circumstances, to allow for the notification of the third country concerned pursuant to paragraph 3 and for it to cease the economic coercion.

3. The Commission shall, upon adoption of the implementing act, notify the third country concerned of the Union response measures adopted pursuant to paragraph 1. In the notification, the Commission shall, on behalf of the Union, call on the third country concerned to promptly cease the economic coercion, offer to negotiate a solution, and inform the third country concerned that the Union response measure will apply, unless the economic coercion ceases.

4. The implementing act referred to in paragraph 1 shall state that the application of the Union response measures shall be deferred for a period specified in that implementing act, where the Commission has credible information that the third country has ceased the economic coercion before the start of application of the adopted Union response measures. In that event, the Commission shall publish a notice in the Official Journal of the European Union indicating that there is such information and the date from which the deferral shall apply. If the third country ceases the economic coercion before the Union response measures start to apply, the Commission shall terminate the Union response measures in accordance with Article 10.

5. Notwithstanding paragraphs 2, 3 and 4, the Union response measures may apply without the Commission, on behalf of the Union, first calling, once more, on the third country concerned to cease the economic coercion or without the Commission first notifying it that Union response measure will apply, where this is necessary for the preservation of the rights and interests of the Union or Member States, notably of the effectiveness of Union response measures.

6. On duly justified imperative grounds of urgency to avoid irreparable damage to the Union or its Member States by the measures of economic coercion the Commission shall adopt immediately applicable implementing acts imposing Union response measures, in accordance with the procedure referred to in Article 15(3). The requirements set out in paragraphs 2 to 5 shall apply. Those acts shall remain in force for a period not exceeding three months.

7. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend the list provided for in Annex I in order to provide additional types of measures to respond to a third country's measure. The Commission may adopt such delegated acts where the types of response measures would:

   (a) be as effective or more effective than the response measures already provided for in terms of inducing the cessation of measures of economic coercion;

(b) provide as effective or more effective relief to economic operators within the Union affected by the measures of economic coercion;

(c) avoid or minimise the negative impact on affected actors; or

(d) avoid or minimise administrative complexity and costs.

Article 8

Union response measures with regard to natural or legal persons

1. The Commission may provide, in the implementing act referred to in Article 7(1), or in a separate implementing act, that:

(a) legal or natural persons designated in accordance with paragraph 2 point (a) shall be subject to Union response measures; or

(b) without prejudice to the responsibility of the third country under international law, Union natural or legal persons affected by the third country's measures of economic coercion shall be entitled to recover, from persons designated pursuant to paragraph 2, point (b), any damage caused to them by the measures of economic coercion up to the extent of the designated persons' contribution to such measures of economic coercion.

Those measures shall apply as of the same date of application as the Union response measures adopted pursuant to Article 7, or as of a later date specified in the implementing act pursuant to this paragraph.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).

2. The Commission may designate a natural or legal person where it finds:

(a) that such person is connected or linked to the government of the third country concerned; or,

(b) that such person is connected or linked to the government of the third country concerned and has additionally caused or been involved in or connected with the economic coercion.

3. In making this designation the Commission shall examine all relevant criteria and available information, including whether the persons concerned are known to effectively act on behalf of, or are beneficially owned or otherwise effectively controlled by the government of the third country.

4. Where the Commission has grounds to consider that persons should be designated pursuant to paragraph 2, point (a) or point (b) it shall publish a provisional list of persons and, where relevant, the possible measures pursuant to Annex I that they would be subject to. Before deciding on designation, it shall give any persons provisionally designated and other interested parties the opportunity to submit comments on the possible designation, in particular whether they fall under the conditions of paragraph 2, point (a) or point (b). The Commission may also seek additional information it considers pertinent concerning the potential designation.

Article 9

Criteria for selecting and designing Union response measures

1. Any Union response measure shall not exceed the level that is commensurate with the injury suffered by the Union or a Member State due to the third country's measures of economic coercion, taking into account the gravity of the third country's measures and the rights in question.

2. The Commission shall select and design an appropriate response measure taking into account the determination made pursuant to Article 4, the criteria set out in Article 2(2) and the Union's interest, on the basis of available information, including as collected pursuant to Article 11, and the following criteria:

   (a) the effectiveness of the measures in inducing the cessation of the economic coercion;

   (b) the potential of the measures to provide relief to economic operators within the Union affected by the economic coercion;

   (c) the avoidance or minimisation of negative impacts on affected actors by Union response measures, including the availability of alternatives for affected actors, for example alternative sources of supply for goods or services;

   (d) the avoidance or minimisation of negative effects on other Union policies or objectives;

   (e) the avoidance of disproportionate administrative complexity and costs in the application of the Union response measures;

   (f) the existence and nature of any response measures enacted by other countries affected by the same or similar measures of economic coercion, including where relevant any coordination pursuant to Article 6;

   (g) any other relevant criteria established in international law.

3. The Commission may decide to apply Union response measures under Articles 7 or 8 consisting of restrictions on foreign direct investment or on trade in services also with regard to services supplied, or direct investments made, within the Union by one or more legal persons established in the Union and owned or controlled by persons of the third country concerned where necessary to achieve the objectives of this Regulation. The Commission may decide on such application where Union response measures not covering such situations would be insufficient to effectively achieve the objectives of this Regulation, in particular where such measures could be avoided. In assessing whether to adopt such a decision the Commission shall consider, in addition to the criteria in paragraphs 1 and 2, amongst other things:

   (a) the patterns of trade in services and investment in the sector targeted by the envisaged Union response measures and the risk of avoidance of any Union response measures not applying to services supplied, or direct investments made, within the Union;

   (b) the effective contribution of such intra-Union restrictions to the objective of obtaining the cessation of the measure of economic coercion;

   (c) the existence of alternative measures capable of achieving the objective of obtaining the cessation of the measure of economic coercion that are reasonably available and less restrictive of trade in services or investment within the Union.

   Any decision to apply restrictions with regard to services supplied, or direct investments made, within the Union by one or more legal persons established in the

Union shall be duly justified in the implementing act referred to in paragraph 1 of Article 7 in light of the above criteria.

Article 10

Amendment, suspension and termination of Union response measures

1. The Commission shall keep under review the measures of economic coercion deployed by a third country that have triggered the Union response measures, the effectiveness of the Union response measures adopted and their effects on the Union's interests and shall keep the European Parliament and the Council informed thereof.

2. Where the third country concerned suspends the economic coercion, or where it is necessary in the Union's interest, the Commission may suspend the application of the respective Union response measure for the duration of the third country's suspension, or as long as necessary in light of the Union's interest. The Commission shall suspend the Union response measures if the third country concerned has offered, and the Union has concluded, an agreement to submit the matter to binding international third-party adjudication and the third country is also suspending its measures of economic coercion. The Commission shall, by means of an implementing act, decide to suspend the Union response measure. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).

3. Where it is necessary to make adjustments to Union response measures taking into account the conditions and criteria laid down in Articles 2 and 9(2), or further developments, including the third country's reaction, the Commission may, as appropriate, amend Union response measures adopted in accordance with Article 7, by means of an implementing act, in accordance with the examination procedure referred to in Article 15(2).

4. The Commission shall terminate Union response measures under any of the following circumstances:

   (a) where the economic coercion has ceased;

   (b) where a mutually agreed solution has otherwise been reached;

   (c) where a binding decision in international third-party adjudication in a dispute between the third country concerned and the Union or a Member State requires the withdrawal of the Union response measure;

   (d) where it is appropriate in light of the Union's interest.

   The termination of Union response measures adopted in accordance with Article 7 shall be decided, by means of an implementing act, in accordance with the examination procedure referred to in Article 15(2).

5. On duly justified imperative grounds of urgency, the Commission shall adopt immediately applicable implementing acts suspending, amending or terminating Union response measures adopted in accordance with Article 7. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 15(3) and they shall remain in force for a period not exceeding two months.

Article 11

Information gathering related to Union response measures

1. Before the adoption of Union response measures or the amendment of such measures, the Commission shall, and before the suspension or termination of such measures, respectively, the Commission may, seek information and views regarding the economic impact on Union operators and Union's interest, through a notice published in the Official Journal of the European Union or through other suitable public communication means. The notice shall indicate the period within which the input is to be submitted.

2. The Commission may start the information gathering at any time it deems appropriate.

3. In conducting the information gathering under paragraph 1, the Commission shall inform and consult stakeholders, in particular industry associations, affected by possible Union response measures, and Member States involved in the preparation or implementation of legislation regulating the affected fields.

4. Without unduly delaying the adoption of Union response measures, the Commission shall, in particular, seek information on:

   (a) the impact of such measures on third-country actors or Union competitors, users or consumers or on Union employees, business partners or clients of such actors;

   (b) the interaction of such measures with relevant Member State legislation;

   (c) the administrative burden which may be occasioned by such measures;

   (d) the Union’s interest.

5. The Commission shall take utmost account of the information gathered during the information gathering exercise. An analysis of the envisaged measures shall accompany the draft implementing act when submitted to the committee in the context of the examination procedure referred to in Article 15(2).

6. Prior to the adoption of an implementing act in accordance with Article 7(6) or Article 10(5), the Commission shall seek information and views from relevant stakeholders in a targeted manner, unless the imperative grounds of urgency are such that information seeking and consultations are not possible or not needed for objective reasons, for instance to ensure compliance with international obligations of the Union.

Article 12

Confidentiality

1. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

2. The supplier of information may request that information supplied be treated as confidential. In such cases, it shall be accompanied by a non-confidential summary or a statement of the reasons why the information cannot be summarised. The Commission, the Council, the European Parliament, Member States or their officials shall not reveal any information of a confidential nature received pursuant to this Regulation, without specific permission from the supplier of such information.

3. Paragraph 2 shall not preclude the Commission to disclose general information in a summary form, which does not contain information allowing to identify the supplier

of the information. Such disclosure shall take into account the legitimate interest of the parties concerned in not having confidential information disclosed.

Article 13

Rules of origin

1. The origin or nationality of a good, service, service provider, investment or intellectual property rightholder shall be determined in accordance with Annex II.

2. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend points 2 to 4 of Annex II in order to amend the rules of origin and add any other technical rules necessary for the application of the Regulation, to ensure its effectiveness and to take account of relevant developments in international instruments and experience in the application of measures under this Regulation or other Union acts.

Article 14

Delegated Acts

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 7(7) and 13(2) shall be conferred on the Commission for an indeterminate period of time from [date of entry into force].

3. The delegation of power referred to in Articles 7(7) and 13(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

A delegated act adopted pursuant to Articles 7(7) and 13(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 15

Committee procedure

1. The Commission shall be assisted by a Committee. That committee shall be a committee within the meaning of Article 3 of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011 in conjunction with Article 5 thereof, shall apply.

Article 16

Review

1. The Commission shall evaluate any Union response measure adopted pursuant to Article 7 six months after its termination, taking into account stakeholder input and any other relevant information. The evaluation report shall examine the effectiveness and operation of the Union response measure, and draw possible conclusions for future measures.

2. No later than three years after the adoption of the first implementing act under this Regulation or six years after the entry into force of this Regulation, whichever is earlier, the Commission shall review this Regulation and its implementation and shall report to the European Parliament and the Council.

Article 17

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of the Union and its Member States from economic coercion by third countries

1.2. Policy area(s) concerned

Common commercial policy

1.3. The proposal/initiative relates to:

× a new action

☐ a new action following a pilot project/preparatory action[14]

☐ the extension of an existing action

☐ a merger or redirection of one or more actions towards another/a new action

1.4. Objective(s)

1.4.1. General objective(s)

The aim of the present proposal for a Regulation of the European Parliament and of the Council is to protect the interests of the Union and its Member States by enabling the Union to respond to economic coercion. Economic coercion refers to a situation where a third country is seeking to pressure the Union or a Member State into making a particular policy choice by applying, or threatening to apply, measures affecting trade or investment against the Union or a Member State.

1.4.2. Specific objective(s)

The Union response, or its mere availability, aims to dissuade third countries from engaging in economic coercion, in the first place, or to dissuade them from continuing the economic coercion, if economic coercion occurs. As a last resort, the Union may counteract the economic coercion. The Union response may take the form of a broad range of measures, following a determination of an act as coercive, including efforts to enter in consultations with the third country concerned to facilitate an agreed or adjudicated solution, where possible, a variety of countermeasures and international cooperation.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The expected benefits are considerable. They arise in the first place from the deterrence effect at the level of the scope of application, broadly capturing measures of economic coercion, as well as at the level of the range of measures, which allows for a calibrated and effective response. A successful deterrence effect will result in no or limited use of the instrument, in the best-case scenario. Benefits also arise from

[14] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

the two-step process that prioritises a non-interventionist approach (agreed solutions versus countermeasures), and openness to engage with the third country, but also from the ability to quickly respond with countermeasures, where necessary for the protection of the interests of the Union and its Member States. No significant costs arise from the existence of the instrument, as such. Potential varying costs may arise from the use of the instrument in individual cases, in particular if the Union deploys countermeasures. Any costs would be taken into account in the design of the particular measure.

1.4.4. Indicators of performance

Specify the indicators for monitoring progress and achievements.

- The number of coercive measures identified per year, as well as their magnitude;
- The number and type of actions of first resort and their outcome, in particular if they resulted in discontinuation of the coercive measure or any other change;
- The number and type of countermeasures adopted by the EU, their duration and impact, and in particular if they stopped the coercive measure.

The impact of the existence of the instrument per se will be more difficult to measure, as the counterfactual (i.e. the situation that would have prevailed in the absence of the instrument) will be difficult to establish. However, the Commission services will try to continue to engage with stakeholders to monitor their experiences and views regarding the impact of the instrument.

The legislative proposal provides for a review, within a reasonable time, on the functioning and application of the instrument, with reporting obligations to the European Parliament and the Council.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

Not relevant

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at European level (ex-ante) The legal basis for the proposed regulation is Article 207(2) TFEU. Article 207(2) TFEU provides for the adoption of measures defining the framework for implementing the common commercial policy. Article 207(1) TFEU defines the scope of the common commercial policy, which refers to, inter alia, trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, export policy and measures to protect trade. The initiative is concerned with foreign countries' measures that take the form of measures affecting trade or investment towards the Union. The initiative provides a response, in the area of the common commercial policy but also in other areas, to foreign countries' measures of economic coercion.

Article 5(3) TEU provides that the principle of subsidiarity applies in areas which do not fall within the exclusive competence of the Union. Article 3(1)(e) TFEU provides that the Union has exclusive competence in the area of common commercial policy. Article 207(2) TFEU falls into the category of exclusive competences. Therefore, the question of subsidiarity does not arise insofar as the third countries' measures of economic coercion and/or the Union response falls under the common commercial policy.

In any event, only an action at Union level would ensure a uniform solution to a problem of concern to the Union as a whole. Member States remain responsible for and are able to act in the defence of their rights under international law. This includes their right to counteract international economic coercion, as long as they do so without taking measures for which the Union is exclusively competent. However, it is not possible for a Member State to put in place national legislation in order to cover economic coercion that is targeted against the Union and not against that Member State. Furthermore, national legislation would not be capable of providing an effective solution in the situation of concern to the Union as a whole or across the Member States. Union action remains the sole option under which the Union can implement its obligation to define and conduct the common commercial policy, and Member States cannot act in that area.

For completeness, it is considered that the added value of an action at Union level lies in the achievement of benefits that cannot be achieved sufficiently, if at all, at Member State level. These benefits relate to deterrence and counteraction against economic coercion by third countries to preserve the Union's and Member States' autonomy in policy-making and shield trade and investment from weaponisation.

1.5.3. Lessons learned from similar experiences in the past

Not relevant

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

Not relevant

1.5.5. Assessment of the different available financing options, including scope for redeployment

Not relevant

1.6. Duration and financial impact of the proposal/initiative

☐ limited duration

– ☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

× unlimited duration

– Implementation with a start-up period from YYYY to YYYY,

– followed by full-scale operation.

1.7. Management mode(s) planned[15]

× Direct management by the Commission

– × by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies

☐ Shared management with the Member States

☐ Indirect management by entrusting budget implementation tasks to:

– ☐ third countries or the bodies they have designated;

– ☐ international organisations and their agencies (to be specified);

– ☐ the EIB and the European Investment Fund;

– ☐ bodies referred to in Articles 70 and 71 of the Financial Regulation;

– ☐ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

– ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– If more than one management mode is indicated, please provide details in the 'Comments' section.

Comments

[15] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

Not applicable

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

Not applicable

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

Not applicable

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

Not applicable

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

Not applicable

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[16]	from EFTA countries[17]	from candidate countries[18]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]	Diff./Non-diff.	YES/NO	YES/NO	YES/NO	YES/NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

[16] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
[17] EFTA: European Free Trade Association.
[18] Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

– X The proposal/initiative does not require the use of operational appropriations

– ☐ The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	

DG: <…….>			Year N[19]	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
• Operational appropriations										
Budget line[20]	Commitments	(1a)								
	Payments	(2a)								
Budget line	Commitments	(1b)								
	Payments	(2b)								
Appropriations of an administrative nature financed from the envelope of specific programmes[21]										

19 Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

20 According to the official budget nomenclature.

21 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

Budget line		(3)								
TOTAL appropriations for DG <…….>	Commitments	=1a +1b +3								
	Payments	=2a +2b +3								

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADING <….> of the multiannual financial framework	Commitments	=4+ 6								
	Payments	=5+ 6								

If more than one operational heading is affected by the proposal / initiative, repeat the section above:

• TOTAL operational appropriations (all operational headings)	Commitments	(4)								
	Payments	(5)								
TOTAL appropriations of an administrative nature										

financed from the envelope for specific programmes (all operational headings)		(6)								
TOTAL appropriations under HEADINGS 1 to 6 of the multiannual financial framework (Reference amount)	Commitments	=4+6								
	Payments	=5+6								

Heading of multiannual financial framework	7	'Administrative expenditure'

This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the Annex to the Legislative Financial Statement (Annex V to the internal rules), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

		Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	Year 2028	Year 2029	TOTAL
DG: TRADE									
• Human resources		0.785	0.785	0.785	0.785	0.785	0.785	0.785	5.495
• Other administrative expenditure		0.020	0.020	0.020	0.020	0.020	0.020	0.020	0.140
TOTAL DG TRADE	Appropriations	0.805	0.805	0.805	0.805	0.805	0.805	0.805	5.635

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)	0.805	0.805	0.805	0.805	0.805	0.805	0.805	5.635

EUR million (to three decimal places)

		Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	Year 2028	Year 2029	TOTAL
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments	0.805	0.805	0.805	0.805	0.805	0.805	0.805	5.635
	Payments	0.805	0.805	0.805	0.805	0.805	0.805	0.805	5.635

3.2.2. Estimated output funded with operational appropriations

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs			Year N		Year N+1		Year N+2		Year N+3		Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL	
	OUTPUTS																	
⇩	Type [22]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[23]…																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific																		

[22] Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

[23] As described in point 1.4.2. 'Specific objective(s)…'

objective No 2																
TOTALS																

3.2.3. Summary of estimated impact on administrative appropriations

– ☐ The proposal/initiative does not require the use of appropriations of an administrative nature

– X The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	Year 2028	Year 2029	TOTAL
HEADING 7 of the multiannual financial framework								
Human resources	0.785	0.785	0.785	0.785	0.785	0.785	0.785	5.495
Other administrative expenditure	0.020	0.020	0.020	0.020	0.020	0.020	0.020	0.140
Subtotal HEADING 7 of the multiannual financial framework	0.805	0.805	0.805	0.805	0.805	0.805	0.805	5.635

Outside HEADING 7[24] of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 7 of the multiannual financial framework								

TOTAL	0.805	0.805	0.805	0.805	0.805	0.805	0.805	5.635

[24] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

3.2.3.1. Estimated requirements of human resources

– ☐ The proposal/initiative does not require the use of human resources.

– X The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

		Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	Year 2028	Year 2029
• Establishment plan posts (officials and temporary staff)								
20 01 02 01 (Headquarters and Commission's Representation Offices)		5	5	5	5	5	5	5
20 01 02 03 (Delegations)								
01 01 01 01 (Indirect research)								
01 01 01 11 (Direct research)								
Other budget lines (specify)								
• External staff (in Full Time Equivalent unit: FTE)[25]								
20 02 01 (AC, END, INT from the 'global envelope')								
20 02 03 (AC, AL, END, INT and JPD in the delegations)								
XX 01 xx yy zz [26]	- at Headquarters							
	- in Delegations							
01 01 01 02 (AC, END, INT - Indirect research)								
01 01 01 12 (AC, END, INT - Direct research)								
Other budget lines (specify)								
TOTAL		5	5	5	5	5	5	5

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

[25] AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

[26] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

Officials and temporary staff	Management and operation of the new instrument; application of the new instrument; monotoring third country measures that may give rise to the application of the instrument; monotoring the impact of Union response measures and of third country measures; fact-finding; legal advice
External staff	

3.2.4. Compatibility with the current multiannual financial framework

The proposal/initiative:

– X can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. Please provide an excel table in the case of major reprogramming.

– ☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

Explain what is required, specifying the headings and budget lines concerned, the corresponding amounts, and the instruments proposed to be used.

– ☐ requires a revision of the MFF.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. Third-party contributions

The proposal/initiative:

– X does not provide for co-financing by third parties

– ☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year N[27]	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

[27] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

3.3. Estimated impact on revenue

– X The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

☐ on own resources

☐ on other revenue

please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[28]						
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For assigned revenue, specify the budget expenditure line(s) affected.

[…]

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[…]

[28] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.