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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	9 December 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
Subject:	REGULATORY SCRUTINY BOARD OPINION 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

Delegations will find attached document SEC(2021) 418 final.

Encl.: SEC(2021) 418 final

EUROPEAN COMMISSION

19/10/2021

SEC(2021) 418

REGULATORY SCRUTINY BOARD OPINION

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) 775
SWD(2021) 371
SWD(2021) 372

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Instrument to deter and counteract coercive actions by third countries

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

Trade policy operates in an increasingly challenging geo-political context. Rising global tensions, unilateral actions and coercive measures mean, that trade policy is increasingly being 'weaponised'.

In order to increase the resilience of the EU economy in this context, this initiative addresses economic coercion from third countries. Economic coercion happens, when third countries use economic/trade measures to assert pressure on the EU's or its Member States' legitimate policymaking. This report considers how to defer such economic coercion, to de-escalate it, discontinue coercive measures, and if that does not work, counteract it.

(B) Summary of findings

The Board notes the useful additional information provided in advance of the meeting and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

(1) The report does not explain well how coercion relates to international law.

(2) The report does not sufficiently explain the articulation with the Blocking Statute and other existing instruments and legislation.

(3) The report does not present policy choices completely and adequately, nor does it analyse sufficiently their efficiency and effectiveness.

(4) The report is not sufficiently clear about triggers, conditions and criteria for launching specific actions under the mechanism.

This opinion concerns a draft impact assessment which may differ from the final version.

(C) What to improve

(1) The report should explain better that coercion is a breach of customary international law, which is not covered by international treaties and their settlement mechanisms. It should clarify that the EU has never issued any retaliatory measures against coercion because it lacks the legal means. It should explain that the EU is an exception in not having anti-coercive power.

(2) The report should more systematically present evidence supporting the claim that the problem is significant and increasing.

(3) The report should explain the articulation with overlapping instruments such as the EU Blocking Statute and other existing instruments and legislation that could be used to dissuade and counter coercion. The report should highlight the gap that this instrument is designed to fill and how coherence will be ensured. The options should clarify how this new instrument would interact with the EU Blocking Statute on extra-territoral sanctions. If there are several possible approaches, the report should present and analyse these.

(4) The report should explain, which conditions and criteria will have to be fulfilled to trigger the launch of an anti coercion case. The options should reflect any political choices that need to be made in this context. The report should also better explain the process under which a specific anti-coercion action would be adopted and how efficient decision-making would be ensured.

(5) Policy options should be accompanied with the best possible evidence of their effectiveness and efficiency. The comparison of options should better take into account the likely differences in cost between the options.

(6) The report should be more precise on the required legal base for the actions taken.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Instrument to deter and counteract coercive actions by third countries
Reference number	PLAN/2020/9688
Submitted to RSB on	29 August 2021
Date of RSB meeting	22 September 2021

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

Specific cists are linked to the use of the instrument in specific, future cases and for the reasons stated in the report it is not feasible to estimate them at the design phase.

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
EU authorities are able to adopt policies, which were at the origin of the coercion, without being subject to external pressure		By deterring third country coercion or deterring threats of using coercive measures
More predictable environment in the sphere of trade policy, including:		
(i) lower transaction costs for EU exporters, which is of particular importance for SMEs		If coercion would take the form of host country import restrictions
(ii) lower host country compliance costs for EU investors		If coercion would take the form of restrictions in the market of the coercing country
(iii) lower costs for EU importers and predictable supply		If imports of inputs for their economic activity would be restricted
Indirect benefits		
Continued and stable employment		In sectors that would be targeted by coercive country
Lower or stable prices for EU consumers		

Costs are specified based on the assumption that the instrument is able to deter coercion and therefore is used less than once a year. This is classified as "one-off" in the table below.

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Policy package 2	Direct costs	Higher costs of products if there is pass-through effect Third country: may take place if a specific group of funding or persons is affected by countermeasures		Higher costs of imported products; depressed market access; restricted operations of EU investors abroad (depending on countermeasures) Third country: may take place if a specific group of funding or persons is affected by countermeasures		Administrative costs of assessing the damage to the EU economic operators and designing countermeasures Third country: may take place if a specific group of funding or persons is affected by countermeasures	
	Indirect costs						