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**Interinstitutional File:  
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**NOTE**

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	14943/21 + ADD 1
Subject:	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 (First reading) - Confirmation of the final compromise text with a view to agreement

1. On 8 December 2021, the European Commission published its 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 (Anti-Coercion Instrument - ACI) (documents ST 14943/21 + ADD 1). On 24 January 2022, all linguistic versions of the Commission proposal for a Regulation were transmitted to the Council.
2. The above proposal is the EU's response to the Union and its Member States becoming the target in recent years of deliberate economic pressure exercised by third countries through measures affecting trade or investment. It aims to strengthen the Union's toolbox of autonomous instruments and to allow the Union to defend itself better on the global stage.

3. The European Parliament appointed the International Trade Committee (INTA) as the lead committee, and its Chair, Bernd Lange (S&D, DE), was appointed as rapporteur. With a strong support, the INTA Committee adopted amendments to the proposal in block, and voted on its report on 10 October 2022, as well as to start the negotiations with the Council ‘immediately’. The EP plenary confirmed on 19 October 2022 the EP mandate to start the interinstitutional negotiations.
4. On 15 July 2022, eleven Member States (AT, HR, FI, DE, LV, LU, MT, PT, RO, SI and SE - and in September also IE) submitted to the Presidency a non-paper asking for an adequate involvement of Member States or the Council in the decision-making process in the ACI and expressing their concerns regarding the foreign policy implications of the instrument.
5. On 30 August 2022, the Council Legal Service<sup>1</sup> issued a legal opinion addressing the concerns of Member States regarding the legal basis of the instrument and the role of the Member States in the decision-making process. The Opinion concluded that the proposal would fall under the remit of the common commercial policy. Hence, it could be adopted based on Article 207(2) TFEU subject to several considerations. It also concluded that, given the impact on the relations between the Union and the third country concerned and bearing in mind the Council’s powers under the Treaties as regards the EU’s external action, the Council should be involved in the determination of the economic coercion by a third country.
6. Following intensive discussions and exchanges in the Working Party on Trade Questions, the Czech Presidency managed to garner broad support for the compromise text circulated on 10 November 2022.

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<sup>1</sup> Doc. 11943/22

7. In this context, and to facilitate a consensus among Member States, the Commission circulated on 28 October 2022 a draft statement, on the use of the examination procedure under this instrument. More specifically, the Commission would pay particular attention to affording early and effective opportunities to the committee of Member States to examine any draft implementing act and express views before voting, and, at all times, to work towards solutions which command the widest possible support by the Member States for a positive opinion by consensus or qualified majority in favour. The draft statement was presented with a view to address the Member States' concerns about their appropriate/adequate involvement in the decision-making. The draft statement has been approved in principle by the College of Commissioners and forms part of the final package. The text of this draft statement can be recorded in the minutes of the Permanent Representatives Committee. The Commission expressed its willingness to have the statement published in the Official Journal. The draft Commission statement is reflected in Addendum 2 of this document.
8. On 16 November 2022, the Permanent Representatives Committee mandated the Presidency to start informal trilogue negotiations with the European Parliament and the Commission (14409/1/22 REV 1).
9. Based on the positions of the European Parliament and the Council, four political trilogues took place on the following dates: 28 November 2022, 15 December 2022, 27 March 2023 and 6 June 2023. At the informal trilogue held on 27 March 2023, a provisional political compromise was reached. At the informal trilogue held on 6 June, both co-legislators confirmed the final text of the Regulation as concluded at technical level. The overall compromise also includes two statements, including a revised version of the one presented by the Commission on 28 October 2022, which aim to address concerns and requests from the European Parliament and the Council:
- The European Parliament, the Council and the Commission recognise that this Regulation has no precedent and that approaches contained therein, including as regards the conferral of implementing powers to the Council to determine whether is an economic coercion under Article 4, do not constitute a precedent for future legislative acts in the area of common commercial policy;

- The Commission agrees to pay particular attention to affording early and effective opportunities to the committee of EU Member States to examine any draft implementing act and express views before voting, and, at all times, to work towards solutions which command the widest possible support by the Member States for a positive opinion by consensus or qualified majority in favour.
10. During the informal trilogue negotiations, the Presidency regularly informed Member States and consulted them on the proposed way forward. It is clear from these consultations that the approach proposed by the Presidency is supported by a large number of Member States.
11. The INTA Committee of the European Parliament is expected to vote on the overall compromise in the near future, paving the way for the adoption of the draft Regulation at first reading.
12. The Permanent Representatives Committee is therefore invited to:
- confirm the final compromise text, as set out in the Annex to this note (changes compared to the Commission proposal are marked with ***bold italic*** and ~~striketrough~~ for deletions); and
  - authorise the Presidency to send a letter to the Chair of the INTA Committee of the European Parliament confirming that, if the European Parliament adopts its position at first reading, in accordance with Article 294(3) of the Treaty, in the terms of the final compromise text set out in the Annex to the letter (subject to its finalisation by the lawyers-linguists of the two institutions), the Council, in accordance with Article 294(4) of the Treaty, will approve the European Parliament's position and the act will be adopted in that wording.
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COMPROMISE TEXT

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 (**TEU**), 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 **is to contribute**, 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 (**the "UN Charter"**).
- (2) Pursuant to Article 21(1) ~~of the Treaty on European Union~~ **TEU**, 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~~ **UN** 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~~ **TEU** 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 *in order to*, 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.
- (4a) *The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations states that international relations are to be conducted in line with the principles of sovereign equality and non-intervention.<sup>1</sup> This Declaration also provides, in relation to the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, that no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. This reflects customary international law and is thus binding in the relations between third countries and the Union and its Member States. Rules of customary international law of state responsibility for internationally wrongful acts are reflected in the United Nations' International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts<sup>2</sup> ("ARSIWA") and are binding in the relations between third countries and the Union and its Member States.*

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<sup>1</sup> *UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970, A/RES/2625(XXV).*

<sup>2</sup> *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.*

- (5) The modern interconnected world economy ~~creates an increased~~**increases the** 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, ***including an expression of a position by an institution, body, office or agency of, respectively, 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 ***concerned***, 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. ***The terms "third country" should be understood to include not only a foreign State, but also a separate customs territory or other subject of international law because these entities are capable of economic coercion. The utilisation of these terms and the application of this Regulation does not have any implication regarding sovereignty. This Regulation should also be applied in conformity with the Union's position in relation to the third country concerned.***

- (7) This Regulation aims to ensure an effective, efficient and swift Union response to economic coercion, ~~including~~**especially the** deterrence of economic coercion of the Union or a Member State and, ~~in the~~**as a** last resort, countermeasures. ***This Regulation is without prejudice to other existing Union instruments and international agreements, as well as actions taken thereunder, consistent with international law, in the area of the common commercial policy, and to other Union policies.***
- (7a) ***Economic coercion by third countries may target foreign policy actions of the Union or a Member State, while a determination of the existence of economic coercion, and responses thereto, may have significant implications for relations with third countries. It is necessary to ensure consistent responses in distinct but related policy areas, and this Regulation is without prejudice to a possible Union action pursuant to specific provisions in Chapter 2 of Title V of TEU on the Union's common foreign and security policy, to which due consideration should be given when considering any response to economic coercion by a third country.***
- (8) ~~The objectives of this Regulation, in particular counteracting Third countries' economic coercion of the Union or~~**against** a Member State, ~~cannot be sufficiently achieved by Member States acting on their own. This is because~~ ***affects the Union's internal market and the Union as a whole. Member States, acting on their own cannot counteract third countries' economic coercion through measures falling under the area of common commercial policy. Given 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 (TFEU), only the Union may act. Moreover, Member States are prevented from taking common commercial policy measures as a response to*** ***as distinct actors under international law, may not be entitled to counteract third- countries' economic coercion directed against the Union.*** Therefore, ~~those objectives can be achieved with greater effectiveness at~~**it is necessary that the means for effectively achieving those objectives are created at the** Union level. ***This Regulation is without prejudice to the division of competences as defined in the Treaties.***

- (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 ***and provided the third country also engages in good faith***, efforts to find a solution in cooperation with the third country concerned. Any measures imposed by the Union should be ~~commensurate with~~ ***proportionate and not exceed*** 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 ***effectiveness of the response measures in inducing the cessation of the economic coercion and, where requested, reparation of the injury to the Union, and the*** need to avoid or minimise collateral effects, ***disproportionate*** administrative ***complexity and*** 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~~ ***TEU***.

- (10) Any action undertaken by the Union on the basis of this Regulation should ~~comply with the Union's obligations under~~ *be consistent with international law, including customary 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* *Among* ~~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.~~<sup>3</sup> 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 *agreements concluded by the Union and the Member States, the Agreement establishing the World Trade Organization (WTO) is the cornerstone of the rules-based multilateral trading system. Therefore, it is important that* 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 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.~~ *continue to support that system, with the WTO at its core, and to use its dispute settlement system where appropriate.*

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<sup>3</sup> 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.

*(10a) Customary international law, as reflected in Articles 22 and 49 to 53 of the ARSIWA, 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. Accordingly, Union response measures could consist, as necessary, not only in measures consistent with the Union's international obligations, but also in the non-performance of international obligations towards the third country concerned insofar as the measures of economic coercion of the third country constitute an internationally wrongful act. Under international law, in accordance with the principle of proportionality, countermeasures should be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful acts and the rights 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.*

*10ter Where the economic coercion constitutes an internationally wrongful act, the Union should, where appropriate, in addition to the cessation of economic coercion, request the third country concerned to make reparation of any injury caused to the Union, in accordance with Articles 31 and 34-39 of the ARSIWA. In the event of the Union obtaining compensation for the injury suffered by Union operators, the Union may, where appropriate and to the extent possible, consider to transfer that compensation to the Union operators that have suffered losses as a result of the economic coercion.*

- (11) Coercion is prohibited ***and therefore a wrongful act*** 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 ***and the Council should take into account*** ~~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. ***Among those criteria, there should be elements that characterise, both qualitatively and quantitatively, notably the form, the effects and the aim of the measures which the third country is deploying. Applying those criteria would ensure that only economic coercion with a sufficiently serious impact or, where the economic coercion consists in a threat, only a threat that is credible, would fall under this Regulation. In addition, the Commission and the Council should examine closely whether the third country pursues a legitimate cause, because its objective is to uphold a concern that is internationally recognised, such as, among other things, the maintenance of international peace and security, the protection of human rights, the protection of the environment, and the fight against climate change.***

- (12) Acts by third countries are understood under customary international law to include all forms of action *or omission, including threats*, that are attributable to a State under customary international law. *Articles 2(a) and 4-11 of the ARSIWA confirm that customary* 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.<sup>4</sup>
- (13) The Commission should examine whether third-country measures ~~are coercive, on its own initiative or following~~ *constitute economic coercion. The Commission should carry out such an examination on the basis of* information received from any *reliable* source, including ~~legal and natural~~ *natural and legal* persons, *the European Parliament*, ~~or a Member State. Following this examination, the Commission should determine in a decision,~~ *or trade unions. In determining* 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~~ *a third country applies or threatens to apply measures affecting trade or investment and constituting economic coercion, the assessment of the Commission and the Council should be based on facts.*

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<sup>4</sup> See Articles 2(a) and 4-11 of the ~~Articles on Responsibility of States for Internationally Wrongful Acts~~, footnote 1 above.

*(13a) In order to ensure uniform conditions for the implementation of this Regulation, and in view of the unique nature of economic coercion affecting trade and investment, implementing powers should be conferred on the Council for the determination of the economic coercion and whether it is appropriate to request reparation for the injury to the Union. Conferring implementing powers on the Council is limited to and addresses the circumstances arising from the economic coercion and is not to be considered as a precedent.*

*(13b) Following the Commission's examination and in the event that the Commission considers that the third-country measure constitutes economic coercion, the Commission should submit a proposal to the Council to adopt an implementing act determining that the third-country measure constitutes economic coercion. The Commission should also propose an indicative timeline for assessing whether the conditions for the adoption of Union response measures are met. Where it considers it appropriate, the Commission should also submit a proposal to the Council to adopt an implementing act determining that the Union requests the third country to repair the injury to the Union. It is important that in the exercise of its implementing powers, the Council should act in accordance with the conditions and criteria set out in this Regulation.*

*Furthermore, economic coercion falling under this Regulation may impact the Union or any Member State and thus create a need to act quickly under this Regulation and in line with the Union principles of solidarity between Member States and of sincere co-operation. As a consequence, in acting pursuant to this Regulation, the Council should act expeditiously and make all necessary efforts to adopt a decision within eight weeks of the submission of the proposal by the Commission.*

*(13bis) In an effort to secure the cessation of economic coercion and, where requested, reparation of injury, the Union should seek an early and just settlement of the matter. Accordingly, the Commission should provide adequate opportunity for consultations with the third country concerned and, if that third country is ready to enter into consultations in good faith, engage with it expeditiously. In the course of such consultations, the Commission should endeavour to resort to means such as direct negotiations, submitting the matter to international adjudication, or mediation, conciliation or good offices by a third party, without prejudice to the division of competence between the Union and the Member States. In particular, when the third country suspends its actions and agrees to submit the matter to international adjudication, an international agreement with the third country should be concluded, as necessary. Such an international agreement could be concluded either by the Union, in accordance with the procedure laid down in Article 218 TFEU, or by the Member State concerned.*

- (14) The Union should support and cooperate with third countries affected by the same or similar ~~measures~~ *cases* of economic coercion or other interested third countries. The Union should participate in international coordination in *any* bilateral, plurilateral or multilateral fora that are ~~geared towards~~ *suitable for* the prevention or elimination of ~~the~~ economic coercion. *The Commission should express the Union position after having consulted the Council in accordance with the Treaties as applicable and, where appropriate, with the participation of the Member States.*

- (15) *It is desirable that* the Union ~~should only impose countermeasures when other means~~*use proactively all available means of engagement with the third country concerned* such as negotiations, *adjudication or* mediation, *and it should only impose response measures in cases where such means* or adjudication do not lead to the prompt and effective cessation of the economic coercion and, *where appropriate and requested by the Union from the third country concerned, the reparation of the injury to the Union* ~~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 *under international law* and it is in the Union's interest *to take such action*. 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 the measures in inducing the cessation of *the economic coercion by the third country; their and, where appropriate, the reparation of the injury it has caused to the Union; the* potential to provide relief to economic operators within the Union affected by the ~~third-country measures of third country's~~ 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. *The investment environment and knowledge economy of the Union should be safeguarded.* It is ~~also~~ essential that the selection and design of Union response measures take account of the Union's interest, *which includes, inter alia, the interests of both upstream and downstream industries and final consumers in the Union. When the Commission is considering Union response measures it should prioritise measures that would not have a disproportionate impact on legal certainty and predictability of the measures for economic operators, and on the administration of relevant national regulations. When the Commission is considering Union response measures affecting authorisations, registrations, licenses or other rights for the purposes of commercial activities, it should prioritise measures valid throughout the Union and based on secondary legislation, or, where no such measures are appropriate, measures in areas where extensive Union legislation exists. It is important that Union response measures do not interfere with administrative decisions based on scientific evidence.* 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.

- (16a) The Union should be able to adopt Union response measures of general application designed in such a way that they affect particular sectors, regions or operators of the third country concerned. The Union should also be able to adopt Union response measures which apply specifically to certain natural or legal persons who are connected or linked to the government of the third country and who engage or may engage in activities covered by Article 207 TFEU. Such targeted Union response measures can induce the prompt cessation of economic coercion, whilst effectively avoiding or minimising the negative effects of such coercion on Member States' economies and Union economic operators and final consumers.*
- (16b) As part of the Union response in order to induce the cessation of economic coercion by third countries, the Commission could also adopt measures pursuant to other legal instruments that confer specific powers to the Commission, for example with regard to the granting of Union funding or possibilities to limit participation in Union framework programmes for research and innovation, following the applicable procedures set out therein. This Regulation is without prejudice to rules and procedures under such other legal instruments. The Commission should ensure coordination of adoption of measures set out in Annex I with the measures it adopts pursuant to other Union legal acts. In particular, the Union's overall response should be proportionate and not exceed the injury caused by the third country's economic coercion. Without prejudice to any reporting obligations towards the European Parliament or the Council provided for under such other legal instruments, the Commission should keep the European Parliament and the Council informed of actions under such instruments synchronised with Union response measures.*
- (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~~ **and** 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 cessation of the~~ ***economic coercion in a particular case, and, where appropriate, the reparation of the injury caused*** ~~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 ***and*** 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~~***should*** 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~~ ***third country's*** 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, ***among which businesses***, for the purposes of ***the*** adoption and amendment of Union response measures; and, ~~where-as~~ relevant, for the purposes of ***their*** suspension and termination, in view of the potential impact on such stakeholders.
- (20a) ***In light of economic coercion by third countries against the Union and its Member States, and the frequency and severity of such practices, the Commission should, to ensure coherence, provide a single contact point for the functioning of this Regulation and should act with a view to ensuring that the Union is able to better anticipate and effectively react to economic coercion.***

- (21) It is important to ensure ~~an effective communication and exchange of views and information between the Commission on the one hand and~~**that** 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**are informed regularly and in a timely manner of relevant developments in the application of this Regulation and where appropriate, to have opportunities for an exchange of views with the Commission.**
- (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~~**nationality to take account of relevant developments in international instruments and experience in the application of measures under this Regulation or other** 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 ~~acts under this Regulation or other Union acts, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending~~ 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<sup>5</sup>. 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.

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<sup>5</sup> ***Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making*** (OJ L 123, 12.5.2016, p.4 1).

- (23) In order to ensure uniform conditions for the implementation of ***Union response measures*** ***under*** this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 ***of the European Parliament and of the Council.*** <sup>6</sup>
- (24) The examination procedure should be used for the adoption of Union response measures and their amendment, suspension or termination given that those ~~acts~~***measures*** determine the Union's ~~responses~~***response*** to economic coercion falling within the scope of this Regulation. ***Considering the specific nature of this Regulation and the particular sensitivity attached to the Union response measures, the Commission should not adopt a draft implementing act on any Union response measures where the committee delivers a no opinion on that act. In exercising its implementing powers, special attention should be given by the Commission to solutions which command the widest possible support among Member States and, at all stages of the procedure, including in the appeal committee, finding balanced solutions and avoiding going against any predominant position amongst Member States, in particular as regards the appropriateness of a draft implementing act.***
- (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~~ ***or suspension*** of Union response measures, imperative grounds of urgency ~~so require~~***require expedited action to avoid irreparable damage or to ensure consistency with international law. Such expedited action could prevent the coercion from causing or worsening any economic damage, notably with a view to protecting acute and vital interests of the Union or a Member State.***

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<sup>6</sup> 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).

- (25a) *Any action taken under this Regulation, including the adoption of Union response measures which apply specifically to certain natural or legal persons, should respect the Charter of Fundamental Rights of the European Union. Moreover, any processing of personal data pursuant to this Regulation should be consistent with the applicable rules on the protection of personal data. Processing of personal data by Member States' officials obtaining information under this Regulation should be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>7</sup>. Processing of personal data by the Commission should be carried out in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>8</sup>.*
- (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 *and also its relationship to other Union policies and existing legal instruments, including the Blocking Statute<sup>9</sup>. The review 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.

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<sup>7</sup> *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).*

<sup>8</sup> *Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).*

<sup>9</sup> *Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom. OJ L 309, 29.11.1996, p. 1.*

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 **any** 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.~~
- 1a. This Regulation establishes a framework for the Union to respond to economic coercion with the objective of deterring or having the third country desist from such coercion, whilst enabling the Union, as a last resort, to counteract such coercion. This Regulation also establishes a framework for the Union to seek reparation for the injury caused by such coercion, where appropriate.*
2. Any action taken under this Regulation shall be consistent with ~~the Union's obligations under~~ international law and **be** conducted in the context of the principles and objectives of the Union's external action.
3. *This Regulation applies without prejudice to other existing Union instruments and international agreements, as well as actions taken thereunder, consistent with international law, in the area of the common commercial policy, and to other Union policies. This Regulation does not affect the division of competences between the Union and its Member States as defined by the Treaties.*

## Article 1a

### Definitions

*For the purposes of this Regulation, the following definitions apply:*

1. *"third-country measure" means any action or omission attributable to a third country under international law;*
2. *"particular act" means any legal or other act, including an expression of a position, by an institution, body, office or agency of respectively, the Union or of a Member State, or of a third country;*
3. *"injury to the Union" means a negative impact, including economic damage, to the Union or a Member State, including to Union economic operators caused by economic coercion;*
4. *"third country" means any State, separate customs territory or other subject of international law, other than the Union or a Member State;*

## Article 2

### Scope

1. This Regulation applies ~~wherein~~ *in cases of economic coercion* by a third country. *For the purposes of this Regulation, economic coercion exists:*
  - *where a third country* 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~~**Commission and the Council** shall ~~be taken~~**take** into account ***the following***:
- (a) the intensity, severity, frequency, duration, breadth and magnitude of the third country's measure, ***including its impact on trade or investment relations with the Union, and the pressure arising from it on the Union or a Member State***;
  - (b) whether the third country is engaging in a pattern of interference seeking to obtain from the Union, ~~a or from Member States~~**State** or other countries particular acts;
  - (c) the extent to which the third-country measure encroaches upon an area of the Union's or ~~a Member States~~**State's** sovereignty;
  - (d) whether the third country is acting ***on the basis of*** ~~based on~~ a legitimate concern that is internationally recognised;
  - (e) whether and in what manner the third country, before the imposition ***or application*** 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, ***on its own initiative or upon a duly substantiated request, examine any third-country measure*** ~~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 ***and its examination shall normally not exceed four months***.

2. The Commission ~~may~~**shall** carry out the examination referred to in paragraph 1 ***based on substantiated information collected*** on its own initiative or following information received from any ***reliable*** source, ***including a Member State, the European Parliament, economic operators or trade unions***. The Commission shall ensure the protection of confidential information in ~~line~~**accordance** with Article 12, which may include ***protecting*** the identity of the supplier of the information. ***The Commission shall set up publicly available secure tools with a view to facilitating the submission of information from external sources.***
3. ***The Commission shall in a timely manner inform the Member States of relevant developments as regards launched and ongoing examinations.***
34. The Commission ~~may~~**shall** seek information about the impact of the ***third-country*** measures, ***where necessary. The Commission may request Member States to supply information on such impact and Member States shall act expeditiously*** ~~of the third country concerned.~~

The Commission may publish a notice in *the Official Journal of the European Union* ***and, where appropriate,*** ~~the Official Journal of the European Union~~ or through other suitable public communication means with an invitation to ***stakeholders*** to submit information within a specified time limit ***taking into account the timeline indicated in paragraph 1. In the-*** ~~In that event~~ ***of the publication of a notice,*** the Commission shall notify the third country concerned of the ~~initiation~~**launch** of the examination.

## Article 4

### Determination with regard to the third-country measure

- 1.** Following an examination carried out in accordance with Article 3, *in the event that* the Commission ~~shall adopt a decision determining whether the measure of the third country concerned~~*considers that the third-country measure meets the conditions of Article 2(1), it shall submit a proposal to the Council for an implementing act determining that the third-country measure* meets the conditions set out in Article 2(1). The Commission shall ~~act expeditiously~~*explain in the proposal how the conditions referred to in Article 2(1) are met.*

*The proposal shall include an indicative timeline for assessing whether the conditions set out in Article 7(1) are met, which shall not exceed six months, unless a duly justified longer period is necessary in light of the specific circumstances of the case.*

- 1a.** *In the proposal referred to in paragraph 1 or as a subsequent proposal for a Council implementing act, the Commission shall, where appropriate, propose that the Council determine that the third country concerned be requested to repair the injury to the Union.*

*The assessment of whether it is appropriate to request that the third country concerned repair the injury to the Union shall be based on all circumstances of the particular case. In particular, the assessment shall be based on the nature and extent of the damage caused and the general obligation under customary international law to make full reparation for the injury caused through an internationally wrongful act.*

2. *Prior to ~~adopting its decision~~ submitting the proposal referred to in paragraph 1, where useful for the purposes of the determination referred to in that paragraph, the Commission may shall, without prejudice to the engagement with the third country concerned pursuant to Article 5, invite the third country concerned to submit its observations within a specified period of time. Such period shall be reasonable and shall not unduly delay the Commission's proposal under paragraph 1.*
3. *Prior to submitting the proposal referred to in paragraph 1, the Commission shall inform the European Parliament of the outcome of its examination.*
4. *The Council shall adopt the implementing acts referred to in paragraphs 1 and 1a, acting by a qualified majority. The Council, acting by a qualified majority, may amend the Commission's proposals.*

*The Council shall act expeditiously throughout the process set out in this Article. The Council shall act within eight weeks of the submission of the proposal by the Commission. By way of derogation, the Council may act after the eight-week period provided that it informs the Commission of the reasons for the delay. The total period of time for the Council to act shall normally not exceed ten weeks.*

*In the exercise of its implementing powers, the Council shall apply the conditions laid down in Article 2(1) of this Regulation and the criteria in paragraph 1a, respectively and shall explain how these are applied.*

5. *The implementing acts referred to in this Article shall be published in the Official Journal of the European Union.*
6. *The European Parliament shall be informed of any implementing acts proposed or adopted pursuant to this Article.*

7. Where the ~~Commission decides that the measure of the third country concerned meets the conditions set out in Article 2(1), it~~**Council adopts the implementing acts referred to in paragraphs 1 or 1a, the Commission** shall ~~notify~~**inform** the third country concerned of its decision~~accordingly~~ and request it to cease the economic coercion **immediately** and, ~~where appropriate, to~~ repair the injury suffered ~~by~~**to** the Union or its Member States**within a reasonable period of time, respectively.**

## Article 5

### Engagement with the third country concerned

***Following the adoption of an implementing act in accordance with Article 4, the Commission shall provide adequate opportunity for consultations***~~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~~ ***and, where so requested in accordance with Article 4, reparation of the injury to the Union.***

***If the third country concerned enters into consultations with the Union in good faith, the Commission shall expeditiously engage in such consultations.***

***In the course of such consultations, the Commission may explore*** ~~Such options may include~~**with the third country concerned including:**

- 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.;
- ***mediation, conciliation or good offices by a third party to assist the Union and the third country concerned in those efforts.***

The Commission shall seek to obtain the cessation of the economic coercion ~~by~~ also **by** raising the matter in any relevant international forum, ***after having consulted the Council, where applicable in accordance with the Treaty.***

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

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

## Article 6

### International cooperation

The Commission shall enter into consultations or cooperation, ~~on behalf of the Union,~~ with any ~~other~~ ***third*** country affected by the same or similar ~~measures~~ ***cases*** of economic coercion or with any interested third country, with a view to obtaining the cessation of the coercion, ***after having consulted the Council, where applicable in accordance with the Treaty.*** This may involve, where appropriate, ***sharing related information and experiences to facilitate a coherent response to such cases of economic coercion,*** coordination in relevant international fora and coordination in response to the coercion. ***Such consultation or cooperation shall not unduly delay the procedure under this Regulation. The Commission shall invite, where appropriate, Member States to participate in such consultation and cooperation.***

## Article 7

### Union response measures

1. The Commission shall *adopt Union response measures by means of* ~~adopt an implementing act determining that it shall take a Union response measure~~ *in accordance with the examination procedure referred to in Article 15(2) where the following conditions are met:*
  - (a) action pursuant to ~~the~~ Articles 4 and 5 has not resulted in the cessation of the economic coercion and, *where requested, in the reparation of the injury* ~~reparation of the injury it has caused to the Union or a Member State~~, within a reasonable period of time;
  - (b) ~~action~~ *the adoption of Union response measures* is necessary to protect the interests and rights of the Union and its Member States in that particular case, ~~and~~ *in light of the options available;*
  - (c) ~~action~~ *the adoption of Union response measures* is in the Union's interest, *as determined in accordance with Article 7bis.*

*Where the third country has ceased the economic coercion but has not repaired in full the injury as requested, the assessment of whether the condition referred to in point (b) of the first subparagraph is met shall be based on all circumstances of the particular case. In particular, the assessment should be based on the nature and extent of the damage caused and the general obligation under customary international law to make full reparation for the injury caused through an internationally wrongful act.*

- 1a.** *The Commission shall determine which Union response measures set out in Annex I are appropriate on the basis of the criteria for selection and design set out in Article 9. In the implementing act referred to in paragraph 1, the Commission shall also determine the appropriate set out the reasons why it considers that the conditions referred to in that paragraph are met and that the Union response from among the measures provided for in Annex I. Such measures are appropriate in light of the criteria referred to in Article 9.*
- 1b.** *Union response measures may also apply with regard to be adopted as:*
- a) measures of general application or,*
  - b) measures which apply to certain natural or legal persons designated in accordance with which engage or may engage in activities covered by Article 8207 TFEU and are connected or linked to the government of the third country concerned.*
- Union response measures of general application may be designed in such a way that they affect particular sectors, regions or operators of the third country concerned in accordance with the rules of origin in Annex II. The Commission may also adopt measures which it can take pursuant to other legal instruments.*
- 1c.** *Insofar as the measures of the third country concerned constitute an internationally wrongful act, Union response measures The implementing act shall be adopted in accordance with the examination procedure referred to in Article 15(2) under this Regulation may consist of measures implying the non-performance of international obligations towards the third country concerned.*
- 1d.** *The Commission shall ensure coordination of the adoption of Union response measures with the measures it adopts pursuant to other Union legal acts for the purpose of responding to economic coercion in the particular case.*

2. The Union response measures shall apply from a specified date after the adoption of the implementing act referred to in paragraph 1. *The specified date for application shall not be later than three months from the adoption of the implementing act, unless the implementing act specifies a later date in light of the specific circumstances. The Commission shall set this specify the date of application of the Union response measures, 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 and, where requested, to repair the injury caused.*
3. ~~The Commission shall, Upon adoption of the implementing act, notify the third country concerned of the Union response measures adopted pursuant to referred to in paragraph 1. In the notification, the Commission shall, on behalf of the Union, call on notify 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 thereof and:~~
- (a) call on the third country concerned to immediately cease the economic coercion and, where appropriate, and where requested, to repair the injury caused;*
  - (b) offer the third country concerned to negotiate a solution; and*
  - (c) inform the third country concerned that the Union response measures will apply, unless the economic coercion ceases and, where appropriate, and where requested, the third country repairs the injury to the Union.*

4. The implementing act referred to in paragraph 1 shall ~~state that the~~ **provide for a deferred** application of the Union response measures, **but only** ~~shall be deferred~~ for a period **that is necessary for the Commission to verify the actual cessation of the coercion and which needs to be** specified in that implementing act, where the Commission has credible information that the third country has ceased **or has taken concrete steps to cease** the economic coercion **and, where appropriate, has repaired the injury caused** before the start of application of the adopted Union response measures. ~~In that~~
- In the** event, ~~that~~ the Commission **has the information referred to in the first subparagraph, it** shall publish a notice in the *Official Journal of the European Union* ~~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 **and, where appropriate, repairs the injury caused** before the ~~Union response measures start to apply~~ **date of application of the Union response measures**, the Commission shall terminate the Union response measures in accordance with Article 10.
5. Notwithstanding paragraphs 2, 3 and 4, the **implementing act referred to in paragraph 1 may provide that** Union response measures ~~may~~ **shall** apply without the Commission, ~~on behalf of the Union,~~ first calling, ~~once more~~ **again**, on the third country concerned to cease the economic coercion or, **where appropriate, repair the injury caused, or** without the Commission first notifying ~~it~~ **the third country concerned** that Union response measure will apply **pursuant to paragraph 3**, where **in duly justified cases**, this is necessary for the preservation of the rights and interests of the Union or ~~a Member States~~ **State**, notably of the effectiveness of Union response measures.

- 5a. *Notwithstanding paragraphs 2 and 4, where the economic coercion consists in a threat to apply measures affecting trade or investment in accordance with Article 2(1), the implementing act referred to in paragraph 1 shall apply from the date on which the third-country measures affecting trade or investment at stake start applying. The Commission shall publish a notice in the Official Journal of the European Union indicating the date of application of the implementing act as referred to in paragraph 1.*
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 7a

### *Determination of the Union's interest*

*The determination of the Union interest in taking, suspending, amending or terminating Union response measures shall consist in an appreciation of the various interests at stake, taken as a whole. The various interests shall include, primarily, the preservation of the ability of the Union and its Member States to make legitimate sovereign choices free from economic coercion, as well as all other interests of the Union or the Member States specific to the particular case at stake, interests of Union economic operators, including upstream and downstream industries, and of final Union consumers, affected, or potentially affected, by the economic coercion or by Union response measures. The determination shall be based on all information available.*

## Article 8

~~Union response measures with regard to~~ ***Conditions for applying Union response measures to certain 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.~~
- 1. *A natural or legal person may be considered as connected or linked to the government of the third country concerned for the purposes of Article 7(1b), first subparagraph, point (b) where:***
- (a) that government beneficially owns more than 50 % of the equity interest in such legal person, exercises directly or indirectly more than 50 % of the voting rights in it, or has the power to appoint a majority of its directors or otherwise to legally direct its actions;***
  - (b) such person benefits from exclusive or special rights or privileges granted in law or in fact by the government of the third country concerned, if it operates in a sector where that government limits to one or more the number of suppliers or buyers, or if it is allowed directly or indirectly by that government to exercise practices which prevent, restrict or distort competition; or***
  - (c) such person effectively acts on behalf of, or at the direction or instigation of the government of the third country concerned.***

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.~~
42. ~~Where the Commission has grounds to consider that persons should be designated pursuant to paragraph 2, point (a) or~~ *reason to believe that a natural or legal person meets the criteria set out in Article 7(1b), first subparagraph, point (b) and the Commission is considering to adopt Union response measures that would apply with regard to that person,* ~~it shall publish a provisional list of persons and, where relevant, the possible~~ *inform that person of the following:*
- (a) *the reasons why the Commission considers that that person meets the criteria set out in Article 7(1b), first subparagraph, point (b);*
  - (b) *the Union response measures that the Commission is considering to apply to that person;*
  - (c) *the possibility for that person to submit, within a reasonable period of time, observations on whether that person meets the criteria set out in Article 7(1b), first subparagraph, point (b).*

*The Commission shall publish a notice in the Official Journal of the European Union to this effect and, where possible, notify the person concerned directly.*

*In the notice referred to in the second subparagraph, the Commission shall give other interested parties the opportunity to submit observations* ~~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~~ *seek, including by requesting from Member States, any information it considers relevant.*

3. *Without prejudice to Article 10, where new substantial evidence is submitted to the Commission after Union response measures referred to in Article 7(1b), first subparagraph, point (b) have been adopted, the Commission shall review whether the natural or legal persons concerned continue to meet the criteria set out in Article 7(1b), first subparagraph, point (b) and shall inform the natural or legal persons concerned accordingly.*

## Article 9

### Criteria for selecting and designing Union response measures

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

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 *determination pursuant to Article 7bis*, on the basis of available information, including as collected pursuant to Article 11; *and any relevant action pursuant to the Union's common foreign and security policy* and the following criteria:
- (a) the effectiveness of the *Union response* measures in inducing the cessation of the economic coercion *and, where requested, reparation of the injury to the Union*;
  - (aa) *the avoidance or minimisation of negative impacts*;
    - *on Union actors affected by Union response measures, including the availability of alternatives for such affected actors, for example alternative sources of supply for goods or services*;
    - *on the investment environment in the Union or a Member State, including the impact on employment and regional development policy*;
  - (ab) *the avoidance or minimisation of negative impacts on the promotion of economic growth and employment through the protection of intellectual property rights as a means to spur innovation and a knowledge economy in the Union or a Member State*;
  - (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 *by Union response measures*;

- (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~~**third** countries affected by the same or similar ~~measures~~ **cases** of economic coercion, including where relevant any coordination pursuant to Article 6;
- (g) any other relevant criteria established in international law.

*In selecting Union response measures, the Commission shall give predominant weight to measures which most effectively ensure compliance with criteria (a) and (aa) of the first subparagraph.*

**2a.** *Without prejudice to paragraph 2, when selecting and designing an appropriate response measure that affects a procedure whereby a public authority in the Union grants authorisations, registrations, licenses or other rights to a natural or legal person for the purposes of their commercial activities, the Commission shall always consider measures according to the following hierarchy of steps:*

- (a) *measures affecting procedures duly initiated after the entry into force of the implementing act referred to in Article 7(1) or where no such measures are available;*
- (b) *measures affecting procedures not yet completed upon the entry into force of the implementing act referred to in Article 7(1).*

*Where none of the measures referred to in points (a) and (b) of the first subparagraph are available, the Commission may, in exceptional circumstances consider other response measures, where it has been demonstrated, in light of the information-gathering exercise conducted pursuant to Article 11, that those other measures would not disproportionately affect the upstream industries, downstream industries or final consumers within the Union or impose a disproportionate burden on the process of administration of relevant national regulations, whilst ensuring effectiveness.*

*In conjunction with the first subparagraph, when selecting and designing a response measure, the Commission shall always take into account the level of harmonisation while preferring measures affecting procedures applied on a Union-wide basis or measures affecting procedures applied in an area where extensive Union legislation exists.*

*Union response measures taken according to the first subparagraph shall not interfere with administrative decisions of Union and Member State authorities that are based on the evaluation of scientific evidence.*

2. *Where necessary to achieve the objective of this Regulation*, the Commission may decide to apply Union response measures under ~~Articles 7 or 8~~ **Article 7** consisting of ~~restrictions on measures affecting the access of~~ foreign direct investment **to the Union** 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~~ **the** application ~~whereof such~~ Union response measures **where** not covering such situations would be insufficient to effectively achieve the objectives of this Regulation, in particular where **the effect of** such measures could be avoided ~~or circumvented by the third country or the person concerned~~.

In assessing whether to adopt ~~such a~~ **the** decision *referred to in the first subparagraph*, the Commission shall consider, in addition to the criteria ~~in~~ **under** 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 **by the third country or the person concerned** of any Union response measures not applying to services supplied, or direct investments made, within the Union;

- (b) the *possible* effective contribution of such intra-Union restrictions *referred to in the first subparagraph to to the objective of obtaining the cessation of economic coercion and the reparation of the injury to the Union* the measure of economic coercion;
- (c) the existence of alternative measures capable of achieving the objective of obtaining the cessation *obtaining the cessation of the economic coercion and the reparation of the measure of economic coercion injury to the Union* 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 7(1) in light of the criteria referred to in the third paragraph of this Article.*

## 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 ~~the~~ third country that ~~have~~ *has* 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 *interest*.

2. Where the third country concerned suspends the economic coercion, ~~or where it is necessary in the Union's interest,~~ the Commission ~~may~~**shall** suspend the application of the respective Union response measure for the duration of the third country's suspension.

*Where the third country concerned has offered, and the Union or the Member State concerned has concluded, an agreement to submit the matter to binding international third-party adjudication and the third country also suspends its measures of economic coercion,* ~~or as long as necessary in light of the Union's interest,~~ the Commission shall suspend the Union response measures ~~if~~**for the duration of the proceedings.**

*Where adjudication or a settlement with the third country concerned has offered, and the Union has concluded, an agreement to submit the matter to binding international third-party adjudication and* **requires implementation by the third country, the Commission shall suspend the Union response measures as long as the third country is also suspending its measures of economic coercion** ~~remains engaged in implementation in line with the settlement or the adjudication.~~

The Commission shall, ~~by means of an implementing act,~~ decide to suspend the ~~suspend or resume the Union response measures where necessary in light of the Union interest determined pursuant to Article 7bis, or where necessary to facilitate continued engagement after the adoption of~~ Union response ~~measure~~**measures pursuant to Article 5(4).**

*The Commission shall act by means of an implementing act,* ~~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)~~**9**, or further developments, including the third country's reaction, the Commission ~~may~~**shall**, 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 *and the injury to the Union has been repaired, where requested;*
  - (aa) *where the Council has decided pursuant to Article 4 to request reparation and the third country ceased the economic coercion but has not repaired the injury, unless it is necessary to achieve the objective of this Regulation, taking into account all circumstances of the particular case, to maintain the measures;*
  - (b) where a mutually agreed solution has otherwise been reached;
  - (c) where a binding decision in international third-party adjudication in a dispute *covering the matter of the economic coercion* between the third country concerned and the Union or a Member State requires the withdrawal of the Union response measure; *or*
  - (d) where it is appropriate in light of the Union's interest *as determined pursuant to Article 7bis.*

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, *such as avoiding irreparable damage to the Union or a Member State or continuing to ensure consistency with the Union's obligations under international law pursuant to the suspension or cessation of the economic coercion of the third country concerned,* the Commission shall adopt immediately applicable implementing acts suspending, ~~amending or terminating~~ *or amending* 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 **Union response** 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 **economic** operators ~~and Union's interest~~, through a notice published in the *Official Journal of the European Union* **and, where appropriate**, ~~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~~ **associations acting on behalf of Union economic operators, and trade unions**, affected by possible Union response measures, and Member States' **authorities** 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 **identify possible options for Union response measures and**, in particular, seek information **and views** on:
  - (a) the impact of such measures on third-country actors ~~or Union~~ **and their** competitors **in the Union**, users ~~or~~, consumers or ~~on Union employees~~ **employees in the Union**, business partners or clients of such **third-country** actors **in the Union**;
  - (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 ***and their potential impacts*** shall accompany the draft implementing act when submitted to the committee in the context of the examination procedure referred to in Article 15(2). ***That analysis shall include a thorough assessment of impact on both upstream and downstream industries and final consumers within the Union and, if relevant, point out any potential disproportionate effects.***
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~~***The Commission shall seek information and views in a targeted manner from relevant stakeholders prior to the adoption of an implementing act in accordance with Article 10(5), unless the exceptional situation of 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 11a***

##### ***Single contact point***

1. ***There shall be a single contact point within the Commission in relation to the application of this Regulation and its coordination with any relevant acts.***
2. ***For the purposes of this Regulation, the Commission shall:***
  - (a) ***gather information and provide cost and data analyses with a view to determining the nature of the economic coercion;***
  - (b) ***act, in full compliance with the principle of confidentiality, as the main contact point for Union businesses and private stakeholders affected by the economic coercion at stake, including with regard to assistance to be provided in the context of ongoing economic coercion.***

## Article 12

### Confidentiality

1. Information received pursuant to this Regulation shall be used only for the purpose for which it was *supplied*, requested, *or obtained*.
2. The supplier of information may request ~~that~~*such* information ~~supplied~~ be treated as confidential. In such cases, it shall be accompanied by a non-confidential *and meaningful* summary *of the information concerned* or a statement of the reasons *explaining* why the information *concerned* 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~~*from disclosing* general information in ~~a summary~~*summary but meaningful* form, ~~which~~*provided that such disclosure* does not contain information allowing ~~to identify~~*the identity of* the supplier of the information *to be known*. Such disclosure shall take into account the legitimate interest of the parties concerned in not having confidential information disclosed.
4. *Member States officials obtaining information under this Regulation shall be subject to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties. A secure and encrypted system shall be provided by the Commission to support direct cooperation and exchange of information with Member States officials.*

## Article 13

### Rules of origin *and nationality*

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 and 3 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~~ **Article 13(2)** shall be conferred on the Commission for an indeterminate period of time from ~~[five years from the date of entry into force]~~ **of this Regulation. Such delegation of power shall be tacitly extended for periods of an identical duration unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.**
3. The delegation of power referred to in ~~Articles 7(7) and~~ **Article 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* ~~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~~ **Article** 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.

***Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) 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

### ***Reporting and 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~~ ***keep the European Parliament and the Council informed, regularly and in a timely manner, of relevant developments in the application of this Regulation at the stage of examination, including its launch, of engagement with the third country concerned and international cooperation, and in the period during which Union response measures are in force. In light of the information received, the European Parliament or the Council may invite the Commission for an exchange of views where appropriate. The European Parliament may express its views via any appropriate means and draw possible conclusions for future measures.***
- 1a. ***The Commission shall evaluate Union response measures, adopted pursuant to Article 7, six months after their termination, taking into account stakeholder input, and information provided by the European Parliament and the Council, and any other relevant information, and shall report to the European Parliament and the Council. In this evaluation report the Commission shall examine the effectiveness and operation of the Union response measure, and, where appropriate, draw possible conclusions for future Union response measures and the review of this Regulation pursuant to paragraph 2.***

2. No later than three years after the adoption of the first implementing act under this Regulation *pursuant Article 4, or ~~five~~<sup>six</sup> years* after the entry into force of this Regulation, whichever is earlier, *and every five years thereafter*, the Commission shall review this Regulation and its implementation and shall report to the European Parliament and the Council. *In the course of such review, the Commission shall give particular consideration to any issues which may arise as regards the relationship of this Regulation to other existing Union instruments.*

## 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*  
*The President*

*For the Council*  
*The President*

## Annex I

### Union response measures pursuant to Articles 7 and 8

Measures which may be adopted pursuant to ~~Articles 7 and 8~~ **Article 7** are:

- (a) the ~~suspension of~~ ***non-performance of applicable international obligations as regards*** any tariff concessions, as necessary, and the imposition of new or increased customs duties, including the re-establishment of customs duties at the most-favoured-nation level or the imposition of customs duties beyond the most-favoured-nation level, or the introduction of any additional charge on the importation or exportation of goods;
- (b) the ~~suspension~~ ***non-performance*** of applicable international obligations, as necessary, and the introduction or increase of restrictions on the importation or exportation of goods, ***including, where appropriate, on export control goods***, whether made effective through quotas, import or export licences or other measures, or on the payment for goods;
- (c) the ~~suspension~~ ***non-performance*** of applicable international obligations, as necessary, and the introduction of restrictions on trade in goods made effective through measures applying to transiting goods or internal measures applying to goods.
- (d) the ~~suspension~~ ***non-performance*** of applicable international obligations concerning the right to participate in tender procedures in the area of public procurement, as necessary, and:

- (i) the exclusion from public procurement of goods, services or suppliers of goods or services of the third country concerned or the exclusion of tenders the total value of which is made up of more than ***50% of goods or services originating in the third country concerned, unless a lower percentage is necessary in light of the exceptional circumstances of the particular case, and the remaining***~~a specified~~ percentage of goods or services ~~of the third country concerned~~***is not covered by Union commitments under the Government Procurement Agreement or another Union agreement on public procurement concluded with other third countries;*** and/or
- (ii) the imposition of a ~~mandatory price evaluation weighting penalty~~***score adjustment***<sup>1</sup> on tenders of goods, services or suppliers of goods or services of the third country concerned.

Origin shall be determined on the basis of Annex II;

- (e) ~~the suspension of applicable international obligations, as necessary, and the imposition of restrictions on the exportation of goods falling under the Union export control regime;~~
- (f) ~~the suspension~~***non-performance*** of applicable international obligations regarding trade in services, as necessary, and the imposition of measures affecting trade in services;

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<sup>1</sup> ~~Mandatory price evaluation weighting penalty~~***Score adjustment*** means an obligation for contracting authorities or entities conducting public procurement procedures to ~~increase~~***relatively diminish***, subject to certain exceptions, the ~~price of goods or services falling under this paragraph that have been offered in~~***score of a tender resulting from its evaluation, on the basis of the contract award criteria defined in the relevant public procurement documents, by a given percentage. In cases where price or cost is the only contract award procedure criterion, the score adjustment means the relative increase, for the purpose of the evaluation of tenders, by a given percentage of the price offered by a tenderer.***

- (g) the ~~suspension~~**non-performance** of applicable international obligations, as necessary, and the imposition of measures affecting ***the access of*** foreign direct investment ***to the Union***;
- (h) the ~~suspension~~**non-performance** of applicable international obligations with respect to trade-related aspects of intellectual property rights, ~~as necessary,~~ and the imposition of restrictions on the protection of such intellectual property rights or their commercial exploitation, in relation to ~~right-holders~~**rightholders** who are nationals of the third country concerned;
- (i) the ~~suspension~~**non-performance** of applicable international obligations with respect to financial services, as necessary, and the imposition of restrictions for banking, insurance, access to Union capital markets and other financial service activities;
- (j) the ~~suspension~~ **non-performance** of applicable international obligations ~~with respect to the treatment of goods,~~ as necessary, and the ~~imposition~~**introduction or increase** of restrictions on ~~registrations and authorisations under the chemicals legislation of~~***the possibility to place on the market goods falling under the Union's chemicals legislation***;
- (k) the ~~suspension~~ **non-performance** of applicable international obligations, ***as necessary, and the introduction or increase of restrictions on the possibility to place on the market goods falling under the Union's*** ~~with respect to the treatment of goods, as necessary, and the imposition of restrictions on registrations and authorisations related to the sanitary and phytosanitary legislation;~~***of the Union***;
- (l) ~~the suspension of applicable international obligations, as necessary, and the imposition of restrictions on access to Union-funded research programmes or exclusion from Union-funded research programmes.~~

## Annex II

### Rules of Origin **and Nationality**

1. The origin of a good shall be determined in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council.<sup>1</sup>
2. The origin of a service, including a service supplied in the area of public procurement, shall be determined on the basis of the origin of the natural or legal person providing it. The ~~origin~~ **nationality** of the service provider shall be deemed to be:
  - (a) in the case of a natural person, the country of which the person is a national or where the person has a right of permanent residence;
  - (b) in the case of a legal person any of the following:
    - (i) if the service is provided other than through a commercial presence within the Union, the country where the legal person is constituted or otherwise organised under the laws of that country and in the territory of which the legal person is engaged in substantive business operations;
    - (ii) if the service is provided through a commercial presence within the Union,
      - (a) if the legal person is engaged in substantive business operations in the territory of the Member State where the legal person is established such that it has a direct and effective link with the economy of that Member State the origin of that legal person shall be deemed to be that of the Member State in which it is established;

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<sup>1</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

(b) if the legal person providing the service is not engaged in substantive business operations such that it has a direct and effective link with the economy of the Member State in which it is established, the origin of that legal person shall be deemed to be the origin of the natural or legal persons which own or control it. The legal person shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled" by persons of a given country if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.

(iii) By derogation from sub-paragraph (ii)(a), if it is decided that Union response measures should apply to legal persons falling under subparagraph (ii)(a), the origin of that person shall be the nationality or the place of permanent residence of the natural or ~~juridical~~ **legal** person or persons who own or control the legal person in the Union. The legal person shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled" by persons of a given country if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.

3. The nationality of an investment shall be:

(a) if the investment is engaged in substantive business operations in the territory of the Member State where the investment is established such that it has a direct and effective link with the economy of that Member State the nationality of the investment shall be deemed to be that of the Member State in which it is established;

- (b) if the investment is not engaged in substantive business operations such that it has a direct and effective link with the economy of the Member State in which it is established, the nationality of the investment shall be deemed to that of the natural or legal persons which own or control it. The investment shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled" by persons of a given country if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
- (c) by derogation from sub-paragraph (a), if it is decided that Union response measures should apply to legal persons falling under subparagraph (a), the nationality of the investment shall be the nationality or the place of permanent residence of the natural or ~~juridical~~**legal** person or persons who own or control the investment in the Union. The investment shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled" by persons of a given country if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.
4. Regarding trade-related aspects of intellectual property rights, the term "nationals" shall be understood in the same sense as it is used in ~~the~~ paragraph 3 of Article 1 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (*TRIPS*) and *future amendments thereof*.
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