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European Union

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**Interinstitutional File:  
2021/0406(COD)**

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## **INFORMATION NOTE**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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 - Outcome of the European Parliament's first reading (Strasbourg, 2 to 5 October 2023)

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### **I. INTRODUCTION**

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure<sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on International Trade (INTA), Bernd LANGE (S&D, DE) presented on behalf of INTA a compromise amendment (amendment number 78) to the abovementioned proposal for a Regulation and two amendments (amendments number 79 and 80) to the legislative resolution containing statements. These amendments had been agreed during the informal contacts referred to above. No other amendments were tabled.

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<sup>1</sup> OJ C 145, 30.6.2007, p. 5.

## II. VOTE

When it voted on 3 October 2023, the plenary adopted the compromise amendment (amendment number 78) to the abovementioned proposal for a Regulation, as well as amendments number 79 and 80 to the legislative resolution. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto<sup>2</sup>.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>2</sup> The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

**P9\_TA(2023)0333**

**Economic coercion by third countries**

**European Parliament legislative resolution of 3 October 2023 on the 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 (COM(2021)0775 – C9-0458/2021 – 2021/0406(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0775),
- having regard to Article 294(2) and Article 207(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0458/2021),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 14 June 2023 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rule 59 of its Rules of Procedure,
- having regard to the opinions of the Committee on Foreign Affairs and the Committee on the Internal Market and Consumer Protection,
- having regard to the report of the Committee on International Trade (A9-0246/2022),

1. Adopts its position at first reading hereinafter set out;
2. Approves the joint statement by Parliament, the Council and the Commission annexed to this resolution, which will be published in the C series of the *Official Journal of the European Union*;
3. Takes note of the statement by the Commission annexed to this resolution, which will be published in the C series of the *Official Journal of the European Union*;
4. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

**P9\_TC1-COD(2021)0406**

**Position of the European Parliament adopted at first reading on 3 October 2023 with a view to the adoption of Regulation (EU) 2023/... of the European Parliament and of the Council on the protection of the Union and its Member States from economic coercion by third countries**

(Text with EEA relevance)

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<sup>1</sup>,

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<sup>1</sup> Position of the European Parliament of 3 October 2023.

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), first subparagraph, **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 **UN** Charter and international law. Pursuant to Article 21(1), second subparagraph, **TEU**, the Union is also to promote multilateral solutions to common problems.

- (3) Pursuant to Articles 1 and 2 of the UN Charter, one of the purposes of the United Nations is to develop friendly relations among nations in accordance with, among others, the principle of sovereign equality.
- (4) Article 21(2) *TEU* requires the Union to define and pursue common policies and actions, and to work for a high degree of cooperation in all fields of international relations *in order to*, among other things, safeguard its values, fundamental interests, independence and integrity, consolidate and support the rule of law, and the principles of international law.

- (5) *The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly of the United Nations on 24 October 1970, states that international relations are to be conducted in accordance with the principles of sovereign equality and non-intervention. That 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, which reflects customary international law and is thus binding in the relations between third countries, on the one part, and the Union and its Member States, on the other. Moreover, rules of customary international law on State responsibility for internationally wrongful acts are reflected in the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), 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. Those rules are binding in the relations between third countries, on the one part, and the Union and its Member States, on the other.*



- (6) The modern interconnected world economy *increases the* risk of economic coercion, as it provides countries with enhanced means for such coercion, including hybrid means. 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.

- (7) 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 interfere in the legitimate sovereign choices of the Union or a Member State by applying or threatening to apply measures affecting trade or investment in order 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 the Union or a Member State***. Such measures affecting trade or investment 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 that are present in the Union, that cause harm to economic activities in the Union. ***The term "third country" should be understood to include not only a third State, but also a separate customs territory or other subject of international law because such entities are also capable of economic coercion. The use of that term and the application of this Regulation do not have any implication regarding sovereignty. Moreover, this Regulation should be applied in conformity with the Union's position in relation to the third country concerned.***

- (8) This Regulation aims to ensure an effective, efficient and swift Union response to economic coercion . *It especially aims to* deter the economic coercion of the Union or a Member State and to enable the Union, *as a* last resort, to counteract economic coercion through Union response measures. *This Regulation is without prejudice to existing Union instruments and to international agreements concluded by the Union, as well as to actions taken thereunder that are consistent with international law, in the area of the common commercial policy, and to other Union policies.*
- (9) *Economic coercion by third countries can target foreign policy actions of the Union or a Member State and a determination of the existence of economic coercion, and the responses thereto, can have significant implications for relations with third countries. It is necessary to ensure consistent responses in distinct but related policy areas. This Regulation is without prejudice to a possible Union action pursuant to specific provisions in Chapter 2 of Title V of TEU, to which due consideration should be given when considering any response to economic coercion by a third country.*

- (10) ■ The economic coercion *of* a Member State *by a third country affects the Union's internal market and the Union as a whole*. Member States, *acting on their own, cannot counteract economic coercion by third countries through measures falling within the area of common commercial policy*. *Given* the exclusive competence conferred on the Union by Article 207 of the Treaty on the Functioning of the European Union (*TFEU*), *only the Union is permitted to act*. *Moreover, it is possible that* Member States, *as distinct actors under international law, are not entitled to counteract economic coercion of the Union by third countries*. Therefore, *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 between the Union and its Member States*.

(11) 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 ***economic coercion by third countries***. The Union response measures should be preceded by an examination of the facts, a determination of the existence of economic coercion, and, wherever possible ***and provided that 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 ***proportionate and not exceed*** the injury to the Union. The criteria for selecting and designing the Union response measures should take into account, in particular, 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, and the*** need to avoid or minimise collateral effects, ***disproportionate administrative complexity and*** burdens and costs imposed, in particular, on Union economic operators, as well as the Union interest. Therefore, this Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with Article 5(4) ***TEU***.

- (12) Any action undertaken by the Union on the basis of this Regulation should ***be consistent with international law, including customary*** international law. ***Among*** the international 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 ***continue to support that system, with the WTO at its core, and to use its dispute settlement system where appropriate.***

(13) *Customary international law, as reflected in Article 22 and Articles 49 to 53 of the ARSIWA, allows, under certain conditions such as proportionality and prior notice, the imposition of countermeasures, namely 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 economic coercion by the third country constitutes an internationally wrongful act. Under international law, in accordance with the principle of proportionality, countermeasures are to be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question. In that respect, injury to the Union or a Member State is understood under international law to include injury to Union economic operators.*

- (14) *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 for any injury to the Union, in accordance with Article 31 and Articles 34 to 39 of the ARSIWA. In the event of the Union obtaining compensation for the injury to Union operators, the Union may, where appropriate and to the extent possible, consider transferring that compensation to the Union operators that have suffered loss as a result of the economic coercion.*



- (15) 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 obliged to perform under international law and which falls within its sovereignty, and when the coercion reaches a certain qualitative or quantitative threshold, depending both on the objectives pursued and the means used. The Commission ***and the Council should take into account*** 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, that only a credible threat, falls 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, or the fight against climate change.***

- (16) 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. *Article 2(a) and Articles 4 to 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; the conduct of an organ placed at the disposal of a State by another State; the conduct of 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; the conduct of 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 the conduct that the State acknowledges and adopts as its own. ■

- (17) The Commission should examine whether a third-country measure *constitutes economic coercion. The Commission should carry out such an examination on the basis of* information received from any *reliable* source, including *natural and legal* persons, *the European Parliament*, a Member State *or trade unions. In order to determine* whether a *third country applies or threatens to apply measures affecting trade or investment which constitute economic coercion, the assessment of the Commission and the Council should be based on facts.*
- (18) *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.*

**(19) *Following the Commission’s examination, where the Commission concludes that the third-country measure constitutes economic coercion, the Commission should submit a proposal to the Council for an implementing act determining that the third-country measure meets the conditions for the existence of economic coercion. In that proposal, the Commission should include an indicative period for the Commission to assess whether the conditions for the adoption of Union response measures are met. Where appropriate, the Commission should also submit a proposal for a Council implementing act determining that the Union requests the third country to repair the injury to the Union. Furthermore, economic coercion can have an impact on the Union or any Member State and thus create a need to act swiftly under this Regulation and in line with the Union principles of solidarity between Member States and of sincere co-operation. As a consequence, the Council should act expeditiously and make all necessary efforts to adopt a decision within 8 weeks of the submission of the proposal by the Commission. In the exercise of its implementing powers, the Council should act in accordance with the conditions for the existence of economic coercion and criteria for determining whether it is appropriate to request the third country to repair the injury to the Union.***

(20) *In an effort to secure the cessation of economic coercion and, where requested, reparation of injury to the Union, 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 explore 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 the economic coercion 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 Article 218 TFEU, or by the Member State concerned.*

- (21) The Union should support and cooperate with third countries affected by the same or similar economic coercion or other interested third countries. The Union should participate in international coordination in *any* bilateral, plurilateral or multilateral fora that are *suitable for* the prevention or elimination of 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.*
- (22) *It is desirable that the Union proactively use all available means of engagement with the third country concerned* such as negotiations, *adjudication or* mediation, *and that it only impose response measures where such means* 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,* 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 interest *to take such action*. It is appropriate that this 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 those Union response measures.

(23) 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 and, where appropriate, the reparation of the injury it has caused to the Union*; the potential to provide relief to Union economic operators affected by the economic coercion; the aim of avoiding or minimising negative economic and other effects on the Union; and the avoidance of disproportionate administrative burden and costs in the application of the Union response measures. *The investment environment and knowledge economy of the Union should be safeguarded.* It is essential that the selection and design of Union response measures take account of the Union interest, *which includes, among other things, the interests of both Union upstream and downstream industries and Union final consumers. When the Commission is considering Union response measures, it should give preference to 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 give preference to measures which affect procedures applied on a Union-wide basis and based on secondary legislation, or, where no such measures are appropriate, measures in areas where extensive Union law exists. Union response measures should not interfere with administrative decisions that are based on the evaluation of 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.

**(24) *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 to certain natural or legal persons that are connected or linked to the government of the third country and that 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, Union economic operators and Union final consumers.***



(25) *As part of the Union response in order to induce the cessation of economic coercion by third countries, the Commission can also adopt measures pursuant to legal instruments other than this Regulation 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, in accordance with the procedures set out therein. This Regulation is without prejudice to rules and procedures under such other legal instruments. The Commission should ensure coordination of the adoption of measures set out in Annex I with the measures it adopts pursuant to Union legal acts other than this Regulation. In particular, the Union's overall response should be proportionate and not exceed the level of injury to the Union. 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.*

- (26) It is appropriate to set out rules on the origin of goods or services and on the nationality of service providers, investment and holders of intellectual property rights, for the purposes of determining the Union response measures. The rules of origin **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 international agreements concluded by the Union.
- (27) For the purposes of obtaining the ■ cessation of the ***economic coercion in a particular case and, where appropriate, the reparation of the injury caused***, 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 and circumvention. The decision to impose any such restrictions **should** be duly justified in implementing acts adopted pursuant to this Regulation in the light of the criteria specified in this Regulation.

- (28) After the adoption of Union response measures, the Commission should continually assess the situation of economic coercion, the effectiveness of the Union response measures and their effects on the Union interest, with a view to amending, suspending or terminating the Union response measures accordingly. It is therefore necessary to set out the rules and procedures for amending, suspending and terminating Union response measures and the circumstances in which the amendment, suspension or termination of Union response measures is appropriate.
- (29) It is essential to provide for opportunities for the involvement of stakeholders, ***including businesses***, for the purposes of ***the*** adoption and amendment of Union response measures **■** and, ***where*** relevant, for the purposes of ***their*** suspension and termination, in view of the potential impact on such stakeholders.
- (30) ***In light of economic coercion by third countries and, in particular, its frequency and severity, the Commission should, to ensure coherence with any relevant Union legal acts, provide a single point of contact for the functioning of this Regulation and, consequently, should act with a view to ensuring that the Union is able to better anticipate and effectively respond to economic coercion.***

- (31) It is important to ensure *that* the European Parliament and the Council *are informed regularly and in a timely manner of relevant developments in the application of this Regulation and, where appropriate, have opportunities to exchange views with the Commission.*
- (32) In order to allow the ■ adjustment of the rules of origin or *nationality to take account of relevant developments in international instruments and experience in the application of measures 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 of 13 April 2016 on Better Law-Making<sup>2</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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<sup>2</sup> OJ L 123, 12.5.2016, p. 1.

- (33) 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>3</sup>.
- (34) The examination procedure should be used for the adoption of Union response measures and their amendment, suspension or termination, given that those *measures* determine the Union's *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 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, to finding balanced solutions and avoiding going against any predominant position amongst Member States, in particular as regards the appropriateness of a draft implementing act.*

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<sup>3</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).

- (35) The Commission should adopt immediately applicable implementing acts of limited duration where, in duly justified cases relating to the **■** amendment *or* suspension of Union response measures, imperative grounds of urgency *require expedited action to avoid irreparable damage to the Union or a Member State or to ensure consistency with international law. Such expedited action could prevent the coercion from causing or worsening any economic damage, in particular with a view to protecting acute and vital interests of the Union or a Member State.*
- (36) *Any action taken under this Regulation, including the adoption of Union response measures which apply to certain natural or legal persons, is to respect the Charter of Fundamental Rights of the European Union. Moreover, any processing of personal data pursuant to this Regulation is to comply with applicable rules on the protection of personal data. The processing of personal data by Member State officials obtaining information under this Regulation is to be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>4</sup>. Processing of personal data by the Union institutions is to be carried out in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>5</sup>.*

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<sup>4</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>5</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).*

- (37) The Commission should evaluate Union response measures adopted under this Regulation as to their effectiveness and operation and, where appropriate, draw conclusions for the purposes of future Union response measures. The Commission should also review this Regulation after gaining sufficient experience with its application and implementation ***and also its relationship to other Union policies and existing legal instruments, including Council Regulation (EC) No 2271/96<sup>6</sup>. The review of this Regulation*** should cover its scope, functioning, efficiency and effectiveness. The Commission should report on its assessment to the European Parliament and the Council,

HAVE ADOPTED THIS REGULATION:

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<sup>6</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).***

Article 1

Subject-matter *and scope*

1. ***This Regulation applies in cases of economic coercion by a third country.*** It lays down rules and procedures ■ to ensure the effective protection of the interests of the Union and its Member States ***from economic coercion by a third country.***
  
2. ***This Regulation establishes a framework for the Union to respond to economic coercion with the objective of deterring economic coercion or obtaining the cessation of economic coercion, whilst enabling the Union, as a last resort, to counteract economic coercion through Union response measures.***

***This Regulation also establishes a framework for the Union to seek reparation for the injury to the Union, where appropriate.***



3. Any action taken under this Regulation shall be consistent with **■** international law and *be carried out* in the context of the principles and objectives of the Union's external action.
4. *This Regulation applies without prejudice to existing Union instruments and to international agreements concluded by the Union, as well as to actions taken thereunder that are consistent with international law, in the area of the common commercial policy, and to other Union policies.*
5. *This Regulation does not affect the division of competences between the Union and its Member States.*

## Article 2

### *Economic coercion*

1. ***For the purposes of this Regulation, economic coercion exists where a third country applies or threatens to apply a third-country measure affecting trade or investment in order to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State, thereby interfering in the legitimate sovereign choices of the Union or a Member State.***
  
2. In determining whether the conditions of paragraph 1 are met, the ***Commission and the Council*** shall ***take*** into account ***the following***:
  - (a) the intensity, severity, frequency, duration, breadth and magnitude of the third-country 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 prevent or obtain particular ***acts*** from the Union, ***a Member State*** or another third country;
  - (c) the extent to which the third-country measure encroaches upon an area of the Union's or ***a Member State's*** sovereignty;
  - (d) whether the third country is acting ***on the basis of*** a legitimate concern that is internationally recognised;
  - (e) whether and in what manner the third country, before the imposition ***or application*** of ***the third-country*** measure, made serious attempts, in good faith, to settle the matter ***through*** international coordination or adjudication, either bilaterally or within an international forum.

*Article 3*  
*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, on the Union or a Member State, including on 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 4

### Examination of third-country measures

1. The Commission may, *on its own initiative or upon a duly substantiated request, examine any third-country measure* in order to determine whether it meets the conditions of Article 2(1).
2. *Where the Commission examines a third-country measure, it shall act expeditiously. The examination shall normally not exceed 4 months.*

The Commission *shall* carry out the examination *based on substantiated information gathered* on its own initiative or **■** 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 *accordance* with Article 15 including, when necessary, the *protection* of the identity of the person who supplies the information.

*The Commission shall make publicly available a secure tool with a view to facilitating the submission of information to the Commission.*

3. *The Commission shall inform the Member States in a timely manner of the start of examinations and of relevant developments with regard to ongoing examinations.*
4. The Commission *shall* seek information about the impact of the *third-country* measures, *where necessary*.

*The Commission may request Member States to supply such information and Member States shall act upon that request expeditiously.*

*By publishing a notice in the Official Journal of the European Union and, where appropriate, through other suitable means of public communication, the Commission may invite stakeholders to submit information. The Commission shall specify a date by which that information is to be submitted, taking into account the period indicated in the first subparagraph of paragraph 2.*

*If the Commission publishes such a notice, it shall notify the third country concerned that the examination has started.*

## Article 5

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

- 1. *Where, following*** an examination carried out in accordance with Article 4, the Commission ***concludes 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 of Article 2(1).

***In that proposal,*** the Commission shall ***explain how those conditions are met.***

***The proposal shall set out an indicative period for the Commission to assess whether the conditions of Article 8(1) are met. That period shall not exceed 6 months, unless a duly justified longer period is necessary in light of the specific circumstances of the case.***

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

*The assessment of whether it is appropriate to request the third country to repair the injury to the Union shall be based on all circumstances of the case. That assessment shall be based, in particular, 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 by an internationally wrongful act.*

3. Prior to *submitting the proposal referred to in paragraph 1 of this Article, where useful for the purposes of the determination referred to in that paragraph*, the Commission shall, *without prejudice to any engagement with the third country concerned pursuant to Article 6*, invite the third country to submit its observations *within a specified period. Such period shall be reasonable and shall not unduly delay the submission of the proposal referred to in paragraph 1 of this Article.*

4. *Prior to submitting the proposal referred to in paragraph 1 of this Article, the Commission shall inform the European Parliament of the conclusions of the examination carried out in accordance with Article 4.*
5. *The Council shall adopt the implementing acts referred to in paragraphs 1 and 2, acting by qualified majority.*

*The Council may amend the proposals referred to in paragraphs 1 and 2, acting by qualified majority.*

6. *For the purposes of this Article, the Council shall act expeditiously.*

*The Council shall act within 8 weeks of the submission of the proposals referred to in paragraphs 1 and 2.*

*By way of derogation from the second subparagraph, the Council may act after that eight-week period provided that it informs the Commission of a delay and of the reasons for that delay.*

*The total period for the Council to act shall normally not exceed 10 weeks from the submission of the proposals referred to in paragraphs 1 and 2.*

*In the exercise of its implementing powers, the Council shall apply Article 2(1), which sets out the conditions for the existence of economic coercion, and the criteria set out in paragraph 2, second subparagraph, of this Article, and shall explain how those conditions are met and criteria are applied.*



7. *Implementing acts adopted pursuant to this Article shall be published in the Official Journal of the European Union.*
8. *The European Parliament shall be informed of any implementing acts proposed or adopted pursuant to this Article.*
9. Where the *Council adopts an implementing act as referred to in paragraph 1, the Commission shall inform* the third country *accordingly* and request *that third country* to cease the economic coercion *immediately*.
10. *Where the Council adopts an implementing act as referred to in paragraph 2, the Commission shall request the third country to* repair the injury *to the Union within a reasonable period.*

## Article 6

### Engagement with the third country

1. ***Following the adoption of an implementing act in accordance with Article 5, the Commission shall provide adequate opportunity for consultations with the third country*** ■ ***with a view to obtaining the cessation of the economic coercion and, where so requested pursuant to Article 5(10), reparation of the injury to the Union.***

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

***In the course of such consultations, the Commission may explore options with the third country, including the following:***

(a) direct negotiations;

■  
(b) submitting the matter to international adjudication;

(c) ***mediation, conciliation or good offices by a third party to assist the Union and the third country in their efforts under this Article .***

2. ***Without prejudice to paragraph 1, the Commission shall seek to obtain the cessation of the economic coercion*** ■ ***by raising the matter in any relevant international fora after having consulted the Council, where applicable in accordance with the Treaties.***

3. ***Following the adoption of Union response measures pursuant to Article 8, the Commission shall remain open to entering into consultations with the third country, in conjunction with the potential suspension*** ■ ***of any Union response measures pursuant to Article 12(2).***

Article 7  
International cooperation

The Commission shall enter into consultations or *cooperate* with any *third* country affected by the same or similar economic coercion or with any *other* interested third country, with a view to obtaining the cessation of the *economic* coercion, *after having consulted the Council, where applicable in accordance with the Treaties.*

*Such consultations and cooperation* may involve, where appropriate:

- (a) *sharing relevant information and experiences to facilitate a coherent response to such economic coercion;*
- (b) coordination in relevant international fora;
- (c) coordination in the response to the *economic* coercion.

*The Commission shall invite, where appropriate, Member States to participate in such consultations and cooperation.*

*Such consultations and cooperation shall not unduly delay the procedure under this Regulation.*

## Article 8

### Union response measures

1. The Commission shall *adopt Union response measures by means of implementing acts* where *all of the following conditions are met*:
  - (a) action pursuant to Articles 5 and 6 has not resulted, *within a reasonable period*, in the cessation of the economic coercion and, *where requested pursuant to Article 5(10), in the reparation of the injury* to the Union;
  - (b) *the adoption of Union response measures* is necessary to protect the interests and rights of the Union and its Member States in the particular case, *in light of the options available*;
  - (c) *the adoption of Union response measures* is in the Union interest, *as determined in accordance with Article 9*.

*Where the economic coercion has ceased but the third country has not repaired in full the injury to the Union, despite having been requested to do so, the Commission shall base the assessment of whether the condition referred to in the first subparagraph, point (b), of this paragraph, is met on all the circumstances of the case. That assessment shall be based, in particular, 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 by an internationally wrongful act.*

*The implementing acts referred to in the first subparagraph of this paragraph shall be adopted in accordance with the examination procedure referred to in Article 18(2).*

2. *The Commission shall select appropriate Union response measures from those set out in Annex I. It shall determine which of those measures are appropriate on the basis of the criteria for selection and design set out in Article 11.*

*In the implementing act referred to in paragraph 1 of this Article, the Commission shall state the reasons why it considers that the conditions referred to in that paragraph are met and why it considers that the Union response measures are appropriate in light of the criteria referred to in Article 11.*

3. *Union response* measures shall be adopted as:

(a) *measures of general application; or*

(b) *measures which apply to certain natural or legal persons which engage or might engage in activities falling under Article 207 TFEU and are connected or linked to the government of the third country.*

*Union response measures referred to in the first subparagraph, point (a), may be designed in such a way that they affect particular sectors, regions or operators of the third country in accordance with the rules of origin and nationality set out in Annex II.*

4. *Insofar as the third-country measure constitutes an internationally wrongful act, Union response measures may consist of measures that amount to the non-performance of international obligations towards the third country.*
5. *The Commission shall ensure coordination of the adoption of Union response measures with the measures it adopts pursuant to Union legal acts other than this Regulation for the purpose of responding to the economic coercion.*

6. The *implementing act referred to in paragraph 1* shall provide for a deferred date of application *which shall not be later than 3 months from the date of its adoption, unless, in light of specific circumstances, a later date of application is provided for.*

*The Commission shall set that date, taking into account the circumstances of the case, to allow for the notification of the third country pursuant to paragraph 7 and for the third country to cease the economic coercion and, where requested, repair the injury to the Union.*

7. ■ Upon adoption of the implementing act *referred to in paragraph 1* ■, the Commission shall *notify* the third country *thereof and:*

- (a) call upon the third country to immediately cease the economic coercion and, where appropriate and where requested, to repair the injury to the Union;*
- (b) offer to negotiate a solution with the third country; and*
- (c) notify the third country 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.*



8. *Where the Commission has credible information that the economic coercion has ceased or that the third country has taken concrete steps to cease the economic coercion and, where appropriate, has repaired the injury to the Union before the deferred date of application set in accordance with paragraph 6, the implementing act referred to in paragraph 1 shall provide for a further deferral of the date of application. That deferral shall be for a period specified in that implementing act and shall be such as to allow the Commission to verify the actual cessation of the economic coercion.*

*In the event that the Commission has such credible information, it shall publish a notice in the Official Journal of the European Union indicating that it has such information and the date of application of the implementing act referred to in paragraph 1, as deferred in accordance with the first subparagraph of this paragraph.*

9. *If the third country ceases the economic coercion and, where appropriate, repairs the injury to the Union before the date of application of the implementing act referred to in paragraph 1, the Commission shall adopt an implementing act repealing that implementing act.*

*That repealing implementing act shall be adopted in accordance with the examination procedure referred to in Article 18(2).*

10. Notwithstanding paragraphs 7, 8 and 9, the **implementing act referred to in paragraph 1 may provide that** Union response measures apply without the Commission **█** first calling, **pursuant to paragraph 7, point (a), upon** the third country concerned to cease the economic coercion or, **where appropriate, repair the injury to the Union, or** notifying, **pursuant to paragraph 7, point (c), the third country concerned** that Union response measures will apply where, **in duly justified cases**, that is necessary for the preservation of the rights and interests of the Union or **a Member State, in particular** of the effectiveness of Union response measures.

11. **Notwithstanding paragraphs 6 and 8, where the economic coercion consists of a threat to apply a third-country measure affecting trade or investment in accordance with Article 2(1), the implementing act referred to in paragraph 1 of this Article shall apply from the date on which that third-country measure is applied.**

**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 of this Article.**

**█**

## *Article 9*

### *Determination of the Union interest*

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

Article 10

*Conditions for applying Union response measures to certain natural or legal persons*

- I**
1. *For the purposes of Article 8(3), first subparagraph, point (b), a natural or legal person may be considered as connected or linked to the government of the third country 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, where it operates in a sector where that government limits the number of suppliers or buyers to one or more, or 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 under the direction or instigation of, the government of the third country concerned.*

2. Where the Commission has *reason to believe that a natural or legal person meets the criteria set out in Article 8(3), first subparagraph, point (b), and is considering the adoption of Union response measures with regard to that person*, it shall *inform that person of the following*:

(a) *the reasons why the Commission believes that that person meets those criteria;*

(b) *the Union response measures that the Commission is considering to adopt with regard to that person;*

(c) *the possibility for that person to submit, within a reasonable period, observations on whether that person meets those criteria.*

3. *For the purposes of paragraph 2, the Commission shall publish a notice in the Official Journal of the European Union and, where possible, notify the person concerned directly.*

*In that notice, the Commission shall give other interested parties the opportunity to submit observations.* ■

4. *For the purposes of this Article, the Commission may seek any information it considers relevant, including by requesting such information from Member States.*

5. *Without prejudice to Article 12, where, after the adoption of Union response measures referred to in Article 8(3), first subparagraph, point (b), new substantial evidence is submitted to the Commission, the Commission shall review whether the persons concerned continue to meet the criteria set out in Article 8(3), first subparagraph, point (b), and shall inform the persons concerned accordingly.*

## Article 11

### Criteria for selecting and designing Union response measures

1. Union response measures shall ***be proportionate and*** not exceed the level ***of injury to*** the Union, ***taking into account the gravity of the*** economic coercion, ***its economic impact on the Union or a Member State*** and the rights ***of the Union and its Member States***.
2. The Commission shall select and design appropriate Union response ***measures*** on the ***basis of available information, including as gathered pursuant to Article 13***, and taking into account the determination made pursuant to Article 5, the criteria set out in Article 2(2), the ***determination of the Union interest pursuant to Article 9***, any ***relevant action pursuant to the Union's common foreign and security policy, as well as*** the following criteria:
  - (a) the effectiveness of the ***Union response*** measures in inducing the cessation of the economic coercion ***and, where requested, the reparation of the injury to the Union;***

- (b) *the avoidance or minimisation of negative impact on:*
- (i) *Union actors affected by Union response measures, in light of, inter alia, the availability of alternatives for such actors, such as alternative sources of supply for goods or services;*
  - (ii) *the investment environment in the Union or a Member State, including the impact on employment and regional development policy;*
- (c) *the avoidance or minimisation of negative impact on the promotion of economic growth and employment through the protection of intellectual property rights as a means to promote innovation and a knowledge economy in the Union or in a Member State;*
- (d) the potential █ to provide relief to Union economic operators affected by the economic coercion;

█

(e) the avoidance or minimisation of negative effects *of the Union response measures on Union policies or objectives*;

■

(f) the avoidance of disproportionate administrative burden and costs in the application of the Union response measures;

(g) the existence and nature of any response measures enacted by *third* countries affected by the same or similar economic coercion, including, where relevant, any coordination pursuant to Article 7;

(h) any relevant criteria established in international law.

*In selecting Union response measures, the Commission shall give preference to measures which most effectively ensure compliance with criteria set out in the first subparagraph, points (a) and (b).*



3. *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 consider Union response measures in the following hierarchical order:*
- (a) measures affecting procedures initiated after the entry into force of the implementing act referred to in Article 8(1);*
  - (b) where measures referred to in point (a) of this paragraph are not available, measures affecting procedures not yet completed upon the entry into force of the implementing act referred to in Article 8(1).*

*Where none of the measures referred to in the first subparagraph are possible, the Commission may, in exceptional circumstances, consider other response measures, where it has been demonstrated, in light of the information and views gathered pursuant to Article 13, that those other measures would ensure effectiveness, without disproportionately affecting the upstream industries, downstream industries or final consumers within the Union, or imposing a disproportionate burden on the process of administration of relevant national regulations.*

*When selecting and designing a Union response measure referred to in the first subparagraph, the Commission shall take into account the level of harmonisation and give preference to measures which affect procedures applied on a Union-wide basis or in an area where extensive Union law exists.*

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

■

4. *Where necessary to achieve the objective of this Regulation*, the Commission may ■ adopt Union response measures *that affect the access of* foreign direct investment *to the Union* or ■ trade in services ■ and that apply *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 ■ .

The Commission may adopt *such* Union response measures *where* not applying them to such services supplied or direct investments made would be insufficient to effectively achieve the objective of this Regulation, in particular where *the effect of* Union response measures could otherwise be avoided *or circumvented by the third country or the person concerned*.

In assessing whether to adopt such *Union response measures*, the Commission shall consider, inter alia, the following criteria, in addition to those *set out in* paragraphs 1 and 2:

- (a) the patterns of trade in services and investment in the sector targeted by the envisaged Union response measures and the risk of avoidance or circumvention *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 Union response measures *referred to in the first subparagraph to* obtaining the cessation of *economic coercion and the reparation of the injury to the Union*;
- (c) the existence of alternative measures capable of *obtaining the cessation of the economic coercion and the reparation* of the *injury to the Union* that are reasonably available and less restrictive of trade in services or investment within the Union.

The adoption of such Union response measures shall be duly justified in the implementing act referred to in *Article 8(1)* in the light of the *criteria set out in this paragraph*.

## Article 12

### Amendment, suspension and termination of Union response measures

1. The Commission shall keep under review the economic coercion, and the effectiveness of the Union response measures and their effects on the Union *interest*.
2. Where the third country suspends the economic coercion, the Commission *shall* suspend the application of the Union response measures for the duration of the third country's suspension.

*Where the third country and the Union or the Member State concerned have concluded an agreement, including on the basis of an offer from that third country, to submit the matter to binding international third-party adjudication and that third country suspends its economic coercion, the Commission shall suspend the application of the Union response measures for the duration of the adjudication proceedings.*

*Where an adjudication decision or a settlement with the third country requires implementation by the third country, the Commission shall suspend the application of the Union response measures provided that the third country is engaged in the implementation of that adjudication decision or settlement.*

The Commission shall *suspend or resume the application of Union response measures where necessary in light of the Union interest determined pursuant to Article 9, or where necessary to facilitate continued engagement pursuant to Article 6(3) after the adoption of Union response measures.*

*The Commission shall suspend or resume the application of Union response measures by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18(2).*

3. Where it is necessary to make adjustments to Union response measures taking into account Articles 2 and **11**, or further developments, including the third country's reaction, the Commission **shall** amend, as appropriate, Union response measures, by means of implementing acts.

***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18(2).***

4. The Commission shall terminate Union response measures in any of the following circumstances:
- (a) the economic coercion has ceased ***and, where the Council has decided to request reparation of the injury to the Union pursuant to Article 5(10), the injury to the Union has been repaired;***
  - (b) ***the economic coercion has ceased, but the third country has not repaired the injury to the Union despite the Council having decided to request reparation of the injury to the Union pursuant to Article 5(10), unless maintaining the Union response measures is necessary to achieve the objective of this Regulation, taking into account all circumstances of the case;***

- (c) a mutually agreed solution has been reached;
- (d) a binding decision in international third-party adjudication *covering the matter of the economic coercion* requires the termination of the Union response measure;
- (e) termination of the Union response measures is appropriate in light of the Union interest *determined pursuant to Article 9*.

The Commission shall terminate Union response measures by means of implementing acts. *Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18(2).*

5. On duly justified imperative grounds of urgency, *such as to avoid irreparable damage to the Union or a Member State or to continue to ensure consistency with the Union's obligations under international law as a result of the suspension or cessation of the economic coercion*, the Commission shall adopt immediately applicable implementing acts in order to suspend *or amend* Union response measures.

Those implementing acts shall be adopted in accordance with the procedure referred to in Article 18(3) and they shall remain in force for a period not exceeding 2 months.



## Article 13

### Information gathering related to Union response measures

1. The Commission shall, before the adoption *or* amendment of **Union response** measures, and may, before the suspension or termination of such measures, seek information and views regarding the economic impact on Union **economic** operators by means of publishing a notice in the *Official Journal of the European Union* and, where **appropriate**, through other suitable means of public communication.

The notice shall indicate the date by which the information and views are to be submitted to the Commission.

The Commission may start gathering the information and views as referred to in the first subparagraph at any time it deems appropriate.

2. For the purposes of paragraph 1, the Commission shall inform and consult stakeholders, in particular **associations acting on behalf of Union economic operators and trade unions**, that could be affected by potential Union response measures, and Member States' **authorities** involved in the preparation or implementation of legislation that regulates the sectors that could be affected by those measures.

3. Without unduly delaying the adoption of Union response measures, the Commission shall ***identify possible options for potential Union response measures and*** seek information ***and views*** in particular on:
- (a) the impact of such measures on third-country actors ***and their*** competitors, business partners or clients ***within the Union, as well as*** users, final consumers or ***employees within the Union***;
  - (b) the interaction of such measures with relevant Member State legislation;
  - (c) the administrative burden which could be caused by such measures.



4. The Commission shall take utmost account of the information and views gathered pursuant to this Article.

When submitting a draft implementing act to the Committee in the context of the examination procedure referred to in Article 18(2), the Commission shall provide an analysis of the envisaged measures ***and their potential impact***.

***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 impact.***

5. For the purpose of adopting *immediately applicable implementing acts in accordance with Article 12(5), the Commission shall seek information and views in a targeted manner from relevant stakeholders*, unless the *exceptional situation of imperative grounds of urgency is* such that the gathering of information and views is not possible or not needed for objective reasons, such as to ensure compliance with international obligations of the Union.

#### *Article 14*

##### *Single point of contact*

1. *The Commission shall provide a single point of contact within the Commission for the application of this Regulation and its coordination with any relevant Union legal acts and for gathering information and providing cost and data analyses with a view to determining the nature of the economic coercion.*
2. *For the purposes of this Regulation, the single point of contact shall, in full compliance with the principle of confidentiality, be the main contact point for Union businesses and private stakeholders affected by the economic coercion, including with regard to assistance to be provided in the context of ongoing economic coercion for those businesses and stakeholders.*

Article 15  
Confidentiality

1. Information received pursuant to this Regulation shall be used only for the purpose for which it was *supplied, requested, or obtained*.
2. A person who supplies information referred to in paragraph 1 may request *such* information **■** be treated as confidential. That request 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.
3. The European Parliament, the Council, the Commission, Member States or their respective officials shall not reveal any information of a confidential nature received pursuant to this Regulation without specific permission from the person that supplies such information.
4. Paragraphs 2 and 3 shall not preclude the Commission *from disclosing* general information in *a meaningful summary, provided that the disclosure does not allow the identity of the person that supplied it to be known*.

*The disclosure of such general information shall* take into account the legitimate interest of the parties concerned in not having confidential information disclosed.

5. *Member State officials 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 in relation to this Regulation.*
6. *The Commission shall provide a secure and encrypted system to support direct cooperation and exchange of information with Member State officials.*

## Article 16

### Rules of origin *and nationality*

1. For the purposes of this Regulation, the origin of a good or service or the nationality of a service provider, investment or intellectual property right holder shall be determined in accordance with Annex II.
2. The Commission is empowered to adopt delegated acts in accordance with Article 17 to amend points 2 *and* 3 of Annex II ■ to take account of relevant developments in international instruments and experience in the application of ■ this Regulation or other Union acts.

## Article 17

### Exercise of the delegation

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 **Article 16(2)** shall be conferred on the Commission for *a* period of **5 years from ... [the date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than 9 months before the end of the five-year period. The 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 3 months before the end of each period.**
3. The delegation of power referred to in **Article 16(2)** may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the **Official Journal of the European Union** or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to *Article 16(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 18  
Committee procedure

1. The Commission shall be assisted by a Committee. That committee shall be a committee within the meaning 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 Article 5(4), third subparagraph, 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 19

***Reporting and review***

1. Without prejudice to Regulation (EU) No 182/2011, the Commission shall ***keep the European Parliament and the Council informed, regularly and in a timely manner, of relevant developments in the application of this Regulation throughout the examination of third-country measures, including the start thereof, the engagement with the third country and the international cooperation, and during the period in which Union response measures are in force.***

***In light of the information received, the European Parliament or the Council may invite, where appropriate, the Commission for an exchange of views.***

***The European Parliament may express its views via any appropriate means.***

2. ***The Commission shall evaluate Union response measures adopted pursuant to Article 8 within 6 months after their termination, taking into account stakeholder input, information provided by the European Parliament and the Council and any other relevant information, and shall submit an evaluation report to the European Parliament and the Council.***

***The evaluation report shall examine the effectiveness and operation of the Union response measures, and, where appropriate, draw conclusions for the purposes of future Union response measures as well as for the review of this Regulation pursuant to paragraph 3.***

3. No later than 3 years after the adoption of the first implementing act *pursuant Article 5 or ... [5 years from the date of entry into force of this Regulation]*, whichever is earlier, *and every 5 years thereafter*, the Commission shall review this Regulation and its implementation and shall submit a report to the European Parliament and the Council. *For the purposes of that review, the Commission shall give particular consideration to any issues which could arise as regards the relationship of this Regulation to other existing Union instruments.*

Article 20  
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 ...,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## Annex I

### Union response measures pursuant to Article 8

1. 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, which may amount, as necessary, to the ***non-performance of applicable international obligations as regards*** any tariff concessions.
2. The introduction or increase of restrictions on the importation or exportation of goods, ***including, where appropriate, on goods subject to export control***, whether those restrictions are made effective through quotas, import or export licences or other measures, or the introduction or increase of restrictions on the payment for goods, which may amount, as necessary, to the ***non-performance*** of applicable international obligations.

3. The introduction of restrictions on trade in goods made effective through measures applying to transiting goods or internal measures applying to goods, which may amount, as necessary, to *the non-performance* of applicable international obligations.
4. The following measures, which may amount, as necessary, to *the non-performance* of applicable international obligations concerning the right to participate in tender procedures in the area of public procurement:
  - (a) the exclusion of goods, services or suppliers of goods or services of the third country concerned from public procurement or the exclusion from public procurement 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 case and provided that the remaining percentage of goods or services is not covered by Union commitments under the Agreement on Government Procurement (GPA) concluded within the World Trade Organization or another agreement on public procurement concluded between the Union and a third country other than the third country concerned**; or
  - (b) the imposition of a *score adjustment*<sup>1</sup> on tenders of goods or services of the third country concerned or on tenders of suppliers of goods or services of the third country concerned.

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<sup>1</sup> *Score adjustment* means an obligation for contracting authorities or entities conducting public procurement procedures to *relatively diminish*, subject to certain exceptions, the *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 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.*

■

5. The imposition of measures affecting trade in services, which may amount, as necessary, to the *non-performance* of applicable international obligations regarding trade in services.
6. The imposition of measures affecting *the access of* foreign direct investment *to the Union*, which may amount, as necessary, to the *non-performance* of applicable international obligations.
7. The imposition of restrictions on the protection of intellectual property rights or their commercial exploitation, in relation to *rightholders* that are nationals of the third country concerned, which may amount, as necessary, to the *non-performance* of applicable international obligations with respect to trade-related aspects of intellectual property rights  
■ .
8. The imposition of restrictions for banking, insurance, access to Union capital markets and other financial service activities, which may amount, as necessary, to the *non-performance* of applicable international obligations with respect to financial services.

9. The *introduction or increase* of restrictions on *the possibility to place on the Union market goods falling under* Union legal acts on *chemicals*, which may amount, as necessary, to the *non-performance* of applicable international obligations ■ .

10. *The introduction or increase of restrictions on the possibility to place on the Union market goods falling under the Union* sanitary and phytosanitary *legal* acts, which may amount, as necessary, to *the non-performance* of applicable international obligations.

■

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 nationality of the natural or legal person providing it.

The *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;

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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) 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 Member State in which it is established or, if Union response measures apply to that person, the nationality or the place of permanent residence of the natural or *legal* person or persons who own or control the legal person in the Union;

- (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 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.

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 Member State in which it is established or, if Union response measures apply to the natural or legal person that owns or controls the investment in the Union, the nationality or permanent residence of that natural or legal person;
  - (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 natural or legal person that owns or controls 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.

4. Regarding trade-related aspects of intellectual property rights, the term "nationals" shall be understood in the same sense as it is used in █ paragraph 3 of Article 1 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (*TRIPS*) and *future amendments thereof*.

Two statements have been made with regard to this act and can be found in OJ C ... of ...

**Joint Statement of the European Parliament, the Council and the Commission on Regulation (EU) 2023/... on the protection of the Union and its Member States from economic coercion by third countries**

Economic coercion may affect any area of the Union's or a Member State's activities and may have complex political, economic and legal implications. This Regulation is a necessary and effective response to economic coercion and operates through deterrence but can lead to the adoption of countermeasures, where necessary in the last resort. This Regulation has no precedent, it is designed carefully and with due regard to the significant implications of cases of economic coercion. It follows that this Regulation and approaches therein, in particular the conferral of implementing powers to the Council under Article 4, are strictly subject-specific and they do not present a precedent for other legislative files based on Article 207 TFEU, or for proposing such acts. Equally, the rules on the use of the examination procedure in relation to Union response measures agreed in this instrument do not prejudice the outcome of other ongoing or future legislative negotiations and are not to be seen as precedent for other legislative files. This Regulation therefore shall not be considered as a precedent for other acts.

**Statement by the Commission on the use of examination procedure for Union response measures under Regulation (EU) 2023/XXX on the protection of the Union and its Member States from economic coercion by third countries**

The Commission is committed to cooperate closely with the European Parliament, with the Council and with the EU Member States in the application of the EU Anti-Coercion Instrument, at all stages, following applicable rules and best practices. The Commission notes that delivering a united EU response will support the key features of the instrument, namely, deterrence and effectiveness, and will be the most appropriate in light of the sensitive nature of the instrument.

The Commission underlines that, in the context of this regulation, arriving at solutions which command the widest possible support is achievable given the nature and impact of the Union action under the regulation. The application of this regulation requires an assessment of complex economic, policy and legal matters, which provides a substantial margin for selecting solutions, and notably those which have the widest possible support from EU Member States.

In this regard, in the exercise of its implementing powers under the regulation, and following the rules and general principles established by the European Parliament and the Council and laid down in Regulation (EU) No 182/2011, the Commission will 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 EU Member States within the committee. Subject to protection of confidential information, the Commission will make available to the European Parliament and the Council the analysis of the envisaged measures referred to in Article 13(4) promptly when submitted to the Member States. The Commission will draw the attention to the European Parliament and the Council where the envisaged Union response measures relate to those described in Article 8(4).

Furthermore, in the event a committee delivers no opinion on a draft implementing act, the Commission will take the utmost account of the views expressed within the committee and will prioritise return to the committee with an amended draft act, in order to ensure the widest possible support for a positive opinion by consensus or qualified majority in favour in relation to an amended draft act. Should it be necessary to have recourse to the appeal committee, the Commission will take the utmost account of the views expressed within the appeal committee and work towards the adoption of measures which are based on the widest possible support for a positive opinion by consensus or qualified majority in favour. In the event that the appeal committee delivers a no opinion on a draft implementing act, the Commission will act in such a way as to avoid going against any predominant position within the appeal committee against the appropriateness of the draft implementing act.