Council of the European Union

Brussels, 10 December 2021
(OR. en)

Interinstitutional File:
2021/0406(COD)

14943/21
ADD 4

COMER 113
IA 204
CODEC 1634

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
No. Cion doc.:	SWD(2021) 372 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT *Accompanying the document* 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 SWD(2021) 372 final.

Encl.: SWD(2021) 372 final

EUROPEAN
COMMISSION

Brussels, 8.12.2021
SWD(2021) 372 final

COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

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

A. Need for action

What is the problem and why is it a problem at EU level?

This initiative addresses economic coercion, which is defined as pressure exercised by non-EU countries through measures affecting trade or investment in order to attain a specific outcome falling within the legitimate policymaking space of the EU or its Member States. Non-EU countries' coercive measures restrict the EU's or a Member State's legitimate policy space or impose costs on its use. The EU and its Member States have been targeted by economic coercion and are continuously at risk. Such coercion is unlikely to disappear or recede.

What should be achieved?

The specific objectives are to deter coercion in general, de-escalate and bring about the end of coercive measures in place, and, as a last resort, counteract coercive measures. More generally, the aim is to preserve the legitimate policymaking space of the EU and the Member States.

What is the added value of action at EU level (subsidiarity)?

The envisaged EU response falls under the common commercial policy. In any event, action at EU level results in benefits, e.g. deterrence and counteraction against coercion, which cannot be achieved sufficiently, if at all, at Member State level.

B. Solutions

What are the various options to achieve the objectives? Is there a preferred option?

The preferred option is a framework regulation of the European Parliament and the Council allowing EU action, in compliance with public international law and based on the following

- A two-step EU response: the first step involves non-interventionist measures, such as formally identifying if a coercive measure falls within the regulation's scope and efforts to engage with the non-EU country, encouraging it to end its measures. If not successful, a broad range of possible EU countermeasures would become available in a possible second step, as a last resort.
- The instrument applies to a broad range of coercive measures, including those involving explicit, disguised and silent coercion and their variations. A qualitative threshold for action would apply.
- The decision-making process falls under the standard framework of delegated and implementing acts, with means for swift action. Stakeholders should be able to participate in any process involving the use of the instrument.

What are different stakeholders' views?

All categories of stakeholders broadly support the creation of a new legal instrument. There is solid convergence on:

- the main choices for its design, notably, the need for a broad scope of possibilities for EU action against coercion, with countermeasures only as a last resort;
- the broad coverage of possible coercive measures to trigger the instrument;
- the ability of stakeholders to participate in the use of the instrument; and
- particular attention being paid to risks of collateral damage.

C. Impact of the preferred option

What are the benefits of the preferred option?

Benefits would arise from the broad range of coercion measures captured within the instrument's scope of application, and from the range of response measures allowing for a tailored and effective response, as both of these would have the effect of deterring coercion. Benefits would also arise from prioritising solutions not involving countermeasures and the EU's openness to engage with the non-EU country concerned. The broad range of possible countermeasures, as a last resort, allows the EU to be assertive where needed and the response to be appropriately calibrated.

What are the costs of the preferred option?
No significant costs would arise from the instrument's existence. Potential varying costs may arise from its use. Depending on the deployed measures, costs may arise for specific EU economic operators with trade or investment links with the non-EU country concerned. These costs would be taken into account when the particular measure is being designed.
What are the impacts on SMEs and competitiveness?
No costs would arise from instrument's existence. Potential varying costs for SMEs may arise from the instrument's use, as mentioned above.
Will there be significant impacts on national budgets and administrations?
No significant impact.
Will there be other significant impacts?
The deterrence effect built into the preferred option may result in no or limited use of the instrument, in the best-case scenario.
Proportionality
The preferred option limits the EU's response to what is proportionate regarding the magnitude of the problem of economic coercion, but allows for an assertive (counter)action if necessary.
D. Follow up
When will the policy be reviewed?
A review of the instrument will follow within a reasonable period after adoption.