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WORKING DOCUMENT

From:	AT Delegation
To:	Working Party on Trade Questions
Subject:	Anti-Coercion Instrument - AT comments

**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
(ACI)
2021/0406(COD)
Non-versioned [LATEST TEXT]
08-07-2022 at 13h30**

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
1	2021/0406 (COD)	2021/0406 (COD)	2021/0406 (COD)
2	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	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	
3	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
4	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,	<u>AT Comment:</u> AT is among MS that generally welcome the design of the instrument as a deterrent and underline the importance of de-escalatory steps and countermeasures only as last resort. EU instruments should not be the origin/source of escalating trade tensions. Compliance with public international law, e.g. WTO law, is paramount for the EU to act. AT is among MS that generally do not contest Article 207(2) TFEU in principle as a legal base for this Regulation. AT takes note, in particular, of CLS written opinion, according to which the majority of on areas for Union response measures in Annex I were compatible with Art. 207(2) TFEU as a legal base. From a policy perspective, however, AT is among MS that perceive an epic contradiction in the fact that ACI, as per Commission Proposal and per Second Compromise Proposal, would allow for a much broader range of <u>unilateral</u> reaction measures in comparison to reaction measures under existing Trade Enforcement Regulation (TER). In TER, a first-instance <u>multilateral</u> WTO ruling must be at least partially in favour of the EU. It is plain to AT, that EU countermeasures in TER have a completely different (i.e. multilateral) legitimacy as opposed to the unilateral

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			("autonomous") EU instrument under discussion here. AT is among MS that would appreciate outstanding CLS written opinion on the compatibility of the Proposal with international law and WTO rules, as CLS in its written opinion acknowledges was raised during discussions. AT is among MS that kindly ask for CLS written opinion on how the relationship of ACI to other instruments (e.g. international procurement instrument, the foreign direct investment screening instrument, the blocking statute or the trade enforcement regulation) should be clarified in the main body of the text of this Regulation. AT's preliminary drafting suggestion for a Third Compromise Proposal is to delete all areas for EU response measures in Annex I going beyond areas mentioned in the Trade Enforcement Regulation (TER) (i.e. trade in goods, trade in services, trade-related aspects of intellectual property rights, public procurement). AT is not persuaded by a narrative according to which a long list of areas for Union response measures in Annex I of this Proposal has a deterrent effect by virtue of its mere length. On the contrary, AT's concern is that measures in these new areas listed in Annex I are often

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			difficult to design, burdensome to implement for MS administrations and their commensurability is difficult to ensure. AT therefore favors a narrow list of traditional “commercial policy measures” not going beyond trade enforcement regulation (TER). A narrow list of traditional “commercial policy measures” could be comparatively easy to implement for MS administrations, and their commensurability could be ensure more easily. AT believes in a deterrent effect only of measures that can be easily implemented. <i>On areas for Union response measures similar to TER see lines 142-145, 147, 149.</i> <i>See corresponding AT drafting suggestions to line 16 and to Annex I below (in particular in lines 146, 148 and 150-153).</i>
5	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	
6	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national Parliaments,	

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
7	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	
8	Whereas:	Whereas:	
9	(1) Pursuant to Article 3(5) of the Treaty on European Union, in its relations with the wider world, the Union is to uphold and promote its values and interests and contribute to the protection of its citizens and, among other things, to solidarity and mutual respect among peoples and the strict observance and the development of international law, including respect for the principles of the United Nations Charter.	(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”).	
10	(2) Pursuant to Article 21(1) of the Treaty on European Union, the Union's action on the international scene is to be guided by principles such as the rule of law, equality and solidarity, and respect for the principles of the United Nations Charter and international law. It also	(2) Pursuant to Article 21(1) of the Treaty on European Union TEU, the Union's action on the international scene is to be guided by principles such as the rule of law, equality and solidarity, and respect for the principles of the United Nations UN Charter and international law. It also	AT Comment: AT's concern is that if a delineation to WTO dispute settlement is not properly made, this Regulation as “autonomous” (unilateral) EU trade instrument may open up a simplified way to arrive at Union response measures circumventing WTO dispute settlement, which

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	states that the Union is to promote multilateral solutions to common problems.	states that the Union is to promote multilateral solutions to common problems.	could undermine instead of promoting multilateral solutions. AT is among MS that would appreciate outstanding CLS' written opinion on the compatibility of the Proposal with international law and WTO rules, as CLS in its written opinion acknowledges was raised during by delegations during discussions in Council. See AT Comment and question to CLS regarding the relationship of this Regulation to WTO Dispute Settlement in lines 15 and 18 below.
11	(3) Pursuant to Article 1 of the United Nations Charter, the purposes of the United Nations include the purpose to develop friendly relations among nations based on respect for the principle of equal rights.	(3) Pursuant to Article 1 of the United Nations UN Charter, one of the purposes of the United Nations include the purpose is to develop friendly relations among nations based on, among other things, respect for the principle of equal rights.	
12	(4) Article 21(2) of the Treaty on European Union requires the Union to define and pursue common policies and actions, and work for a high degree of cooperation in all	(4) Article 21(2) of the Treaty on European Union TEU requires the Union to define and pursue common policies and actions, and work for a high degree of cooperation in all	

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	fields of international relations, among other things in order to safeguard its values, fundamental interests, independence and integrity, consolidate and support the rule of law, and the principles of international law.	fields of international relations, among other things 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.	
13	(5) The modern interconnected world economy creates an increased risk of, and opportunity for, economic coercion, as it provides countries with enhanced, including hybrid, means to deploy such coercion. It is desirable that the Union contribute to the creation, development and clarification of international frameworks for the prevention and elimination of situations of economic coercion.	(5) The modern interconnected world economy creates an increases the risk of, and opportunity for, economic coercion, as it provides countries with enhanced, including hybrid, means to deploy such coercion. It is desirable that the Union contribute to the creation, development and clarification of international frameworks for the prevention and elimination of situations of economic coercion.	
14	(6) Whilst always acting within the framework of international law, it is essential that the Union possess an appropriate instrument to deter and counteract economic coercion by third countries in order to safeguard its rights and interests and those of	(6) Whilst always acting within the framework of international law, it is essential that the Union possess an appropriate instrument to deter and counteract economic coercion by third countries in order to safeguard its rights and interests and those of	

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	its Member States. This is particularly the case where third countries take measures affecting trade or investment that interfere in the legitimate sovereign choices of the Union or a Member State by seeking to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State. Such measures affecting trade or investment may include not only actions taken on, and having effects within, the territory of the third country, but also actions taken by the third country, including through entities controlled or directed by the third country and present in the Union, that cause harm to economic activities in the Union.	its Member States. This is particularly the case where third countries take measures affecting trade or investment that interfere in the legitimate sovereign choices of the Union or a Member State by seeking to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State . Such measures affecting trade or investment may include not only actions taken on, and having effects within, the territory of the third country concerned , but also actions taken by the third country, including through entities controlled or directed by the third country and present in the Union, that cause harm to economic activities in the Union.	
15	(7) This Regulation aims to ensure an effective, efficient and swift Union response to economic coercion, including deterrence of economic coercion of the Union or a Member State and, in the last resort, countermeasures.	(7) This Regulation aims to ensure an effective, efficient and swift Union response to economic coercion, including deterrence of economic coercion of the Union or a Member State and, in the as a last resort, countermeasures. This Regulation should be without prejudice to other existing Union instruments, including Regulation (EU) 2021/167 of the European Parliament and of the Council¹, given the specificity of the	<u>AT Comment:</u> AT is among MS whose concern is that this Regulation could treat its relationship to TER and to the WTO Dispute Settlement only in a superficial manner in the Recitals avoiding proper treatment in the main body of the text and postponing it to a review. AT is among MS who believe that the relationship of this Regulation to TER is ancillary to the relationship of this Regulation to WTO Dispute Settlement, in the sense that

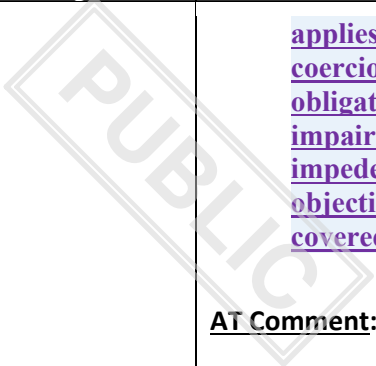
	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		objectives pursued by this Regulation and the legal consequences deriving from the third-country action that could lead to the application of this Regulation. Moreover, this Regulation should not modify the scope of application of other legal instruments, including other regulations defining the framework for implementing the common commercial policy. ----- 1. Regulation (EU) 2021/167 of the European Parliament and of the Council of 10 February 2021 amending Regulation (EU) No 654/2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules (OJ L 49, 12.2.2021, p. 1).	either this Regulation or WTO Dispute Settlement applies. Otherwise this Regulation may create a unilateral fast-track procedure for conflicts that would have to be solved in WTO Dispute Settlement. AT is among MS that would appreciate outstanding CLS' written opinion on the compatibility of the Proposal with international law and WTO rules, as CLS in its written opinion acknowledges was raised by delegations during discussions in Council. Here, AT has a preference for the wording in the Second Compromise Proposal. The wording in the Second Compromise Proposal at least - while falling short of answering - acknowledges the - in AT's view pivotal - question of the relationship of this Regulation with the WTO Dispute Settlement system. <i>See corresponding AT drafting suggestion and AT comment in line 10 above and 18 below.</i>
16	(8) The objectives of this Regulation, in particular counteracting third countries' economic coercion of the Union or a Member State, cannot be sufficiently achieved by Member States acting on their own. This is because Member States as distinct actors under international law may not be entitled under international	(8) The objectives of this Regulation, in particular counteracting third countries' economic coercion of the Union or a Member State, cannot be sufficiently achieved by Member States acting on their own, but can be achieved with greater effectiveness at Union level. This is because Member States as distinct	<u>AT Drafting Suggestion for Third Compromise:</u> (8) The objectives of this Regulation, in particular counteracting third countries' economic coercion of the Union or a Member State, cannot be sufficiently achieved by Member States acting on their own, but can be achieved with greater effectiveness at Union level. This is

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	law to respond to economic coercion directed against the Union. Additionally, because of the exclusive competence conferred on the Union by Article 207 of the Treaty on the Functioning of the European Union, Member States are prevented from taking common commercial policy measures as a response to economic coercion. Therefore, those objectives can be achieved with greater effectiveness at Union level.	actors under international law may not be entitled under international law to respond to economic coercion directed against the Union, whilst the Union is entitled adopt countermeasures in response to economic coercion directed against a Member State, Additionally, given the exclusive competence conferred on the Union by Article 207 of the Treaty on the Functioning of the European Union (TFEU), Member States are prevented from taking to take ing common commercial policy measures in the area of common commercial policy. as a response to economic coercion. Therefore, those objectives can be achieved with greater effectiveness at Union level.	because Member States as distinct actors under international law may not be entitled under international law to respond to economic coercion directed against the Union, whilst the Union is entitled adopt countermeasures in response to economic coercion directed against a Member State, Additionally, given the exclusive competence conferred on the Union by Article 207 of the Treaty on the Functioning of the European Union (TFEU), Member States are prevented from taking to take ing common commercial policy <u>common commercial policy</u> measures in the area of common commercial policy. as a response to economic coercion. Therefore, those objectives can be achieved with greater effectiveness at Union level. <i>"[...] whilst the Union is entitled adopt countermeasures in response to economic coercion directed against a Member State [...]"</i> AT Comment: AT is among MS which are not convinced ARSIWA can be interpreted to "entitle" the Union to adopt countermeasures in response to economic coercion directed against a Member State. In AT's view, not every interference in the sovereign decision-making freedom of a Member State also results in an adverse

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			interference in the legal position of the EU, which is why above all the right to take countermeasures by the EU in such a case would be questionable. Therefore, AT would at least find a differentiation of cases of application useful here (e.g. restriction of the EU's countermeasures to interference in EU competences). <i>On the horizontal question of restriction of the EU's countermeasures to interference in EU competences see main AT Comment in line 48, with further references.</i> AT prefers the wording from Article 5 TER (“commercial policy measures”) here, and measures not going beyond TER (and commercial policy). AT takes note, in particular, of CLS’ written opinion that the majority of measures set out in Annex I to the Proposal are either expressly provided for in Article 207(1) TFEU¹⁴ or have clearly been established as falling within the common commercial policy. From a policy perspective, as outlined in line 4, AT is not convinced that a politization of all these areas is beneficial to the policy area at hand. AT favors a short and focused, but implementable list of “Union reaction measures” not going beyond “commercial policy measures” in TER, with the advantage added that commensurability could be more

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			easily ensured.
17	(9) In accordance with the principle of proportionality, it is necessary and appropriate, for creating an effective and comprehensive framework for Union action against economic coercion, to lay down rules on the examination, determination and counteraction with regard to third countries' measures of economic coercion. In particular, the Union's response measures should be preceded by an examination of the facts, a determination of the existence of economic coercion, and, wherever possible, efforts to find a solution in cooperation with the third country concerned. Any measures imposed by the Union should be commensurate with the injury caused by the third countries' measures of economic coercion. The criteria for defining the Union response measures should take into account in particular the need to avoid or minimise collateral effects, administrative burdens and costs imposed on Union economic operators as well as the Union's interest. Therefore, this Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with Article 5(4) of the Treaty on	(9) In accordance with the principle of proportionality, it is necessary and appropriate, for creating an effective and comprehensive framework for Union action against economic coercion, to lay down rules on the examination, determination and counteraction with regard to third countries' measures of economic coercion. In particular, the Union's response measures should be preceded by an examination of the facts, a determination of the existence of economic coercion, and, wherever possible, efforts to find a solution in cooperation with the third country concerned. Any measures imposed by the Union should be commensurate with the injury caused by the third countries' measures of economic coercion. The criteria for defining the Union response measures should take into account in particular the need to avoid or minimise collateral effects, administrative burdens and costs imposed on Union economic operators as well as the Union's interest. Therefore, this Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with Article 5(4) of the Treaty on	<i>"[...] Any measures imposed by the Union should be commensurate with the injury caused by the third countries' measures of economic coercion.[...]"</i> AT Comment: AT is among MS which are concerned this Regulation could endow the Union with the power to enact Union response measures in a broad array of areas, without at the same time endowing the Union with the capacity to design "commensurate" reaction measures. AT is among MS which are concerned the injury suffered through third country economic coercion or the restriction on legitimate sovereign choices in the Union could be difficult to quantify. Which calculation method will CION use to quantify the impact of third countries' measure to ensure a Union response in any of the areas in Annex I beyond trade in goods (e.g. Union-funded research programmes, sanitary and phytosanitary legislation of the Union, chemicals legislation of the Union, financial services, measures affecting foreign direct investment, Union export control regime) is commensurate?

Commission Proposal		Second Compromise Proposal	AT draft suggestions
European Union.		European Union TEU.	See horizontal AT Comment in line 4, with further references.
18	(10) Any action undertaken by the Union on the basis of this Regulation should comply with the Union's obligations under international law. International law allows, under certain conditions, such as proportionality and prior notice, the imposition of countermeasures, that is to say of measures that would otherwise be contrary to the international obligations of an injured party vis-à-vis the country responsible for a breach of international law, and that are aimed at obtaining the cessation of the breach or reparation for it.² Accordingly, response measures adopted under this Regulation should take the form of either measures adhering to the Union's international obligations or measures constituting permitted countermeasures. Under international law, and in accordance with the principle of proportionality, they should not exceed a level that is commensurate with the injury suffered by the Union or a Member State due to the third country's measures of economic coercion, taking into account the gravity of the third country's measures and the Union's rights and interests in	(10) Any action undertaken by the Union on the basis of this Regulation should comply be consistent with the Union's rights and obligations under international law. International law, which encompass all rights and obligations deriving from international agreements concluded by the Union, as well as those applicable by virtue of customary international law. Such rights and obligations in large part match the Member States' rights and obligations under 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. The Union should continue to support that system, with the WTO at its core.	AT Drafting Suggestion for Third Compromise: (10) Any action undertaken by the Union on the basis of this Regulation should comply be consistent with the Union's rights and obligations under international law. International law, which encompass all rights and obligations deriving from international agreements concluded by the Union, as well as those applicable by virtue of customary international law. Such rights and obligations in large part match the Member States' rights and obligations under 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. The Union should continue to supportstrengthen that system, with the WTO at its core. <u>In compliance with this obligation enshrined in Article 23 WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (WTO DSU), the Union shall have recourse to, and abide by, the rules and procedures of the WTO DSU if a third country</u>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	question. In this respect, injury to the Union or a Member State is understood under international law to include injury to Union economic operators. 1. See Articles 22 and 49-53 of the Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the United Nations' International Law Commission at its fifty-third session, in 2001, and taken note of by the United Nations General Assembly in resolution 56/83.		<u>applies a measure of economic coercion in which it violates its WTO obligations or otherwise nullifies or impairs the Unions benefits under or impedes the attainment of any objective of the WTO agreements covered by WTO DSU.</u> <u>AT Comment:</u> <i>See AT Comment in lines 10 and 15 above.</i> AT is among MS who believe a proper distinction need be made in which situations the Union can act on the basis of this Regulation and in which situations the Union is obliged to act in the framework of WTO Dispute Settlement. AT is among MS which are concerned ACI could help further undermine, when it should aim to strengthen, the Multilateral System. AT is among MS which are concerned this Regulation could enable the Union to enact "Union response measures" unilaterally going far beyond "commercial policy measures" the Union could enact after successfully having had recourse to the multilateral WTO Dispute Settlement system. AT is among MS which are concerned this Regulation could create an incentive to circumvent the WTO Dispute Settlement system as such. AT underlines CLS' written opinion did not

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			cover compatibility of this Proposal with international law and WTO rules. AT underlines that a CLS written opinion on compatibility of this Proposal with international law and WTO rules is still <u>outstanding</u>. AT is among MS that would appreciate CLS to answer -inter alia - the following questions in a written opinion: - What are, in international law, the potential ramifications of the proposed instrument on the relationship of customary international law and the WTO? We are particularly referring to article 55 of ARSIWA (lex specialis –article). - Could the EU propose to take action at the WTO or under other Dispute Settlement mechanisms, in addition to imposing the countermeasures/response measures as identified in the Annexes to the proposal? - Why would the WTO dispute settlement regime or another relevant dispute settlement mechanism not be suitable as forum to resolve issues of economic coercion? - Is Article 23 WTO DSU to be interpreted in a way that it obliges the Union to have recourse to, and abide by, the rules and procedures of the WTO DSU in a scenario in which a third

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			country applies a measure of economic coercion which (also) constitutes a breach of WTO law?
19		(10bis) Customary international law, as reflected in Articles 22 and 49 to 53 of the Articles on 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, allows, under certain conditions, such as proportionality and prior notice, the imposition of countermeasures, that is to say of measures that would otherwise be contrary to the international obligations of an injured party vis-à-vis the country responsible for a breach of international law, and that are aimed at obtaining the cessation of the breach or reparation for it.² Accordingly, response measures adopted under this Regulation should take the form of either measures adhering to the Union’s international obligations or measures constituting permitted	AT Drafting Suggestion for Third Compromise: (10bis) Customary international law, as reflected in Articles 22 and 49 to 53 of the Articles on 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, allows, under certain conditions, such as proportionality and prior notice, the imposition of countermeasures, that is to say of measures that would otherwise be contrary to the international obligations of an injured party vis-à-vis the country responsible for a breach of international law, and that are aimed at obtaining the cessation of the breach or reparation for it.² Accordingly, response measures adopted under this Regulation should take the form of either measures adhering to the Union’s international obligations or measures constituting permitted countermeasures Union response measures could consist, as necessary, not only in measures adhering to the Union’s international obligations,

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		countermeasures Union response measures could consist, as necessary, not only in measures adhering to the Union's international obligations, but also in the non-performance of international obligations towards the third country concerned insofar as the measures of the third country constitute an internationally wrongful act. Under international law, and in accordance with the principle of proportionality, they should not exceed a level that is commensurate with the injury suffered by the Union or a Member State due to the third country's measures of economic coercion, taking into account the gravity of the third country's measures and the Union's rights and interests in question. In this respect, injury to the Union or a Member State is understood under international law to include injury to Union economic operators. 2. See Articles 22 and 49-53 of the Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the United Nations' International Law Commission at its fifty third session, in 2001, and taken note of by the United Nations General Assembly in resolution 56/83	but also in the non-performance of international obligations towards the third country concerned insofar as the measures of economic coercion of the third country constitute an internationally wrongful act. Under international law, and in accordance with the principle of proportionality, they should not exceed a level that is commensurate with the injury suffered by the Union or a Member State due to the third country's measures of economic coercion, taking into account the gravity of the third country's measures and the Union's rights and interests in question. In this respect, injury to the Union or a Member State is understood under international law to include injury to Union economic operators. 2. See Articles 22 and 49-53 of the Articles on Responsibility of States for Internationally Wrongful Acts, adopted by the United Nations' International Law Commission at its fifty third session, in 2001, and taken note of by the United Nations General Assembly in resolution 56/83

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		its fifty-third session, in 2001, and taken note of by the United Nations General Assembly in resolution 56/83	
20		(10ter)Where measures of economic coercion constitute an internationally wrongful act, the Union should, where appropriate , in addition to the cessation of economic coercion, request the third country concerned to make reparation of any injury caused to the Union or a Member State, in accordance with Articles 31 and 34-39 of the ARSIWA.	(10ter) Where measures of economic coercion constitute an internationally wrongful act, the Union should, where deemed appropriate by Council, in addition to the cessation of economic coercion, request the third country concerned to make reparation of any injury caused to the Union or a Member State, in accordance with Articles 31 and 34-39 of the ARSIWA. <i>See corresponding AT Comment in line 26 below.</i> AT Comment: AT is among MS which are concerned that a lack in leeway to the Union as to the question of whether or not to insist on reparation could unduly prolong trade conflicts, instead of helping to early resolve them. AT is among MS which consider the cessation of economic coercion is the main final aim of this Regulation. Therefore, this Regulation should give the Union discretion as to whether or not to request reparation.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			AT welcomes the role, which CLS written opinion demands COUNCIL should have in ACI institutional set up. In AT's view, it should fall to COUNCIL to exercise the discretion of whether or not to ask for reparation or insist on asking for reparation in case of economic coercion under this Regulation. AT questions to CION: - How will CION calculate injury caused by third country economic coercion to the Union or a Member State in an area beyond trade in goods (see AT comment on line 17)? - How will CION proceed if the third country only ceases its economic coercion, but does not make the full reparation requested by the Union for the injury caused by its economic coercion? <i>See corresponding AT comment in line 26 below.</i>
21	(11) Coercion is prohibited under international law when a country deploys measures such as trade or investment restrictions in order to obtain from another country an action or inaction which that country is not internationally obliged to perform and which falls within its	(11) Coercion is prohibited and therefore a wrongful act under international law when a country deploys measures such as trade or investment restrictions in order to obtain from another country an action or inaction which that country is not internationally obliged to	AT Drafting Suggestion for Third Compromise: (11) Economic Coercion is prohibited and therefore a wrongful act under international law unwelcome when a country deploys measures such as trade or investment restrictions in order to obtain from another country an action or inaction which that country is not internationally obliged to

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	sovereignty, when the coercion reaches a certain qualitative or quantitative threshold, depending on both the ends pursued and the means deployed. The Commission should examine the third-country action on the basis of qualitative and quantitative criteria that help in determining whether the third country interferes in the legitimate sovereign choices of the Union or a Member State and whether its action constitutes economic coercion which requires a Union response.	perform and which falls within its sovereignty, when the coercion reaches a certain qualitative or quantitative threshold, depending on both the ends pursued and the means deployed. The Commission should examine the third-country action on the basis of qualitative and quantitative criteria that help in determining whether the third country interferes in the legitimate sovereign choices of the Union or a Member State and whether its action constitutes economic coercion which requires a Union response. Among those criteria 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. In addition, the Commission 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, and the protection of the environment, notably the fight against climate change.	perform and which falls within its sovereignty, when the coercion reaches a certain qualitative or quantitative threshold, depending on both the ends pursued and the means deployed. The Commission should examine the third-country action on the basis of qualitative and quantitative criteria that help in determining whether the third country interferes in the legitimate sovereign choices of the Union or a Member State and whether its action constitutes economic coercion which requires a Union response. Among those criteria 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. In addition, the Commission 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, and the protection of the environment, notably the fight against climate change. <i>“Coercion is prohibited and therefore a wrongful act under international law when [...]”</i> <u>AT Comment:</u> AT is among MS which are concerned by a vague and broad concept of economic coercion in this Regulation.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			AT is among MS that do not consider every "coercion" to constitute a breach of international law (an "internationally wrongful act"). In this respect, AT considers the wording in Recital 11 Second Compromise Proposal to be misleading. AT favors a wording that clearer distinguishes between two types of economic coercion: 1. economic coercion that is “unwelcome” to the EU but does not constitute a breach by the third country of one of its obligations under international law and 2. economic coercion with which the third country (allegedly, from an EU perspective) violates one of the third country’s obligations under international law. In AT’s view, this distinction would be important also for the selection of "Union response measures”. Only in the second type of "economic coercion" would "Union response measures” according to Annex I ACI-Proposal, in which EU temporarily does not perform its own international obligations be “justified”. In the first kind of economic coercion, the Union could only respond with “soft” Union response measures, i.e. Union response measures that do not foresee a temporary non-performance of otherwise applicable EU international obligations.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			Therefore, AT Drafting Suggestion for Third Compromise above is designed so as to remove the link the Second Compromise Proposal tries to artificially establish between “coercion” and “wrongful act”.
22	(12) Acts by third countries are understood under customary international law to include all forms of action that are attributable to a State under customary international law. International law qualifies as an act of a State, in particular: the conduct of any State organ, of a person or entity which is not an organ of the State but which is empowered by the law of that State to exercise elements of governmental authority, an organ placed at the disposal of a State by another State, a person or group of persons that are acting on the instructions of, or under the direction or control of, that State in carrying out the conduct, a person or group of persons that are exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority, and conduct that the State acknowledges and adopts as its own.³ 3. See Articles 2(a) and 4-11 of the Articles on	(12) Acts by third countries are understood under customary international law to include all forms of action or omission, including threats, that are attributable to a State under customary international law. Articles 2(a) and 4-11 of the ARSIWA confirm that customary international law qualifies as an act of a State, in particular: the conduct of any State organ, of a person or entity which is not an organ of the State but which is empowered by the law of that State to exercise elements of governmental authority, an organ placed at the disposal of a State by another State, a person or group of persons that are acting on the instructions of, or under the direction or control of, that State in carrying out the conduct, a person or group of persons that are exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority, and conduct that the State acknowledges and adopts as its own.³	AT Drafting Suggestion for Third Compromise: (12) Acts by third countries are understood under customary international law to include all forms of action or omission, including threats, that are attributable to a State under customary international law. Articles 2(a) and 4-11 of the ARSIWA confirm that customary international law qualifies as an act of a State, in particular: the conduct of any State organ, of a person or entity which is not an organ of the State but which is empowered by the law of that State to exercise elements of governmental authority, an organ placed at the disposal of a State by another State, a person or group of persons that are acting on the instructions of, or under the direction or control of, that State in carrying out the conduct, a person or group of persons that are exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority, and conduct that the State acknowledges and adopts as its own.³ 3. See Articles 2(a) and 4-11 of the Articles on Responsibility of States for Internationally Wrongful

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	Responsibility of States for Internationally Wrongful Acts, footnote 1 above.	3- See Articles 2(a) and 4-11 of the Articles on Responsibility of States for Internationally Wrongful Acts, footnote 1 above.	Acts, footnote 1 above. AT Comment: <i>See main AT comment/question to CLS on this "threat"-concept in line 48, with further references.</i>
23	(13) The Commission should examine whether third-country measures are coercive, on its own initiative or following information received from any source, including legal and natural persons or a Member State. Following this examination, the Commission should determine in a decision whether the third-country measure is coercive. The Commission should communicate any affirmative determination to the third country concerned, together with a request that the economic coercion cease and a request, where appropriate, that any injury be repaired.	(13) The Commission should examine whether third-country measures are coercive, on its own initiative or upon a reasoned request of a Member state. The Commission could carry out such examination following on the basis of information received from any reliable source, including legal and natural persons or a Member State. To determine if a third country applies or threatens to apply measures affecting trade or investment, the Commission's assessment should be based on facts and not mere allegations or remote conjectures or possibilities. Following this examination, the Commission should determine in a decision whether the third-country measure is coercive, following the advisory procedure, given the sequential logic in relation to the adoption of Union response measures. The Commission should decide on the decision to be adopted, taking the utmost	AT Drafting Suggestion for Third Compromise: <u>Recital 13 Commission Proposal need to be reworded so as to accommodate COUNCIL implementing powers as argued in WK 10440 2022 INIT and as recommended CLS' written opinion.</u> AT Comment: AT is among MS which believe the determination that a third country exercises economic coercion against the EU, will likely already have foreign policy implications, bear reputational costs and bring tensions to the relationship between the EU but also individual MS and the third country – not only in trade policy matters but possibly also in other policy areas. <i>See ACI - Non-paper of <u>Austria</u>, <u>Croatia</u>, <u>Finland</u>, <u>Germany</u>, <u>Latvia</u>, <u>Luxemburg</u>, <u>Malta</u>, <u>Portugal</u>, <u>Romania</u>, <u>Slovenia</u> and <u>Sweden</u> with regards to the current state of the discussions in the Working Party on Trade Questions on the Commission's proposal on the protection</i>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		account of the conclusions drawn from the discussions within the committee and of the opinion delivered, in application of Article 4(2) of Regulation (EU) No 182/2011 of the European Parliament and of the Council⁴ The Commission should communicate any affirmative determination to the third country concerned, together with a request that the economic coercion cease and a request, where appropriate, that any injury be repaired to cease the economic coercion and, appropriate, repair any injury. 4. Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).	<i>of the Union and its Member States from economic coercion by third countries (Joint Non-Paper on ACI WK 10440 2022 INIT).</i> AT welcomes CLS' written opinion that COUNCIL should be involved in the determination that there is economic coercion by the third country concerned through conferring on COUNCIL implementing powers in accordance with Article 291(2) TFEU, to be exercised on a proposal from the Commission. As to the options elaborated in CLS' written opinion as the voting rights in COUNCIL are concerned, AT is among Member States that are of the opinion COUNCIL should determine in a positive qualified-majority decision whether a third-country measure is coercive according to this Regulation. <i>See corresponding AT Comment in line 57 below.</i>
24		(13bis) In an effort to secure the cessation of economic coercion, the Union should seek an early and just settlement of the matter. Accordingly, the Commission should, on behalf of the Union, afford adequate opportunity for consultations with the third country concerned and, when that	AT Comment: AT is among MS seeing merit in the FR PSY's efforts to draft Recital 13bis Second Compromise Proposal. Howdoes CLS evaluate it from a legal perspective?

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		third country is ready to enter into consultations in good faith, engage with it expeditiously. In the course of such consultations, the Commission should endeavour to resort to means such as mediation, conciliation, or international adjudication, without prejudice to the delimitation of competence of the Union and Member States. In particular, when the third country suspends its actions and agrees to submit the matter to international adjudication, an international agreement with the third country should be concluded, as necessary. Such an international agreement could be concluded by the Member State concerned or by the Union, where the Treaties so provide and following the procedure laid down in Article 218 TFEU and in respect of the Council's policy making and coordinating functions.	
25	(14) The Union should support and cooperate with third countries affected by the same or similar measures of economic coercion or other interested third countries. The Union should participate in international coordination in bilateral, plurilateral or multilateral	(14) The Union should support and cooperate with third countries affected by the same or similar measures of economic coercion or other interested third countries. The Union should participate in international coordination in bilateral, plurilateral or multilateral	AT Comment: AT is among MS seeing merit in Recital 14 Second Compromise Proposal. How does CLS evaluate it from a legal perspective?

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	fora that are geared towards the prevention or elimination of the economic coercion.	fora that are geared towards the prevention or elimination of the economic coercion. The Commission should represent the Union and express its position as established by the Council, in accordance with the Treaties.	
26	(15) The Union should only impose countermeasures when other means such as negotiations, mediation or adjudication do not lead to the prompt and effective cessation of the economic coercion and to reparation of the injury it has caused to the Union or its Member States, and where action is necessary to protect the interests and rights of the Union and its Member States and it is in the Union's interest. It is appropriate that the Regulation sets out the applicable rules and procedures for the imposition and application of Union response measures and permits expeditious action where necessary to preserve the effectiveness of any Union response measures.	(15) The Union should only impose countermeasures when if other means such as negotiations, mediation or adjudication do not lead to the prompt and effective cessation of the economic coercion and to reparation of the injury it has caused to the Union or its Member States, and where action is necessary to protect the interests and rights of the Union and its Member States under international law and it is in the Union's interest to take such action. It is appropriate that the Regulation sets out the applicable rules and procedures for the imposition and application of Union response measures and permits expeditious action where necessary to preserve the effectiveness of any Union response measures.	<u>AT Drafting Suggestion for Third Compromise:</u> (15) The Union should only impose countermeasures when if other means such as negotiations, mediation or adjudication do not lead to the prompt and effective cessation of the economic coercion and, <u>where necessary</u>, to reparation of the injury it has caused to the Union or its Member States, and where action is necessary to protect the interests and rights of the Union and its Member States under international law and it is in the Union's interest to take such action. It is appropriate that the Regulation sets out the applicable rules and procedures for the imposition and application of Union response measures and permits expeditious action where necessary to preserve the effectiveness of any Union response measures. <i>See corresponding AT comment in line 20 above.</i> <u>AT Comment:</u>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			AT is among MS which are concerned a lack of Union discretion in this Regulation on whether or not to ask for reparation could draw out instead of resolve trade conflicts. AT's preliminary drafting suggestion for a Third Compromise Proposal in this recital is aimed at aligning line 26 and line 20 and at upholding Union [in AT's view: COUNCIL] discretion on reparation, in order to facilitate trade conflict resolution. AT is among MS according to which the politically sensitive question of "reparation" should be dealt with by COUNCIL. As AT is among MS that believe that the main aim of Anti-Coercion Instrument should be economic coercion to be removed, a leeway should be given to COUNCIL on whether or not to as for reparation, as necessary.

27	(16) Union response measures adopted in accordance with this Regulation should be selected and designed on the basis of objective criteria, including: the effectiveness of the measures in inducing the cessation of coercion by the third country; their potential to provide relief to economic operators within the Union affected by the third-country measures of economic coercion; the aim of avoiding or minimising negative economic and other effects on the Union; and the	(16) Union response measures adopted in accordance with this Regulation should be selected and designed on the basis of objective criteria, including: the effectiveness of the measures in inducing the cessation of coercion by the third country; the potential to provide relief to economic operators within the Union affected by the third-country measures of economic coercion; the aim of avoiding or minimising negative economic and other effects on the Union; and the	AT Drafting Suggestion for Third Compromise: (16) Union response measures adopted in accordance with this Regulation should be selected and designed on the basis of objective criteria, including: the effectiveness of the measures in inducing the cessation of coercion by the third country; their potential to provide relief to economic operators within the Union affected by the third-country measures of economic coercion; the aim of avoiding or minimising negative economic and other effects on the Union; and the avoidance of
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	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	avoidance of disproportionate administrative complexity and costs. It is also essential that the selection and design of Union response measures take account of the Union's interest. Union response measures should be selected from a wide array of options in order to allow the adoption of the most suitable measures in any given case.	avoidance of disproportionate administrative complexity and costs. It is also essential that the selection and design of Union response measures take account of the Union's interest, which includes inter alia the interests of both upstream and downstream industries in the Union. When the Commission is considering Union response measures relating to, inter alia, trade in services, financial services or the protection of intellectual property rights, it should prioritise measures that would not have a disproportionate impact on the administration of relevant national regulations. Similarly, when the Commission is contemplating restrictions relating, to inter alia, tenders in the area of public procurement, the protection or commercial exploitation of trade-related intellectual property rights, the exportation of goods falling under the Union export control regime, registrations or authorisations under the chemicals legislation of the Union or registrations or authorisations under the sanitary and phytosanitary legislation of the Union, it should prioritise restrictions that would not have a disproportionate impact on upstream and downstream industries and final consumers	disproportionate administrative complexity and costs. It is also essential that the selection and design of Union response measures take account of the Union's interest. Union response measures should be selected from a <u>widefocussed</u> array of options, <u>including, insofar as the measures of economic coercion of the third country constitute an internationally wrongful act, common commercial policy measures</u> in order to allow the adoption of the most suitable measures in any given case. <u>AT comment:</u> <i>On AT's preference for a short, focussed and implementable range of areas in which Annex I to Commission Proposal for this Regulation and to Second Compromise Proposal enable the Union to enact Union response measures, see AT Comment to line 4 and AT drafting suggestions in line 16 above as well as AT Drafting Suggestions to Annex I below (in particular in lines 146, 148 and 150-153).</i> From a policy perspective, AT prefers the areas for Union response measures in Annex I should only consist in "commercial policy measures" not going beyond "traditional" "commercial policy measures" in areas already covered by TER. Regarding those measures, AT prefers the wording from Article 5 TER.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		within the Union. Consequently, 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.	
28		(16bis) The Union could adopt measures with regard to natural or legal persons connected or linked to the government of that third country, which encompasses any State organ whatever its character as an organ of the central Government or of a territorial unit of the State, as they could be effective to inter alia induce the prompt cessation of economic coercion or to avoid negative effects on Member States and Union economic operators. Accordingly, these response measures should apply to governmental economic operators or non-governmental economic operators such as enterprises owned by the government of the third country concerned, designated monopolies, enterprises exercising elements of governmental authority, economic operators acting at the instigation of that government through legal or other means such as significant funding, or any other economic	AT Drafting Suggestion for Third Compromise: Delete Recital 16(bis) Second Compromise Proposal: (16bis) The Union could adopt measures with regard to natural or legal persons connected or linked to the government of that third country, which encompasses any State organ whatever its character as an organ of the central Government or of a territorial unit of the State, as they could be effective to inter alia induce the prompt cessation of economic coercion or to avoid negative effects on Member States and Union economic operators. Accordingly, these response measures should apply to governmental economic operators or non-governmental economic operators such as enterprises owned by the government of the third country concerned, designated monopolies, enterprises exercising elements of governmental authority, economic operators acting at the instigation of that government through legal or other means such as significant funding, or any other economic operators whose actions

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		operators whose actions demonstrate that is connected or linked to that government, including persons that have contributed to economic coercion.	demonstrate that is connected or linked to that government, including persons that have contributed to economic coercion. <u>AT Comment:</u> AT takes note of CLS' written opinion which covers some aspects of Article 8, in particular as regards compatibility of Article 8 with Art. 207(2) TFEU as a legal base. CLS distinguishes between two kinds of economic operators: 1. economic operators (natural or legal persons or entities) associated with the government of a third country and having contributed to coercion and engaged in international trade or business 2. economic operators (natural or legal persons or entities) associated (only) with the government of a third country but not engaged in trade between the Union and the third country concerned. AT interprets CLS written opinion in a way that CLS deems a designation pursuant to Artikel 8 only of economic operators of the first kind potentially compatible with Art. 207(2) TFEU, <u>if the possibility for such designation is to be maintained. [emphasis added by AT]</u> From a legal perspective, AT would - as ACI is supposedly based on ARSIWA - kindly ask CLS

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			for its written legal opinion on which Article in ARSIWA the designation of natural or legal persons in this Regulation could legitimately be based? From a policy perspective, AT as a small open economy is among MS that are opposed to the possibility for designation of natural or legal persons to be maintained in this Regulation. AT could consider supporting a mediatization of trade conflict caused by economic coercion on a state-to-state level. In AT's view, however, drawing individuals in a trade conflict risks aggravating the trade conflict, and AT presently fails to see the benefit that would outweigh this much aggravated escalation risk. AT is among MS that ask for a deletion of Recital 16bis in its entirety. <i>See corresponding AT Drafting Suggestion on Article 8 (deletion) in lines 76 to 87, in particular AT Comment in line 77.</i>
29		(16ter) As a result of economic coercion, Union natural and legal persons could suffer significant harm. Without prejudice to the third country's obligation to repair the injury, it could be appropriate to entitle Union persons to recover their damage	AT Drafting Suggestion for Third Compromise: (16ter) As a result of economic coercion, Union natural and legal persons could suffer significant harm. Without prejudice to the third country's obligation to repair the injury, it could be appropriate to entitle Union persons to recover their damage from natural or

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		from natural or legal persons that are not only connected or linked to the government of that third country, but that have also contributed to economic coercion. Such contribution may consist in requesting the government of the third country concerned to interfere with the legitimate sovereign choice of the Union or a Member State or providing assistance in the elaboration of measures of economic coercion. To recover damage, Union persons should invoke the responsibility of the person designated under this Regulation before the courts of Member States where such person holds assets. In accordance with the civil law applicable in the Member State concerned, and on the basis of a decision by the competent national authority, the recovery could take the form of seizure and sale of assets held by the designated persons, including shares held in entities incorporated within the Union.	<u>legal persons that are not only connected or linked to the government of that third country, but that have also contributed to economic coercion. Such contribution may consist in requesting the government of the third country concerned to interfere with the legitimate sovereign choice of the Union or a Member State or providing assistance in the elaboration of measures of economic coercion. To recover damage, Union persons should invoke the responsibility of the person designated under this Regulation before the courts of Member States where such person holds assets. In accordance with the civil law applicable in the Member State concerned, and on the basis of a decision by the competent national authority, the recovery could take the form of seizure and sale of assets held by the designated persons, including shares held in entities incorporated within the Union.</u> AT Comment: From an legal perspective, AT is among MS not convinced Article 8(1) (b) Commission Proposal is compatible with Article 33(2) ARSIWA and would kindly ask CLS for its written opinion in this regard. AT would much appreciate CLS opinion in the light of ARSIWA Commentary on Article 33(2), which inter alia holds: “[...] <i>It will be a matter for the particular primary rule to determine</i>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			<i>whether and to what extent persons or entities other than States are entitled to invoke responsibility on their own account. [...]". Could CLS please elaborate in a written opinion, what is the primary rule on which EU individuals can invoke damage claims against third country natural or legal persons from the coercing third country? Can the legal base for such claims be at all based on ARSIWA as a secondary rule?</i> From a national law perspective, AT is among MS not convinced Article 8(1) (b) Commission Proposal is compatible with Member States' national civil law regulations. AT takes note on CLS' opinion on compatibility of Article 8 with Article 207(2) TFEU. As a first reaction, AT is not inclined to share CLS' conclusion that "claims for damages" are to be equated with provisions on "seizure and confiscation measures" and are therefore subject to the commercial policy (which is why the cited ruling in C-137/12 would not be relevant). Nor is AT convinced damage claims serve effective legal protection (CLS written opinion, lines 41/42). The CLS written opinion also remains vague, because it formulates "to the extent that this measure is intended to facilitate effective legal protection ... it can be adopted on the basis of Art. 207 (2) TFEU". See AT Comment and corresponding AT Drafting Suggestion in line 77.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
30		(16quater) As part of the Union response in order to induce the cessation of economic coercion by third countries, the Commission could also adopt measures pursuant to other legal instruments that confer specific powers to the Commission, for example with regard to the granting of Union funding, following the applicable procedures set out therein. Measures adopted by the Commission pursuant to such other legal instruments should be synchronised with actions taken under this Regulation and be consistent with the Union's obligations under international law. In particular, such measures, together with Union response measures adopted under this Regulation, as the case may be, should be commensurate with the injury caused by the third countries' measures of economic coercion. This Regulation is without prejudice to rules and procedures under such other legal instruments.	AT Comment: AT sees some merit in Recital 16quater, as it seems to circumscribe the notion of "Union response measures adhering to the Union's international obligations". AT is wondering if Recital 16quater Second Compromise Proposal could be acceptable in the spirit of compromise. AT would appreciate CLS to explain the merits of Recital 16quater Second Compromise Proposal, to help AT find a position.
31	(17) It is appropriate to set out rules on the origin or nationality of goods, services and service providers,	(17) It is appropriate to set out rules on the origin or nationality of goods, services and service providers,	AT Drafting Suggestion for Third Compromise: (17) It is appropriate to set out rules on the origin or nationality of goods, services and

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	investment and holders of intellectual property rights, for the purposes of determining the Union response measures. The rules of origin or of nationality should be determined in the light of the prevailing rules for non-preferential trade and investment that are applicable under Union law and the Union's international agreements.	investment and holders of intellectual property rights, for the purposes of determining the Union response measures. The rules of origin or and of nationality should be determined in the light of the prevailing rules for non-preferential trade and investment that are applicable under Union law and the Union's international agreements.	service providers, investment and holders of intellectual property rights, for the purposes of determining the Union response measures. The rules of origin or and of nationality should be determined in the light of the prevailing rules for non-preferential trade and investment that are applicable under Union law and the Union's international agreements. <u>AT Comment:</u> From a legal perspective, AT takes note of CLS' written opinion, according to which the area for Union response measure set out in - inter alia - Annex I letter g (i.e. imposition of measures affecting foreign direct investment) is expressly provided for in Article 207(1) TFEU. From a policy perspective, however, AT is among MS which are opposed to this Regulation foreseeing Union response measures in the area of foreign direct investment (FDI). <i>On the horizontal question of imposition of measures affecting FDI, see horizontal AT comment in line 148 in particular, with further references.</i> In any case, AT is among MS strongly opposed to this Regulation covering services <u>supplied</u>, or direct investments <u>made</u> for reasons of legal certainty.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
32	(18) In pursuing the objective of obtaining the cessation of the measure of economic coercion, Union response measures consisting of restrictions on foreign direct investment or on trade in services should only apply with regard to services supplied, or direct investments made, within the Union by one or more legal persons established in the Union which are owned or controlled by persons of the third country concerned where necessary to ensure the effectiveness of Union response measures and in particular to prevent their avoidance. The decision to impose any such restrictions will be duly justified in implementing acts adopted pursuant to this Regulation in the light of the criteria specified in this Regulation.	(18) In pursuing the objective of obtaining the cessation of the a measure of economic coercion, Union response measures consisting of restrictions on foreign direct investment or on trade in services should only apply only with regard to <u>services supplied</u>, or <u>direct investments made</u>, within the Union by one or more legal persons established in the Union and which are owned or controlled by persons of the third country concerned where necessary to ensure the effectiveness of Union response measures and in particular to prevent their avoidance. The decision to impose any such restrictions will <u>should</u> be duly justified in implementing acts adopted pursuant to this Regulation in the light of the criteria specified in this Regulation.	<u>AT Drafting Suggestion for Third Compromise:</u> <i>Deletion of Recital 18 in its entirety.</i> <u>AT Comment:</u> AT is among MS strongly opposed to this Regulation covering services <u>supplied</u>, or direct investments <u>made</u> for reasons of legal certainty. <i>On AT's stance and question to CLS regarding "services supplied" and "investments made", see line 92 below.</i>
33	(19) After the adoption of Union response measures, the Commission should continuously assess the situation in relation to the third-country measures of economic coercion, the effectiveness of the Union response measures and their effects, with a view to adjusting, suspending or terminating the	(19) After the adoption of Union response measures, the <u>Commission</u> should continuously assess the situation in relation to the third-country measures of economic coercion, the effectiveness of the Union response measures and their effects, <u>with a view to adjusting, suspending or terminating the</u>	<u>AT Drafting Suggestion for Third Compromise:</u> (19) After the adoption of Union response measures, the <u>Commission</u> should continuously assess the situation in relation to the third-country measures of economic coercion, the effectiveness of the Union response measures and their effects, <u>with a view to adjusting, suspending or terminating the</u> response measures

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	response measures accordingly. It is therefore necessary to set out the rules and procedures for amending, suspending and terminating Union response measures and the situations in which these are appropriate.	response measures accordingly. It is therefore necessary to set out the rules and procedures for amending, suspending and terminating Union response measures and the situations in which they^{se} are appropriate.	accordingly. It is therefore necessary to set out the rules and procedures for amending, suspending and terminating Union response measures and the situations in which they^{se} are appropriate. <u>The transfer of implementing powers to Council for adjusting, suspending or terminating Union response measures is justified by the need to respect the Council's powers on the Union's external action, including the need to ensure consistency between, for instance, possible CFSP measures and the Union response measures under the Proposal.</u> <u>AT Comment:</u> AT is among MS that prefer this Regulation to transfer implementing powers to the COUNCIL (Art. 291 (2) TFEU). COUNCIL implementing powers with a positive qualified majority, in AT's view, shall include, inter alia, the power to introduce, amend, suspend or terminate Union response measures. AT welcomes CLS' written opinion, according to which the transfer of implementing powers to Council can be justified by - inter alia - <i>"the need to respect the Council's powers on the Union's external action, including the need to ensure consistency between, for instance, possible CFSP measures and the Union response measures under the Proposal"</i>. AT would appreciate CLS opinion of the

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			addition here is sufficient, or a justification for other COUNCIL implementing powers need be added in which other Recital for this Regulation. See also line 37. <i>On the horizontal demand to transfer implementing powers to the Council, see "Joint Non-Paper on ACI" (WK 10440 2022 INiT).</i>
34	(20) It is essential to provide for opportunities for stakeholder involvement for the purposes of adoption and amendment of Union response measures, and as relevant for the purposes of suspension and termination, in view of the potential impact on such stakeholders.	(20) It is essential to provide for opportunities for stakeholder involvement for the purposes of adoption and amendment of Union response measures; and, where as relevant, for the purposes of suspension and termination, in view of the potential impact on such stakeholders.	
35	(21) It is important to ensure an effective communication and exchange of views and information between the Commission on the one hand and the European Parliament and the Council on the other, in particular on efforts to engage with the third country concerned to explore options with a view to obtaining the cessation of the economic coercion and on matters that may lead to the adoption of	(21) It is important to ensure an effective communication and an exchange of views and information between the Commission on the one hand, and the European Parliament and the Council, on the other, in particular on efforts to engage enter into consultations with the third country concerned to explore options with a view to obtaining the cessation of the economic coercion and on matters that may lead to the	<u>AT Drafting Suggestion for Third Compromise:</u> (21) It is important to ensure an effective communication and an exchange of views and information between the Commission on the one hand, and the European Parliament and the Council, on the other, in particular on efforts to engage enter into consultations with the third country concerned to explore options with a view to obtaining the cessation of the economic coercion and on matters that may lead to the adoption of Union response measures under

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	Union response measures under this Regulation.	adoption of Union response measures under this Regulation.	this Regulation. AT Comment: AT prefers wording of Recital 21 in Second Compromise Proposal.
36	(22) In order to allow the update of the range of Union response measures under this Regulation and the adjustment of the rules of origin or of other technical rules, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend the list of Union responses set out in Annex I and technical rules necessary for the application of the Regulation, including rules of origin laid down in Annex II. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making.⁵ In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and	(22) In order to allow the update of the range of Union response measures under this Regulation and the adjustment of the rules of origin and nationality or of other technical rules, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union TFEU should be delegated to the Commission to amend the list of Union responses set out in Annex I and technical rules necessary for the application of the Regulation, including rules of origin and nationality laid down in Annex II. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making.⁵ In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as	AT Drafting Suggestion for Third Compromise: (22) In order to allow the update of the range of Union response measures under this Regulation and the adjustment of the rules of origin and nationality or of other technical rules, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union TFEU should be delegated to the Commission to amend the list of Union responses set out in Annex I and technical rules necessary for the application of the Regulation, including rules of origin and nationality laid down in Annex II. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making.⁵ In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically should have access

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts. 5. OJ L 123, 12.5.2016, p. 1	Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts. 5. Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1).	to meetings of Commission expert groups dealing with the preparation of delegated acts. 5. Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1). AT Comment: <i>On the horizontal AT opposition against the power to CION to adopt delegated acts referred to in Article 7(7), see lines 36, 75 and 116.</i> Therefore, AT is among MS which prefer the wording in Second Compromise Proposal. <i>See horizontal AT Comment in line 4, with further references.</i>
37	(23) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.⁶ 6. 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.	(23) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.⁶ 6. Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and	AT Drafting Suggestion for Third Compromise: (23) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council. The transfer of implementing powers to Council for adjusting, suspending or terminating Union response measures is justified by the need to respect the Council's powers on the Union's external action, including the need to ensure consistency

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	13).	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).	<u>between, for instance, possible CFSP measures and the Union response measures under the Proposal.</u> <u>AT Comment:</u> <i>On the horizontal demand to transfer implementing powers to the Council, see "Joint Non-Paper on ACI" (WK 10440 2022 INIT).</i>
38	(24) The examination procedure should be used for the adoption of Union response measures and their amendment, suspension or termination given that those acts determine the Union's responses to economic coercion falling within the scope of this Regulation.	(24) The examination procedure should be used for the adoption of Union response measures and their amendment, suspension or termination given that those acts determine the Union's responses to economic coercion falling within the scope of this Regulation. Considering the specific nature of this regulation, Article 5(4) of Regulation (EU) No 182/2011 should apply where the competent Committee delivers no opinion. In the case where Commission calls for an appeal committee to examine its draft implementing act, special attention should be given to solutions which command the widest possible support within the appeal committee, in full application of article 6 of Regulation (EU) No 182/2011.	<u>AT Comment:</u> AT is among MS according to which the adoption, the amendment, the suspension and the termination of Union response measures should require an approval of the Council with a positive qualified majority. <i>On the horizontal demand to transfer implementing powers to the Council, see "Joint Non-Paper on ACI" (WK 10440 2022 INIT).</i>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
39	(25) The Commission should adopt immediately applicable implementing acts of limited duration where, in duly justified cases relating to the adoption, amendment, suspension or termination of Union response measures, imperative grounds of urgency so require.	(25) The Commission should adopt immediately applicable implementing acts of limited duration where, in duly justified cases relating to the adoption, amendment, suspension or termination of Union response measures, imperative grounds of urgency so require expedited action to avoid irreparable damage or to ensure consistency with international law. Such expedited action could prevent the coercion from causing or worsening any economic damage, notably with a view to protecting acute and vital interests of the Union or a Member State.	AT Drafting Suggestion for Third Compromise: <i>Delete Recital 25 in its entirety.</i> AT Comment: On the horizontal question of immediately applicable implementing acts for “imperative grounds of urgency”, AT is among MS which are not convinced of a need of immediately applicable implementing acts in this Regulation. <i>On the horizontal question of immediately applicable implementing acts, see AT comments in lines 39, 74, 99 and 106.</i>
40		(25bis) Any action taken under this Regulation, including Union response measures with regard to natural or legal persons, should respect the Charter of Fundamental Rights of the European Union. Moreover, any processing of personal data pursuant to this Regulation should be consistent with the applicable rules on the protection of personal data. Processing of personal data by Committee members representing Member States should be carried out in	<i>See main AT Comment on Article 8 above in line 77.</i> AT Comment: AT notes CLS in its written opinion demands changes to Article 8, to make it compatible with Article 207 TFEU as a legal base, if the possibility for a designation of natural or legal persons is to be maintained. From a policy perspective, AT prefers deletion of Article 8 in its entirety. Could CLS please confirm that, in case of a deletion of Article 8, Recital (25bis) Second Compromise Proposal

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council⁷. Processing of personal data by the Commission should be carried out in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council⁸. ⁷ 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). ⁸ 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).	would not be necessary and could be deleted without detrimental effect on the protection of personal data under this Regulation?
41	(26) The Commission should evaluate measures adopted under this Regulation as to their effectiveness and operation and as to possible conclusions for future measures. The Commission should also review this Regulation after gaining sufficient experience with the existence or	(26) The Commission should evaluate measures adopted under this Regulation as to their effectiveness and operation and as to possible conclusions for future measures. The Commission should also review this Regulation after gaining sufficient experience with the existence or	AT Comment: AT is among MS which are of the opinion the relationship to existing Union instruments (inter alia Blocking Statute) should be clearly stated in the main body of this Regulation and not be postponed to the Review, as these are fundamental questions that need be resolved in the legislative process for this Regulation.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	application of this Regulation. This review should cover the scope, functioning, efficiency and effectiveness of this Regulation. The Commission should report on its assessment to the European Parliament and the Council,	application of this Regulation. That This review should cover the scope, functioning, efficiency and effectiveness of this Regulation and also its relationship to other existing Union instruments . The Commission should report on its assessment to the European Parliament and the Council,	This regards in particular the relationship to TER, and the relationship to WTO Dispute Settlement as an overarching theme. CLS in its written opinion acknowledges question were raised during discussions in Council regarding the compatibility of the Proposal with international law and WTO rules. AT is among MS that would appreciate <u>outstanding</u> CLS written opinion answering these questions. See corresponding AT comment in line 128. On the relationship to TER and WTO-law, see AT Comment in lines 15 and 18.
42	HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION:	
43	<i>Article 1</i> Subject-matter	<i>Article 1</i> Subject-matter	
44	1. This Regulation lays down rules and procedures in order to ensure the effective protection of the interests of the Union and its Member States where a third country seeks, through	1. This Regulation lays down rules and procedures in order to ensure the effective protection of the interests of the Union and its Member States where a third country seeks, through	<i>"This Regulation lays down rules and procedures in order to ensure the effective protection of the interests of the Union and its Member States where a third country seeks, [...], to coerce the Union or a Member State</i>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	measures affecting trade or investment, to coerce the Union or a Member State into adopting or refraining from adopting a particular act. This Regulation provides a framework for the Union to respond in such situations with the objective to deter, or have the third country desist from such actions, whilst permitting the Union, in the last resort, to counteract such actions.	measures affecting trade or investment, to coerce the Union or a Member State into adopting or refraining from adopting a particular act.	<i>into adopting or refraining from adopting a particular act. [...]”:</i> AT Drafting Suggestion for Third Compromise: 1. This Regulation lays down rules and procedures <u>in order</u> to ensure the effective protection of the interests of the Union <u>and its Member States</u> where a third country seeks, through measures affecting trade or investment, to coerce the Union <u>or a Member State</u> into adopting or refraining from adopting a particular act. AT Comment: AT is among MS which are not convinced ARSIWA entitles the Union to countermeasures in situations in which third state measures do not entail any damage to the legal position of the EU itself, but only violate the rights of (individual) member states. <i>On the horizontal question of restriction of the EU's countermeasures to interference in EU competences see main AT Comment in line 48, with further references.</i>
45		2. This Regulation provides establishes a framework for the Union to respond in such situations with the objective to deter, or have the third country desist from such actions,	AT Drafting Suggestion for Third Compromise: 2. This Regulation provides establishes a framework for the Union to respond in such situations with the objective to deter, or

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		whilst permitting enabling the Union, in the as a last resort, to counteract such actions.	have the third country desist from such actions, whilst permitting enabling the Union, in the as a last resort, to counteract such actions. AT Comment: AT is among MS which are not convinced this Regulation can “permit” the Union to respond in situations of third country economic coercion. AT is not convinced even ARSIWA “permit” the Union to respond in situations of third country economic coercion. As matters stand, AT has a slight preference for the wording as in the Second Compromise Proposal here.
46	2. Any action taken under this Regulation shall be consistent with the Union’s obligations under international law and conducted in the context of the principles and objectives of the Union’s external action.	23 . Any action taken under this Regulation shall be consistent with the Union’s obligations under international law and be conducted in the context of the principles and objectives of the Union’s external action.	AT Drafting Suggestion for Third Compromise: 23. Any action taken under this Regulation shall be consistent with the Union’s obligations under international law and be conducted in the context of the principles and objectives of the Union’s external action.
47	Article 2 Scope	Article 2 Scope	
48			AT Drafting Suggestion for Third Compromise:

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	1. This Regulation applies where a third country: – interferes in the legitimate sovereign choices of the Union or a Member State by seeking to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State – by applying or threatening to apply measures affecting trade or investment. For the purposes of this Regulation, such third-country actions shall be referred to as measures of economic coercion.	1. This Regulation applies where a third country: – interferes in the legitimate sovereign choices of the Union or a Member State by seeking to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State – by applying or threatening to apply measures affecting trade or investment. For the purposes of this Regulation, such third-country actions shall be referred to as measures of economic coercion.	1. This Regulation applies where a third country: – interferes in the legitimate sovereign choices of the Union by seeking to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State – by applying or threatening to apply measures affecting trade or investment. For the purposes of this Regulation, such third-country actions shall be referred to as measures of economic coercion. AT Comment: According to Art. 49 para. 1 ARSIWA, a right to take countermeasures is also only available to an "injured state". Situations could therefore be problematic in which third state measures do not entail any damage to the legal position of the EU itself, but only violate the rights of (individual) member states. According to Art. 2 of the legislative proposal, the instrument applies when a third country interferes with the "legitimate sovereign choices of the Union or a Member State". However, not every interference in the sovereign decision-making freedom of a Member State also results in an adverse interference in the legal position of the EU, which is why above all the right to take countermeasures by the EU in such a case would be questionable. Here, at least a

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			differentiation of cases of application would be useful (e.g. restriction of the EU's countermeasures to interference in its competences). <i>On the horizontal question of restriction of the EU's countermeasures to interference in EU competences see AT Comment in lines 16, 44 and 48.</i> AT is among MS that would appreciate CLS to answer -inter alia - the following questions in its written opinion: - What is the CLS views on the legal basis for imposing measures based on a simple threat to apply measures. We note that the Presidency has included in the compromise proposal art. 5bis, which would allow for Union measures to apply only from the date of application of measures by the third country. Pending CLS written opinion in this regard, AT favours a deletion of “threat” here. <i>On “threat”-concept see line 48, but also lines 22, 23 and 73.</i>
■ 49	2. In determining whether the conditions set out in paragraph 1 are met, the following shall be taken into account:	2. In determining whether the conditions set out in paragraph 1 are met, the following shall be taken into account:	<u>AT Drafting Suggestion for Third Compromise:</u> 2. In determining whether the conditions set out in paragraph 1 are met, the following shall be taken into account:

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	(a) the intensity, severity, frequency, duration, breadth and magnitude of the third country's measure and the pressure arising from it; (b) whether the third country is engaging in a pattern of interference seeking to obtain from the Union or from Member States or other countries particular acts; (c) the extent to which the third-country measure encroaches upon an area of the Union's or Member States' sovereignty; (d) whether the third country is acting based on a legitimate concern that is internationally recognised; (e) whether and in what manner the third country, before the imposition of its measures, has made serious attempts, in good faith, to settle the matter by way of international coordination or adjudication, either bilaterally or within an international forum.	(a) the intensity, severity, frequency, duration, breadth and magnitude of the third country's measure and the pressure arising from it on the Union or a Member State; (b) whether the third country is engaging in a pattern of interference seeking to obtain from the Union, or from a Member States or other countries particular acts; (c) the extent to which the third-country measure encroaches upon an area of the Union's or a Member States's sovereignty; (d) whether the third country is acting based on the basis of a legitimate concern that is internationally recognised; (e) whether and in what manner the third country, before the imposition application of its measures, has made serious attempts, in good faith, to settle the matter by way of international coordination or adjudication, either bilaterally or within an international forum.	(a) the intensity, severity, frequency, duration, breadth and magnitude of the third country's measure and the pressure arising from it on the Union or a Member State; (b) whether the third country is engaging in a pattern of interference seeking to obtain from the Union, or from a Member States or other countries particular acts; (c) the extent to which the third-country measure encroaches upon an area of the Union's or a Member States's sovereignty; (d) whether the third country is acting based on the basis of a legitimate concern that is internationally recognised; (e) whether and in what manner the third country, before the imposition application of its measures, has made serious attempts, in good faith, to settle the matter by way of international coordination or adjudication, either bilaterally or within an international forum. AT Comment: See AT Comment on line 48 above.
50	<i>Article 3</i> Examination of third-country measures	<i>Article 3</i> Examination of third-country measures	

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
51	1. The Commission may examine any measure of a third country in order to determine whether it meets the conditions set out in Article 2(1). The Commission shall act expeditiously.	1. The Commission may, on its own initiative or upon a reasoned request of a Member State, examine any measure of a third country in order to determine whether it meets the conditions set out in Article 2(1). The Commission shall act expeditiously.	<u>AT Drafting Suggestion for Third Compromise:</u> 1. The Commission mayshall, on its own initiative or upon a reasoned request of a Member State containing sufficient evidence showing that economic coercion by a particular third country concerned causes injury to the Union industry in that particular Member State, examine any measure of a third country in order to determine whether it meets the conditions set out in Article 2(1). The Commission shall act expeditiously. <u>AT Comment:</u> AT is among the MS which favour a clearer outlining of what is required from an individual Member State in terms of reasoned request. AT is among the MS that would like to avoid the Union getting drawn in comparatively smaller (trade) disputes in its periphery, so AT is in favour of establishing a threshold for MS requests. AT is among the MS that favour the Union to concentrate on economic coercion potentially endangering the integrity of the single market. AT welcomes CLS' written opinion the COUNCIL should be involved in the very determination that there is economic coercion by the third country concerned through conferring on it implementing powers in accordance with Article 291(2) TFEU, to be exercised on a proposal from the Commission.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			<i>On the horizontal demand to transfer implementing powers to the Council, see "Joint Non-Paper on ACI" (WK 10440 2022 INIT).</i>
52	2. The Commission may carry out the examination referred to in paragraph 1 on its own initiative or following information received from any source. The Commission shall ensure the protection of confidential information in line with Article 12, which may include the identity of the supplier of the information.	2. The Commission may carry out the examination referred to in paragraph 1 on its own initiative or following on the basis of information received from any reliable source. The Commission shall ensure the protection of confidential information in line accordance with Article 12, which may include the identity of the supplier of the information.	AT Drafting Suggestion for Third Compromise: 2. The Commission mayshall carry out the examination referred to in paragraph 1 on its own initiative or following on the basis of information received from any reliable source. The Commission shall ensure the protection of confidential information in line accordance with Article 12, which may include the identity of the supplier of the information. <i>See AT Comment on line 51 above.</i>
53		2bis. Where there are reasonable grounds to suspect that the measure of the third country concerned meets the conditions set out in Article 2(1), the Commission shall expeditiously inform Member States.	AT Drafting Suggestion for Third Compromise: 2bis. Where there are reasonable grounds to suspect that the measure of the third country concerned meets the conditions set out in Article 2(1), the Commission shall expeditiously inform <u>Council and Member States</u> . AT Comment: <i>On the horizontal demand to transfer implementing powers to the Council, see</i>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			"Joint Non-Paper on ACI" (WK 10440 2022 INIT).
54		3. The Commission may request Member States to supply information on the impact of the measures of the third country concerned	AT Drafting Suggestion for Third Compromise: 3. The Commission may request Member States to supply information on the impact of the measures of the third country concerned
55	3. The Commission may seek information about the impact of the measures of the third country concerned. The Commission may publish a notice in the <i>Official Journal of the European Union</i> or through other suitable public communication means with an invitation to submit information within a specified time limit. In that event, the Commission shall notify the third country concerned of the initiation of the examination.	43. Following the information of Member States pursuant to paragraph 3, tThe Commission may seek information about the impact of the measures of the third country concerned. The Commission may, by publishing a notice in the <i>Official Journal of the European Union</i> or and, where appropriate, through other suitable public communication means with an invitation to stakeholders to submit information within a specified time limit. In that event, the Commission shall notify the third country concerned of the initiation of the examination.	AT Drafting Suggestion for Third Compromise: 43. Following the information of Member States pursuant to paragraph 3, tThe Commission mayshall seek information about the impact of the measures of the third country concerned. The Commission may, by publishing a notice in the <i>Official Journal of the European Union</i> or and, where appropriate, through other suitable public communication means with an invitation to stakeholders to submit information within a specified time limit. In that event, tThe Commission shall notify the third country concerned of the initiation of the examination. AT Comment: AT is among the MS which are not convinced there exists economic coercion without economic impact. AT therefore, would consider it an obligation by CION to ask stakeholders for impact in an official notice.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			AT is among the MS which believe CION should be obliged to notify the third country concerned of the initiation of an examination.
56	<i>Article 4</i> Determination with regard to the third-country measure	<i>Article 4</i> Determination with regard to the third-country measure	
57	Following an examination carried out in accordance with Article 3, the Commission shall adopt a decision determining whether the measure of the third country concerned meets the conditions set out in Article 2(1). The Commission shall act expeditiously.	1. Following an examination carried out in accordance with Article 3, the Commission shall inform Member States of the relevant information gathered pursuant to Article 3 and, as the case may be, pursuant to Article 4(2) and adopt a decision determining whether the measure of the third country concerned meets the conditions set out in Article 2(1) in accordance with the advisory procedure referred to in Article 15(1bis). The Commission shall publish such decision in the Official Journal of the European Union. The Commission shall act	AT Comment: <i>On the horizontal demand to transfer implementing powers to the Council, see "Joint Non-Paper on ACI" (WK 10440 2022 INIT).</i> AT welcomes CLS' written opinion the Council should be involved in the determination that there is economic coercion by the third country concerned through conferring on it implementing powers in accordance with Article 291(2) TFEU, to be exercised on a proposal from the Commission. As to the options as concern the voting rights in the Council enumerated in CLS' written

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		expeditiously.	opinion, AT is among Member States that prefer Council should determine in a positive qualified-majority decision whether a third-country measure is coercive according to this Regulation. <i>See corresponding AT Comment in line 23 above.</i>
58	Prior to adopting its decision, the Commission may invite the third country concerned to submit its observations.	2. Prior to adopting its decision, where useful for the purposes of the determination, the Commission may shall invite the third country concerned to submit its observations within a reasonable period of time, without prejudice to Article 5.	AT Comment: <i>AT prefers the wording as in Second Compromise Proposal, as altered, if necessary, to accommodate implementing powers to the Council.</i>
59	Where the Commission decides that the measure of the third country concerned meets the conditions set out in Article 2(1), it shall notify the third country concerned of its decision and request it to cease the economic coercion and, where appropriate, repair the injury suffered by the Union or its Member States.	3. Where the Commission decides that the measure of the third country concerned meets the conditions set out in Article 2(1), it shall notify the third country concerned of its decision and request it to cease the economic coercion and, where appropriate, repair the injury suffered by the Union or its Member States.	AT Drafting Suggestion for Third Compromise: 3. Where the Commission Council decides that the measure of the third country concerned meets the conditions set out in Article 2(1), it shall notify the third country concerned of its decision and request it to cease the economic coercion and, where appropriate, repair the injury suffered by the Union or its Member States. AT Comment: <i>On the horizontal demand to transfer implementing powers to the Council, see "Joint Non-Paper on ACI" (WK 10440 2022</i>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			INIT).
60	Article 5 Engagement with the third country concerned	Article 5 Engagement with the third country concerned	
61	The Commission shall be open to engage on behalf of the Union with the third country concerned, to explore options with a view to obtaining the cessation of the economic coercion. Such options may include: – direct negotiations; – mediation, conciliation or good offices to assist the Union and the third country concerned in these efforts; – submitting the matter to international adjudication.	1. Following the adoption of a decision in accordance with Article 4, The Commission shall, be open to engage on behalf of the Union, afford adequate opportunity for consultations with the third country concerned, to explore options with a view to obtaining the cessation of the economic coercion. If the third country concerned offers to enter into consultations with the Union in good faith, the Commission shall expeditiously enter into consultations. In the course of such consultations, the Commission may explore options with the third country concerned, including: Such options may include: – direct negotiations; – mediation, conciliation or good offices to assist the Union and the third country concerned in these efforts;	AT Drafting Suggestion for Third Compromise: 1. Following the adoption of a decision of the Council in accordance with Article 4, The Commission shall, be open to engage on behalf of the Union, afford adequate opportunity for consultations with the third country concerned, to explore options with a view to obtaining the cessation of the economic coercion. If the third country concerned offers to enter into consultations with the Union in good faith, the Commission shall expeditiously enter into consultations. In the course of such consultations, the Commission may explore options with the third country concerned, including: Such options may include: – direct negotiations; – mediation, conciliation or good offices to assist the Union and the third country concerned in these efforts; – submitting the matter to international adjudication.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		submitting the matter to international adjudication.	AT Comment: AT welcomes the Second Compromise Proposal as it elaborates in more detail this offer of negotiations required under Article 52 (1) ARSIWA before countermeasures can be taken (Article 5 of the Commission Proposal only stated that the EU "shall be open to engage" in negotiations). AT welcomes CLS' written legal opinion that argues in favor of a transfer of implementing powers to COUNCIL. <i>On the horizontal demand to transfer implementing powers to the Council, see "Joint Non-Paper on ACI" (WK 10440 2022 INIT).</i>
62	The Commission shall seek to obtain the cessation of the economic coercion by also raising the matter in any relevant international forum.	2. The Commission shall seek to obtain the cessation of the economic coercion also by also raising the matter in any relevant international forum, after having informed the Council.	AT Drafting Suggestion for Third Compromise: 2. The Commission shall seek to obtain the cessation of the economic coercion also by also raising the matter in any relevant international forum, after having informed the Council. AT Comment: AT prefers the wording in Second Compromise Proposal.
63	The Commission shall keep the		AT Drafting Suggestion for Third Compromise:

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	European Parliament and the Council informed of relevant developments.	3. The Commission shall keep the European Parliament and the Council informed of any relevant developments pursuant to paragraphs 1 and 2 .	3. The Commission shall keep the European Parliament and the Council informed of any relevant developments pursuant to paragraphs 1 and 2 . AT Comment: AT prefers the wording in Second Compromise Proposal.
64	The Commission shall remain open to engage with the third country concerned after the adoption of Union response measures pursuant to Article 7. The Commission may pursue these efforts, as the case may be, in conjunction with a suspension, pursuant to Article 10(2), of any Union response measures.	4. The Commission shall remain open to engage enter into consultations with the third country concerned after the adoption of Union response measures pursuant to Article 7: and The Commission may pursue these efforts , as the case may be, in conjunction with a suspension , pursuant to Article 10(2) , of any Union response measures pursuant to Article 10(2) .	AT Drafting Suggestion for Third Compromise: 4. The Commission shall remain open to engage enter into consultations with the third country concerned after the adoption of Union response measures pursuant to Article 7: and The Commission may pursue these efforts , as the case may be, in conjunction with a suspension , pursuant to Article 10(2) , of any Union response measures pursuant to Article 10(2) . AT Comment: Any suspension should of a Union response measure should be enacted by the same authority as responsible for its introduction. AT is among the MS which believe this should be COUNCIL. <i>On the horizontal demand to transfer implementing powers to the Council, see "Joint Non-Paper on ACI" (WK 10440 2022 INIT).</i>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
65	<i>Article 6</i> International cooperation	<i>Article 6</i> International cooperation	
66	The Commission shall enter into consultations or cooperation, on behalf of the Union, with any other country affected by the same or similar measures of economic coercion or with any interested third country, with a view to obtaining the cessation of the coercion. This may involve, where appropriate, coordination in relevant international fora and coordination in response to the coercion.	The Commission shall enter into consultations or cooperation, on behalf of the Union, with any other country affected by the same or similar measures of economic coercion or with any interested third country, with a view to obtaining the cessation of the coercion. This may involve, where appropriate, coordination in relevant international fora and coordination in response to the coercion. The Commission shall keep the European Parliament and the Council informed of any relevant developments.	AT Drafting Suggestion for Third Compromise: The Commission shall enter into consultations or cooperation, on behalf of the Union, with any other country affected by the same or similar measures of economic coercion or with any interested third country, with a view to obtaining the cessation of the coercion. This may involve, where appropriate, coordination in relevant international fora and coordination in response to the coercion. The Commission shall keep the European Parliament and the Council informed of any relevant developments. AT Comment: <i>On the horizontal demand to transfer implementing powers to the Council, see “Joint Non-Paper on ACI” (WK 10440 2022 INIT).</i>
67	<i>Article 7</i> Union response measures	<i>Article 7</i> Union response measures	

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
68	1. The Commission shall adopt an implementing act determining that it shall take a Union response measure where: (a) action pursuant to the Articles 4 and 5 has not resulted in the cessation of the economic coercion and reparation of the injury it has caused to the Union or a Member State within a reasonable period of time; (b) action is necessary to protect the interests and rights of the Union and its Member States in that particular case, and (c) action is in the Union's interest. In the implementing act, the Commission shall also determine the appropriate Union response from among the measures provided for in Annex I. Such measures may also apply with regard to natural or legal persons designated in accordance with Article 8. The Commission may also adopt measures which it can take pursuant to other legal instruments. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 15(2).	1. The Commission shall adopt an implementing act in accordance with the examination procedure referred to in Article 15(2) determining that it shall take a Union response measure under this Regulation, where: (a) action pursuant to the Articles 4 and 5 has not resulted in the cessation of the economic coercion and, where appropriate, the reparation of the injury it has caused to the Union or a Member State within a reasonable period of time; (b) action is necessary to protect the interests and rights of the Union and its Member States in that particular case, and (c) action is in the Union's interest. In the implementing act referred to in the first subparagraph, the Commission shall also determine the appropriate Union response from among the consisting in one or more measures provided for in pursuant to Annex I. Such measures may also apply with regard to natural or legal persons designated in accordance with Article 8. The Commission may also adopt measures which it can take pursuant to other legal instruments.	AT Drafting Suggestion for Third Compromise: 1. The Commission Council on the basis of a Commission proposal shall adopt an implementing act in accordance with the examination positive qualified majority procedure referred to in Article 15(2) determining that it shall take ing a Union response measure under this Regulation, where: (a) Commission informs Council that action pursuant to the Articles 4 and 5 has not resulted in the cessation of the economic coercion and, where appropriate, the reparation of the injury it has caused to the Union or a Member State within a reasonable period of time; (b) action is necessary to protect the interests and rights of the Union and its Member States in that particular case, and (c) action is in the Union's interest. (d) Commission informs Council that the relevant primary international law offers no alternative options to respond to its violation by the third country concerned (e) Commission informs Council that the relevant primary international law does not prescribe an obligatory mechanism which is applicable to the third country concerned that must be used as a matter of priority in the event of a violation of rights. In the implementing act referred to in the first subparagraph, the

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		The implementing act referred to in the first subparagraph shall be adopted in accordance with the examination procedure referred to in Article 15(2).	<u>Commission</u>Council shall <u>also</u> determine the appropriate Union response from among the <u>consisting in one or more</u> measures provided for in <u>pursuant to</u> Annex I. <u>Such measures may also apply with regard to natural or legal persons designated in accordance with Article 8.</u> These Union response measure shall only consist in the <u>non-performance of international obligations towards the third country concerned insofar as the Union has sufficient evidence the measures of the third country constitute an internationally wrongful act. If the Union does not have sufficient evidence the measures of the third country constitute an internationally wrongful act, these Union response measures shall exclusively consist in measures adhering to the Union's international obligations.</u> The Commission may also adopt measures which it can take pursuant to other legal instruments. The implementing act referred to in the first subparagraph shall be adopted in accordance with the examination procedure referred to in Article 15(2). AT Comment: AT is among MS that prefer this Regulation to transfer implementing powers to the COUNCIL (Art. 291 (2) TFEU), as CLS suggests in CLS written opinion. These implementing powers

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			shall include, inter alia, the power to introduce, amend, suspend or terminate Union response measures. These implementing powers should require an approval of the Council with a positive qualified majority. <i>On the horizontal demand to transfer implementing powers to the Council, see “Joint Non-Paper on ACI” (WK 10440 2022 INIT).</i> AT’s concern is that the Union could enact Union response measures and commit an internationally wrongful act or a breach of WTO law in response to a “non-breach” of a third country. In that case, the third country could challenge the Union successfully (e.g. before WTO Dispute Settlement). AT is not convinced, the Recital in line 19 is sufficient to clarify this. This clarification should also be here in the main body of this Regulation. <i>See corresponding AT Comment for the Recitals in line 19.</i> Moreover, the planned Union reaction measures would only fall within the scope of ARSIWA or the secondary norms of state responsibility if they were themselves contrary to international law and then justified as a countermeasure. For example, if a third state measure violates a common treaty, there is the possibility that, in the case of treaty violations, either the treaty or the Vienna Convention on the Law of Treaties (e.g. Art. 60

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			ILC) themselves (within the treaty subsystem) provide non-infringing response options. An example would be a contractual right to suspend performance of the treaty or a contractual compensation payment (contractual penalty) as a reaction to a significant breach of the treaty by the other side, which would then not be seen as a countermeasure under the secondary norms of state responsibility, but as a reaction permitted under treaty law and thus in conformity with international law (primary law). Some of the mentioned scenarios in the legislative proposal could therefore already be regulated in primary norms of international law; either because the relevant primary international law offers optional alternative options for response, or because it provides for obligatory mechanisms that must be used as a matter of priority (within the subsystem) in the event of a violation of rights. On the other hand, there are also other responses that are in conformity with international law because they do not interfere with any legal positions of third states protected under international law at all. This applies, for example, to entry bans for foreign citizens or arms embargoes, provided there are no treaty obligations to do so. However, the ILC articles or secondary norms of state responsibility do not apply at all to these reactions, which are sometimes imprecisely referred to as "countermeasures" in accordance with international law.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
69	2. The Union response measures shall apply from a specified date after the adoption of the implementing act referred to in paragraph 1. The Commission shall set this date of application, taking into account the circumstances, to allow for the notification of the third country concerned pursuant to paragraph 3 and for it to cease the economic coercion.	2. The Union response measures shall apply from a specified date after the adoption of the implementing act referred to in paragraph 1. The Commission shall set this specify the date of application of the Union response measures, taking into account the circumstances, to allow for the notification of the third country concerned pursuant to paragraph 3 and for it to cease the economic coercion.	AT Drafting Suggestion for Third Compromise: 2. The Union response measures shall apply from a specified date after the adoption of the implementing act referred to in paragraph 1. The Commission Council, on the basis of a proposal by the Commission, shall set this specify the date of application of the Union response measures, taking into account the circumstances, to allow for the notification of the third country concerned pursuant to paragraph 3 and for it to cease the economic coercion.
70	3. The Commission shall, upon adoption of the implementing act, notify the third country concerned of the Union response measures adopted pursuant to paragraph 1. In the notification, the Commission shall, on behalf of the Union, call on the third country concerned to promptly cease the economic coercion, offer to negotiate a solution, and inform the third country concerned that the Union response measure will apply, unless the economic coercion ceases.	3. The Commission shall, u Upon adoption of the implementing act ; notify the third country concerned of the Union response measures adopted pursuant referred to in paragraph 1, -In the notification, the Commission shall, on behalf of the Union, notify the third country concerned thereof and: (a) call on the third country concerned to promptly cease the economic coercion; (b) offer to negotiate a solution, and (c) inform the third country concerned that the Union response measures will apply, unless the economic coercion ceases.	AT Drafting Suggestion for Third Compromise: 3. The Commission shall, u Upon adoption of the implementing act ; notify the third country concerned of the Union response measures adopted pursuant referred to in paragraph 1, -In the notification, the Commission shall, on behalf of the Union, notify the third country concerned thereof and in the notification: (a) call on the third country concerned to promptly cease the economic coercion; (b) offer to negotiate a solution, and (c) inform the third country concerned that the Union response measures will apply, unless the economic coercion ceases.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
71	4. The implementing act referred to in paragraph 1 shall state that the application of the Union response measures shall be deferred for a period specified in that implementing act, where the Commission has credible information that the third country has ceased the economic coercion before the start of application of the adopted Union response measures. In that event, the Commission shall publish a notice in the Official Journal of the European Union indicating that there is such information and the date from which the deferral shall apply. If the third country ceases the economic coercion before the Union response measures start to apply, the Commission shall terminate the Union response measures in accordance with Article 10.	4. The implementing act referred to in paragraph 1 shall state that the application of the Union response measures shall be deferred provide for a deferred application of the Union response measures for a period of time specified in that implementing act, where the Commission has credible information that the third country has ceased the economic coercion before the start date of application of the adopted Union response measures. In that event, that the Commission has the information referred to in the first subparagraph, it shall publish a notice in the Official Journal of the European Union indicating that there is such information and the date from which the deferral shall apply. If the third country ceases the economic coercion before the date of application of the Union response measures start to apply, the Commission shall terminate the Union response measures in accordance with Article 10.	AT Drafting Suggestion for Third Compromise: 4. The implementing act referred to in paragraph 1 shall state that the application of the Union response measures shall be deferred provide for a deferred application of the Union response measures for a period of time specified in that implementing act, where the Commission has communicated Council credible information that the third country has ceased the economic coercion before the start date of application of the adopted Union response measures. In that event, that the Commission has communicated to Council the information referred to in the first subparagraph, it the Council shall publish a notice in the Official Journal of the European Union indicating that there is such information and the date from which the deferral shall apply. If the third country ceases the economic coercion before the date of application of the Union response measures start to apply, the Commission Council shall terminate the Union response measures in accordance with Article 10. AT Comment: AT is among MS that subscribe to the idea of exit ramps. A deferral and termination of a

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			Union response measure should be enacted by the same authority that has introduced the Union response measure in the first place (in AT's view: COUNCIL). <i>On the horizontal demand to transfer implementing powers to the Council, see "Joint Non-Paper on ACI" (WK 10440 2022 INIT).</i>
72	5. Notwithstanding paragraphs 2, 3 and 4, the Union response measures may apply without the Commission, on behalf of the Union, first calling, once more, on the third country concerned to cease the economic coercion or without the Commission first notifying it that Union response measure will apply, where this is necessary for the preservation of the rights and interests of the Union or Member States, notably of the effectiveness of Union response measures.	5. Notwithstanding paragraphs 2, 3 and 4, the Union response measures may apply without the Commission, on behalf of the Union, first calling, once more, on the third country concerned to cease the economic coercion or without the Commission first notifying it the third country concerned that Union response measure will apply, where in duly justified cases this is necessary for the preservation of the rights and interests of the Union or a Member States, notably of the effectiveness of Union response measures.	AT Drafting Suggestion for Third Compromise: 5. Notwithstanding paragraphs 2, 3 and 4, the Union response measures may apply without the Commission, on behalf of the Union, first calling, once more, on the third country concerned to cease the economic coercion or without the CommissionUnion first notifying it the third country concerned that a Union response measure will apply, where in duly justified cases this is necessary for the preservation of the rights and interests of the Union or a Member States, notably of the effectiveness of Union response measures. <i>See AT Comment on line 71 above.</i>
73		5bis. Notwithstanding paragraphs 2 and 4, where economic coercion consists in a threat to apply measures affecting trade or investment in accordance with	AT Drafting Suggestion for Third Compromise: 5bis. — Notwithstanding paragraphs 2 and 4, where economic coercion consists in a threat to apply measures affecting trade or investment in accordance with Article

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		Article 2(1), the date of application of the Union response measures shall be the date when the third country starts applying such measures. The Commission shall specify such date of application in the implementing act referred to in paragraph 1. If the third country delays to a specific date the application of its measures, the Commission shall publish a notice in the Official Journal of the European Union indicating that the Union response measures shall apply on that date.	<u>2(1), the date of application of the Union response measures shall be the date when the third country starts applying such measures. The Commission shall specify such date of application in the implementing act referred to in paragraph 1. If the third country delays to a specific date the application of its measures, the Commission shall publish a notice in the Official Journal of the European Union indicating that the Union response measures shall apply on that date.</u> AT Comment: <i>See main AT Comment on “threat”-concept in line 48, with further references.</i>
74	6. On duly justified imperative grounds of urgency to avoid irreparable damage to the Union or its Member States by the measures of economic coercion the Commission shall adopt immediately applicable implementing acts imposing Union response measures, in accordance with the procedure referred to in Article 15(3). The requirements set out in paragraphs 2 to 5 shall apply. Those acts shall remain in force for a period not exceeding three months.	6. On duly justified imperative grounds of urgency to avoid irreparable damage to the Union or its Member States by the measures of economic coercion, the Commission shall adopt immediately applicable implementing acts imposing Union response measures, in accordance with the procedure referred to in Article 15(3). The requirements set out in paragraphs 2 to 5 bis shall apply. Those acts shall remain in force for a period not exceeding three months.	AT Drafting Suggestion for Third Compromise: <u>Delete Para 6 in its entirety</u> AT Comment: On the horizontal question of immediately applicable implementing acts, AT is among MS which are not convinced of a need of immediately applicable implementing acts in this Regulation. <i>On the horizontal question of immediately applicable implementing acts, see AT comments in lines 39, 74, 99 and 106.</i>

Commission Proposal		Second Compromise Proposal	AT draft suggestions
75	7. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend the list provided for in Annex I in order to provide additional types of measures to respond to a third country's measure. The Commission may adopt such delegated acts where the types of response measures would: (a) be as effective or more effective than the response measures already provided for in terms of inducing the cessation of measures of economic coercion; (b) provide as effective or more effective relief to economic operators within the Union affected by the measures of economic coercion; (c) avoid or minimise the negative impact on affected actors; or (d) avoid or minimise administrative complexity and costs.	7. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend the list provided for in Annex I in order to provide additional types of measures to respond to a third country's measure. The Commission may adopt such delegated acts where the types of response measures would: (a) be as effective or more effective than the response measures already provided for in terms of inducing the cessation of measures of economic coercion; (b) provide as effective or more effective relief to economic operators within the Union affected by the measures of economic coercion; (c) avoid or minimise the negative impact on affected actors; or (d) avoid or minimise administrative complexity and costs.	AT Drafting Suggestion for Third Compromise: 7. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend the list provided for in Annex I in order to provide additional types of measures to respond to a third country's measure. The Commission may adopt such delegated acts where the types of response measures would: (a) be as effective or more effective than the response measures already provided for in terms of inducing the cessation of measures of economic coercion; (b) provide as effective or more effective relief to economic operators within the Union affected by the measures of economic coercion; (c) avoid or minimise the negative impact on affected actors; or (d) — avoid or minimise administrative complexity and costs. AT Comment: AT is among MS which demand Second Compromise Proposal here, i.e. the deletion of the delegation of power to CION to adopt delegated acts in accordance with Article 14 to amend the list provided for in Annex I. AT is among MS for which this is a <u>red line</u>, so this kind of absolute power must be removed absolutely.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			<i>On the horizontal AT opposition against the power to CION to adopt delegated acts referred to in Article 7(7), see lines 36, 75 and 116.</i>
76	<i>Article 8</i> Union response measures with regard to natural or legal persons	<i>Article 8</i> Union response measures with regard to natural or legal persons	<u>AT Drafting Suggestion for Third Compromise:</u> <i><u>Delete Article 8 in its entirety</u></i> <u>AT Comment:</u> From a general perspective, AT is among the MS which are not at all convinced Article 8 is compatible with Article 49(1) ARSIWA, according to which an injured State may only take countermeasures against a <u>State</u> which is responsible for an internationally wrongful act. AT is among the MS that would ask CLS in its written opinion to clarify, if at all Article 8 of this Regulation can be construed as compatible with the objects and limits of countermeasures as defined in Article 49 ARSIWA. Pending this CLS written opinion, AT is in favour of deleting Article 8 <u>in its entirety</u>. Without prejudice to the question whether Union response measures with regard to natural or legal persons can be based on ARSIWA, AT is also among the MS which are opposed to “Union response measures” under this Regulation with regard to natural or legal

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			persons from a policy perspective (increasing likelihood of escalation of conflict, loss of mediatization advantage of disputes kept in state-to-state situations). See also AT Comment on Article 8 in line 77.
77	1. The Commission may provide, in the implementing act referred to in Article 7(1), or in a separate implementing act, that: (a) legal or natural persons designated in accordance with paragraph 2 point (a) shall be subject to Union response measures; or (b) without prejudice to the responsibility of the third country under international law, Union natural or legal persons affected by the third country's measures of economic coercion shall be entitled to recover, from persons designated pursuant to paragraph 2, point (b), any damage caused to them by the measures of economic coercion up to the extent of the designated persons' contribution to such measures of economic coercion. Those measures shall apply as of the	1. Where the Commission may provide, in the adopts an implementing act referred pursuant to in Article 7(1), the Commission may provide, either in that implementing act or in a separate implementing act, that: (a) a legal or natural persons designated connected or linked to the government of the third country concerned in accordance with paragraphs 2 and 2bis point (a) shall be subject to one or more Union response measures pursuant to Annex I; or (b) without prejudice to the responsibility of the third country concerned under international law, Union natural or legal persons referred to in paragraph 5 affected by the third country's measures of economic coercion shall be entitled to recover, from persons designated	AT Drafting Suggestion for Third Compromise: <u>Delete Article 8 in its entirety</u> On Article 8 (1) lit. b AT is among MS that would kindly ask CLS to clarify in its written opinion the following questions: - The question of "entitled to recover". This seems to go beyond the EU sanctions regime, where assets are simply frozen (and eventually in some cases, released). In this regard, the ACI would go beyond the sanctions regime in terms of infringing on individual rights. How does the CLS view this article, which provides for not only the seizing of assets but also distributing them as compensation for damage caused? - The ARSIWA rules on responsibility of states give right to require to reparation of the injury suffered from the states. What is the legal background/base (international or EU law) for individual or juridical persons to be entitled to recover from the persons designated according to art. 8

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	same date of application as the Union response measures adopted pursuant to Article 7, or as of a later date specified in the implementing act pursuant to this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).	pursuant to paragraph 2, point (b) a natural or legal person that has contributed to measures of economic coercion in accordance with paragraphs 2 and 3, any damage caused to them by the measures of economic coercion up to the extent of the designated persons' contribution to such measures of economic coercion. Those measures shall apply as of from the same date of application as the Union response measures adopted pursuant to Article 7, or as of from a later date specified in the implementing act pursuant referred to in the first first subparagraph. Those The implementing acts referred to in this paragraph shall be adopted in accordance with the examination procedure referred to in Article 15(2) and include grounds for the designation of the person concerned, the information necessary to identify it and where appropriate the extent of the contribution of such person to measures of economic coercion.	(art. 8.1.b)? - How does the CLS view the art. 8 criteria for designating persons? Do they provide sufficient legal protection for persons or should they be more elaborate and precise? If yes, how could they be specified? The paragraph raises questions of rights and obligations relating to obtaining monetary compensation for damages which are addressed in national courts. Such processes have specific steps and requirements regarding due process in our national law. The article remains very vague in terms of how the right for compensation and the extent of damage would be established. We would welcome the CLS views on this issue. AT is also among the MS which are not convinced Article 8(1) (b) is compatible with Article 33(2) ARSIWA, according to which - inter alia - ARSIWA <i>“do not deal with the possibility of the invocation of responsibility by persons or entities other than States, and paragraph 2 makes this clear. It will be a matter for the particular primary rule to determine whether and to what extent persons or entities other than States are entitled to invoke responsibility on their own account.”</i> AT is among MS which strongly oppose the provision in Art. 8 (1) lit. b out of concerns regarding the compatibility of this provision with Member States' national civil law

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			regulations. The relationship to national civil law regulations is not clear and this provision will cause really significant problems in getting damages. Normally, the courts decide on claims for damages and compensation by companies based on statutory regulations (and not implementing decisions by the Commission), the existence of which must be proven by the injured parties (and is not determined by the Commission; AT however has no problem that an IA adopted by COM can play a decisive role in determining if coercion actually takes place). The whole letter b is quite unclear and leaves many questions unanswered: extent of damages/compensation, are they limited in amount or in proportion to how much the third country beneficiary company contributed to the coercion, which court would be responsible in cross border (intra EU) situations? What happens if one company seizes the assets fully (and therefore be fully/partially compensated) and later on another company claims damages as well etc.
78		1bis. To facilitate the application of paragraph 1 point (b), the Commission shall issue guidelines for Union natural or legal persons on the date of the entry into force of this regulation.	AT Drafting Suggestion for Third Compromise: <u><i>Delete Article 8 in its entirety</i></u> See AT Comment on Article 8 in line 77.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
79	2. The Commission may designate a natural or legal person where it finds: (a) that such person is connected or linked to the government of the third country concerned; or, (b) that such person is connected or linked to the government of the third country concerned and has additionally caused or been involved in or connected with the economic coercion.	2. The Commission may designate a natural or legal person where it finds: (a) that such person is connected or linked to the government of the third country concerned; or, (b) that such person is connected or linked to the government of the third country concerned and has additionally caused or been involved in or connected with the economic coercion.	AT Drafting Suggestion for Third Compromise: <u>Delete Article 8 in its entirety</u>
80		2. The Commission may examine the designation of a natural or legal person in accordance with paragraphs 1 points (a) and (b), provided that it finds that the natural or legal person is engaged in the purchase or sale of goods or services with the Union, either directly or indirectly, through imports, exports or foreign direct investments.	AT Drafting Suggestion for Third Compromise: <u>Delete Article 8 in its entirety</u> See AT Comment on Article 8 in line 77.
81		2bis. The Commission may determine that a natural or legal person is connected or linked to the government of the third country concerned where it finds that:	AT Drafting Suggestion for Third Compromise: <u>Delete Article 8 in its entirety</u> See AT Comment on Article 8 in line 77.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		(a) such person is controlled by the government of the third country concerned, if that government beneficially owns more than 50 % of the equity interest in it, exercise directly or indirectly more than 50 % of the voting rights in it, has the power to appoint a majority of its directors or has otherwise the power to exercise control over it; or (b) such person benefits from exclusive or special rights or privileges granted in law or in fact by the government of the third country concerned, if it operates in a sector where that government limits to one or more the number of suppliers or buyers, or if it is allowed directly or indirectly by that government to exercise practices which prevent, restrict or distort competition; or (c) such person effectively acts on behalf of, or at the direction or instigation of the government of the third country concerned. Any natural or legal person that has contributed to economic coercion in accordance with	

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		paragraph 3 shall be deemed to be connected or linked to the government of that third country under this paragraph.	
82		3. The Commission may determine that a natural or legal person has contributed to measures of economic coercion of the third country concerned where it finds that such person has caused or has been involved in or has been connected with such measures of economic coercion.	AT Drafting Suggestion for Third Compromise: <u>Delete Article 8 in its entirety</u> See AT Comment on Article 8 in line 77.
83		4. A determination pursuant to paragraphs 2bis and 3 may take into account the conduct of a natural person, provided that they are associated to such legal person or otherwise influence its actions, such as shareholders, directors or managers of an undertaking. In this event, paragraph 6 shall also apply to such natural person.	AT Drafting Suggestion for Third Compromise: <u>Delete Article 8 in its entirety</u> See AT Comment on Article 8 in line 77.
84		5. For the purposes of paragraph 1 point (b), Union natural or legal persons include: (a) any natural person being a	AT Drafting Suggestion for Third Compromise: <u>Delete Article 8 in its entirety</u> See AT Comment on Article 8 in line 77.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		national of a Member State; (b) any natural person being a permanent resident in a Member State; (c) any legal person, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State.	
85	3. In making this designation the Commission shall examine all relevant criteria and available information, including whether the persons concerned are known to effectively act on behalf of, or are beneficially owned or otherwise effectively controlled by the government of the third country.	63. In making this designation the Commission shall examine all relevant criteria and in the light of all available information, including whether the persons concerned are known to effectively act on behalf of, or are beneficially owned or otherwise effectively controlled by the government of the third country.	AT Drafting Suggestion for Third Compromise: <u>Delete Article 8 in its entirety</u> See AT Comment on Article 8 in line 77.
86	4. Where the Commission has grounds to consider that persons should be designated pursuant to paragraph 2, point (a) or point (b) it shall publish a provisional list of persons and, where relevant, the possible measures pursuant to Annex I that they would be subject to. Before deciding on designation, it shall give any persons provisionally designated	4. Where the Commission has grounds to consider that a persons s should be designated pursuant to paragraph 12, point (a) or point (b) it shall inform such publish a provisional list of person of its intention, including grounds for designationss, and, where relevant, the possible measures pursuant to Annex I that itthey would be subject to. The	AT Drafting Suggestion for Third Compromise: <u>Delete Article 8 in its entirety</u> See AT Comment on Article 8 in line 77.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	and other interested parties the opportunity to submit comments on the possible designation, in particular whether they fall under the conditions of paragraph 2, point (a) or point (b). The Commission may also seek additional information it considers pertinent concerning the potential designation.	Commission shall carry out such information by publishing a notice in the <i>Official Journal of the European Union</i> and, whenever possible, by communicating directly with the person concerned. Before deciding on designation, the Commission it shall give: (a) any persons referred to in the first subparagraph provisionally designated and other interested parties the opportunity to submit comments observations on the possible designation within a reasonable period of time, in particular whether they fall under the conditions of paragraphs 2bis or 3; and (b) other interested parties the opportunity to submit observations on the possible designation. The Commission may also seek additional information it considers pertinent concerning the potential designation under this Article.	
87			

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		5. Without prejudice to Article 10, the Commission shall review the measures referred to in paragraph 1 point (a) or (b) when new substantial evidence are submitted and inform the natural or legal persons concerned accordingly.	AT Drafting Suggestion for Third Compromise: <u>Delete Article 8 in its entirety</u> See AT Comment on Article 8 in line 77.
88	<i>Article 9</i> Criteria for selecting and designing Union response measures	<i>Article 9</i> Criteria for selecting and designing Union response measures	
89	1. Any Union response measure shall not exceed the level that is commensurate with the injury suffered by the Union or a Member State due to the third country's measures of economic coercion, taking into account the gravity of the third country's measures and the rights in question.	1. Any Union response measure shall not exceed the level that is commensurate with the injury suffered by the Union or a Member State due to the third country's measures of economic coercion, taking into account the gravity of the third country's measures of economic coercion and the rights in question of the Union or a Member State.	AT Drafting Suggestion for Third Compromise: 1. Any Union response measure shall not exceed the level that is commensurate with the injury suffered by the Union or a Member State due to the third country's measures of economic coercion, taking into account the gravity of the third country's measures of economic coercion and the rights in question of the Union or a Member State. AT Comment: AT's concern is that the "commensurability" of

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			a Union response measure could be difficult to ascertain. <i>For the problem on quantification of injury, see also AT Comment in line 17 and line 54.</i> <i>On AT preferring to restrict “Union response measures” to situations in which a third country coercive measure interferences in EU competences, see AT Comment on line 44.</i> This is a horizontal question. AT would appreciate to see how CLS assesses it in a written opinion.
90	2. The Commission shall select and design an appropriate response measure taking into account the determination made pursuant to Article 4, the criteria set out in Article 2(2) and the Union’s interest, on the basis of available information, including as collected pursuant to Article 11, and the following criteria: (a) the effectiveness of the measures in inducing the cessation of the economic coercion; (b) the potential of the measures to provide relief to economic operators within the Union affected by the economic coercion;	2. The Commission shall select and design an appropriate response measure taking into account the determination made pursuant to Article 4, the criteria set out in Article 2(2) and the Union’s interest, on the basis of available information, including as collected pursuant to Article 11, and the following criteria: (a) the effectiveness of the Union response measures in inducing the cessation of the economic coercion; (b) the potential of the Union response measures to provide relief to Union economic operators within the Union	<u>AT Drafting Suggestion for Third Compromise:</u> 2. The Commission shall select and design an appropriate response measure taking into account the determination made by Council in positive qualified majority pursuant to Article 4, the criteria set out in Article 2(2) and the Union’s interest, on the basis of available information, including as collected pursuant to Article 11, and the following criteria: (a) the effectiveness of the Union response measures in inducing the cessation of the economic coercion; (b) the potential of the Union response measures to provide relief to Union economic operators within the Union affected by the economic coercion;

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	(c) the avoidance or minimisation of negative impacts on affected actors by Union response measures, including the availability of alternatives for affected actors, for example alternative sources of supply for goods or services; (d) the avoidance or minimisation of negative effects on other Union policies or objectives; (e) the avoidance of disproportionate administrative complexity and costs in the application of the Union response measures; (f) the existence and nature of any response measures enacted by other countries affected by the same or similar measures of economic coercion, including where relevant any coordination pursuant to Article 6; (g) any other relevant criteria established in international law.	affected by the economic coercion; (c) the avoidance or minimisation of negative impacts on affected Union actors by Union response measures, including the availability of alternatives for such affected such actors, for example alternative sources of supply for goods or services; (d) the avoidance or minimisation of negative effects on other Union policies or objectives by Union response measures; (e) the avoidance of disproportionate administrative complexity and costs in the application of the Union response measures; (f) the existence and nature of any response measures enacted by other third countries affected by the same or similar measures of economic coercion, including where relevant any coordination pursuant to Article 6; (g) any other relevant criteria established in international law.	(c) the avoidance or minimisation of negative impacts on affected Union actors by Union response measures, including the availability of alternatives for such affected such actors, for example alternative sources of supply for goods or services; (d) the avoidance or minimisation of negative effects on other Union policies or objectives by Union response measures; (e) the avoidance of disproportionate administrative complexity and costs in the application of the Union response measures; (f) the existence and nature of any response measures enacted by other third countries affected by the same or similar measures of economic coercion, including where relevant any coordination pursuant to Article 6; (g) any other relevant criteria established in international law.
91		2bis. When selecting and designing an appropriate response measure	AT Drafting Suggestion for Third Compromise:

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		pursuant to Annex I that concerns a procedure organised by a public authority in the Union to grant authorisations, registrations, licenses or other rights to a natural or legal person for the purposes of its commercial activities, the Commission shall always favour: (a) measures applying to procedures duly initiated after the entry into force of the act implementing Union response measures, or where no such measures are available, effective or practicable on the basis of the assessment pursuant to paragraph 2, measures applying to procedures not yet completed upon the entry into force of such act; (b) measures applying to procedures organised on a Union-wide basis and valid throughout the Union, or where no such measures are available, effective or practicable on the basis of the assessment pursuant to paragraph 2, measures applying to procedures organised in an area where extensive Union legislation exists; or	2bis. When selecting and designing an appropriate response measure pursuant to Annex I that concerns a procedure organised by a public authority in the Union to grant authorisations, registrations, licenses or other rights to a natural or legal person for the purposes of its commercial activities, the Commission shall always favour: (a) measures applying to procedures duly initiated after the entry into force of the act implementing Union response measures, or where no such measures are available, effective or practicable on the basis of the assessment pursuant to paragraph 2, measures applying to procedures not yet completed upon the entry into force of such act; (b) measures applying to procedures organised on a Union-wide basis and valid throughout the Union, or where no such measures are available, effective or practicable on the basis of the assessment pursuant to paragraph 2, measures applying to procedures organised in an area where extensive Union legislation exists; or (c) measures that are respecting both points (a) and (b), where feasible. Where no such measures are available, effective or practicable on the basis of the assessment pursuant

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		(c) measures that are respecting both points (a) and (b), where feasible. Where no such measures are available, effective or practicable on the basis of the assessment pursuant to paragraph 2, the Commission may apply other measures, if the information-gathering exercise conducted pursuant to Article 11 does not indicate that there would be a disproportionate impact on the on the upstream and downstream industries and final consumers within the Union or on administration of relevant national regulations.	to paragraph 2, the Commission may apply other measures, if the information-gathering exercise conducted pursuant to Article 11 does not indicate that there would be a disproportionate impact on the on the upstream and downstream industries and final consumers within the Union or on administration of relevant national regulations. AT Comment: AT is among MS not convinced of the broad range of areas for Union response measures foreseen in Annex I Commission Proposal and favours a deletion for the most part. As many of the areas for Union response measures foreseen in Annex I Commission Proposal in AT's view should be deleted, 2bis Second Compromise Proposal would effectively loose its raison d'être, and could be deleted as well. See horizontal AT Comment in line 4, with further references.
92	3. The Commission may decide to apply Union response measures under Articles 7 or 8 consisting of restrictions on foreign direct investment or on trade in services	3. Where necessary to achieve the objectives of this Regulation, the Commission may decide to apply Union response measures under Articles 7 or 8 consisting of	AT Drafting Suggestion for Third Compromise: <i>Delete Article 9 para 3 Commission Proposal and Second Compromise Proposal on services <u>supplied</u> and investments <u>made in its entirety</u> as detrimental to fundamental freedoms and</i>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	also with regard to services supplied, or direct investments made, within the Union by one or more legal persons established in the Union and owned or controlled by persons of the third country concerned where necessary to achieve the objectives of this Regulation. The Commission may decide on such application where Union response measures not covering such situations would be insufficient to effectively achieve the objectives of this Regulation, in particular where such measures could be avoided. In assessing whether to adopt such a decision the Commission shall consider, in addition to the criteria in paragraphs 1 and 2, amongst other things: (a) the patterns of trade in services and investment in the sector targeted by the envisaged Union response measures and the risk of avoidance of any Union response measures not applying to services supplied, or direct investments made, within the Union; (b) the effective contribution of such intra-Union restrictions to the objective of obtaining the cessation of the measure of economic coercion; (c) the existence of alternative measures capable of achieving the objective of obtaining the cessation of the measure of	restrictions on foreign direct investment or on trade in services also with regard to services supplied, or direct investments made, within the Union by one or more legal persons established in the Union and owned or controlled by persons of the third country concerned where necessary to achieve the objectives of this Regulation. The Commission may decide on such the application where-of such Union response measures where not covering such situations would be insufficient to effectively achieve the objectives of this Regulation, in particular where such measures could be avoided by the third country or the person concerned. In assessing whether to adopt such-a the decision referred to in the first subparagraph, the Commission shall consider, in addition to the criteria in under paragraphs 1 and 2, amongst other things: (a) the patterns of trade in services and investment in the sector targeted by the envisaged Union response measures and the risk of avoidance by the third country or the person concerned of any Union response measures not applying to services supplied, or direct investments made, within the Union;	<i>legal certainty.</i> AT Comment: In this context, AT is among MS that would appreciate CLS to answer -inter alia - the following questions in its written opinion: - Are the possible Union reaction measures (such as e.g. restrictions on investment already <u>made</u>, on services already <u>rendered</u>, on the payment for goods and on intellectual property rights) compatible with the legal arrangements already existing in the internal market of the European Union in particular with regard to both EU and third country natural or legal persons, with the protection of fundamental freedoms? Pending outstanding CLS written clarification on conformity with EU investment protection agreements with third countries, AT's preliminary drafting suggestion for a Third Compromise Proposal is to delete this para in its entirety. On AT's stance regarding "services supplied" and "investments made", see also line 32 above.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	economic coercion that are reasonably available and less restrictive of trade in services or investment within the Union. Any decision to apply restrictions with regard to services supplied, or direct investments made, within the Union by one or more legal persons established in the Union shall be duly justified in the implementing act referred to in paragraph 1 of Article 7 in light of the above criteria.	(b) the effective contribution of such intra-Union restrictions referred to in the first subparagraph to the objective of obtaining the cessation of the measure of economic coercion; (c) the existence of alternative measures capable of achieving the objective of obtaining the cessation of the measure of economic coercion that are reasonably available and less restrictive of trade in services or investment within the Union. Any decision to apply restrictions with regard to services supplied, or direct investments made, within the Union by one or more legal persons established in the Union shall be duly justified in the implementing act referred to in paragraph 1 of Article 7 and in paragraph 1 of Article 8 in light of the above criteria referred to in the third paragraph of this Article.	
93		Article 9bis Union interest A determination as to whether it is in the Union's interest to act under this Regulation shall be based on an	AT Comment: AT is among MS that would appreciate CLS to answer -inter alia - the following question: - What are the CLS views on legal

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		appreciation of all the various interests taken as a whole, including the interests of Member States and Union economic operators. The general objective of deterring, or having the third country desist from measures of economic coercion, whilst enabling the Union as a last resort to counteract such actions, shall be given special consideration. Actions under this Regulation shall be taken where the Commission concludes, on the basis of all the information available, that it is in the Union's interest to take such actions.	standing of new article 9bis and the so-called Union interest test. What would the obligations be for the Commission to prove Union interest? - In case of a transfer of implementing powers to Council, who in CLS' view should be responsible for checking if an individual Union response measure is in the Union interest?
94	<i>Article 10</i> Amendment, suspension and termination of Union response measures	<i>Article 10</i> Amendment, suspension and termination of Union response measures	
95	1. The Commission shall keep under review the measures of economic coercion deployed by a third country that have triggered the Union response measures, the effectiveness of the Union response measures adopted and their effects on the Union's interests and shall keep the	1. The Commission shall keep under review the measures of economic coercion deployed by a third country that have triggered the Union response measures, the effectiveness of the Union response measures adopted and their effects on the Union's interests and shall keep the	AT Drafting Suggestion for Third Compromise: 1. The Commission shall keep under review the measures of economic coercion deployed by a third country that have triggered the Union response measures, the effectiveness of the Union response measures adopted and their effects on the

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	European Parliament and the Council informed thereof.	European Parliament and the Council informed thereof.	Union's interests and shall keep the European Parliament and the Council informed thereof.
96	2. Where the third country concerned suspends the economic coercion, or where it is necessary in the Union's interest, the Commission may suspend the application of the respective Union response measure for the duration of the third country's suspension, or as long as necessary in light of the Union's interest. The Commission shall suspend the Union response measures if the third country concerned has offered, and the Union has concluded, an agreement to submit the matter to binding international third-party adjudication and the third country is also suspending its measures of economic coercion. The Commission shall, by means of an implementing act, decide to suspend the Union response measure. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).	2. Where the third country concerned suspends the <u>measures of</u> economic coercion, or where it is necessary in the Union's interest, the <u>Commission may shall suspend</u> the application of the respective Union response measure for the duration of the <u>third country's</u> suspension <u>of the measures of economic coercion by the third country</u>, or as long as necessary in light of the Union's interest. The Commission shall suspend the Union response measures if <u>Where</u> the third country concerned has offered, and the Union <u>or the Member State concerned</u> has concluded, an agreement to submit the matter to binding international third-party adjudication and the third country is also suspending its measures of economic coercion, <u>the Commission shall suspend the Union response measures for the duration of the proceedings.</u> The <u>Commission shall</u>, by means of an implementing act <u>adopted in accordance with the examination procedure referred to in Article</u>	2. Where the <u>Commission informs the Council that the</u> third country concerned suspended the <u>measures of</u> economic coercion, or where it is necessary in the Union's interest, the <u>CommissionCouncil may shall suspend</u> the application of the respective Union response measure for the duration of the third country's suspension <u>of the measures of economic coercion by the third country</u>, or as long as necessary in light of the Union's interest. The Commission shall suspend the Union response measures if <u>Where</u> the third country concerned has offered, and the Union or the Member State concerned has concluded, an agreement to submit the matter to binding international third-party adjudication and the third country is also suspending its measures of economic coercion, <u>the CommissionCouncil shall suspend the Union response measures for the duration of the proceedings.</u> The <u>CommissionCouncil shall</u>, by means of an implementing act <u>adopted in accordance with the examination positive qualified majority procedure referred to in Article 15(2)</u>, decide to <u>suspend</u> the Union response measure <u>under this paragraph.</u> These implementing acts shall be adopted in

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
		<u>15(2)</u>, decide to suspend the Union response measure <u>under this paragraph</u>. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).	accordance with the examination procedure referred to in Article 15(2). AT Comment: AT is among MS according to which the adoption, the amendment, the suspension and the termination of concrete Union response measures should require an approval of the Council with a positive qualified majority. <i>On the horizontal demand to transfer implementing powers to the Council, see “Joint Non-Paper on ACI” (WK 10440 2022 INIT).</i>
97	3. Where it is necessary to make adjustments to Union response measures taking into account the conditions and criteria laid down in Articles 2 and 9(2), or further developments, including the third country’s reaction, the Commission may, as appropriate, amend Union response measures adopted in accordance with Article 7, by means of an implementing act, in accordance with the examination procedure referred to in Article 15(2).	3. Where it is necessary to make adjustments to Union response measures taking into account the conditions and criteria laid down in Articles 2 and <u>paragraphs 2 and 3 of Article 9(2)</u>, or further developments, including the third country’s reaction, the Commission may, as appropriate, amend Union response measures adopted in accordance with Articles <u>7-and 8</u>, by means of an implementing act, in accordance with the examination procedure referred to in Article 15(2).	AT Drafting Suggestion for Third Compromise: 3. Where it is necessary to make adjustments to Union response measures taking into account the conditions and criteria laid down in Articles 2 and <u>paragraphs 2 and 3 of Article 9(2)</u>, or further developments, including the third country’s reaction, the CommissionCouncil may, as appropriate, amend Union response measures adopted in accordance with Articles <u>7-and 8</u>, by means of an implementing act, in accordance with the examination<u>positive-qualified majority</u> procedure referred to in Article 15(2). AT Comment: <i>See AT Comment on Article 8 in line 77.</i>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			AT is among MS that favour this Regulation to transfer implementing powers to the Council (Art. 291 (2) TFEU). There implementing powers shall include, inter alia, the power to introduce, amend, suspend or terminate Union response measures and should require an approval of the Council with a positive qualified majority. <i>On the horizontal demand to transfer implementing powers to the Council, see “Joint Non-Paper on ACI” (WK 10440 2022 INIT).</i> <i>See AT Comment in line 68.</i>

98	4. The Commission shall terminate Union response measures under any of the following circumstances: (a) where the economic coercion has ceased; (b) where a mutually agreed solution has otherwise been reached; (c) where a binding decision in international third-party adjudication in a dispute between the third country concerned and the Union or a Member State requires the withdrawal of the Union response measure; (d) where it is appropriate in light of	4. The Commission shall terminate Union response measures under any of the following circumstances: (a) where the economic coercion has ceased; (b) where a mutually agreed solution has otherwise been reached; (c) where a binding decision in international third-party adjudication in a dispute between the third country concerned and the Union or a Member State requires the withdrawal of the Union response measure; (d) where it is appropriate in light of	AT Drafting Suggestion for Third Compromise: 4. The Commission Council shall terminate Union response measures under any of the following circumstances: (a) where Commission informs Council that the economic coercion has ceased; (b) where a mutually agreed solution has otherwise been reached; (c) where a binding decision in international third-party adjudication in a dispute between the third country concerned and the Union or a Member State requires the withdrawal of the Union response measure; (d) where it is appropriate in light of the
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	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	the Union's interest. The termination of Union response measures adopted in accordance with Article 7 shall be decided, by means of an implementing act, in accordance with the examination procedure referred to in Article 15(2).	the Union's interest. The termination of Union response measures adopted in accordance with Articles 7 and 8 shall be decided, by means of an implementing act, in accordance with the examination procedure referred to in Article 15(2).	Union's interest. The termination of Union response measures adopted in accordance with Articles 7 and 8 shall be decided, by means of an implementing act, in accordance with the examination qualified majority procedure referred to in Article 15(2). AT Comment: AT is among MS that favour this Regulation to transfer implementing powers to the Council (Art. 291 (2) TFEU). There implementing powers shall include, inter alia, the power to introduce, amend, suspend or terminate Union response measures and should require an approval of the Council with a positive qualified majority. <i>On the horizontal demand to transfer implementing powers to the Council, see "Joint Non-Paper on ACI" (WK 10440 2022 INIT).</i>
99	5. On duly justified imperative grounds of urgency, the Commission shall adopt immediately applicable implementing acts suspending, amending or terminating Union response measures adopted in accordance with Article 7. Those implementing acts shall be adopted in accordance with the procedure	5. On duly justified imperative grounds of urgency, such as avoiding irreparable damage to the Union or a Member State or continuing to ensure consistency with the Union's obligations under international law pursuant to the suspension or cessation of measures of economic coercion	AT Drafting Suggestion for Third Compromise: <i><u>Deletion of Para 5 in its entirety.</u></i> AT Comment: On the horizontal question of immediately applicable implementing acts, AT is among MS which are not convinced of a need of

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	referred to in Article 15(3) and they shall remain in force for a period not exceeding two months.	<u>from the third country concerned</u> , the Commission shall adopt immediately applicable implementing acts suspending, amending or terminating Union response measures adopted in accordance with Articles <u>7 and 8</u> . Those implementing acts shall be adopted in accordance with the procedure referred to in Article 15(3) and they shall remain in force for a period not exceeding two months.	immediately applicable implementing acts in this Regulation. <i>On the horizontal question of immediately applicable implementing acts, see AT comments in lines 39, 74, 99 and 106.</i>
100	<i>Article 11</i> Information gathering related to Union response measures	<i>Article 11</i> Information gathering related to Union response measures	
101	1. Before the adoption of Union response measures or the amendment of such measures, the Commission shall, and before the suspension or termination of such measures, respectively, the Commission may, seek information and views regarding the economic impact on Union operators and Union's interest, through a notice published in the <i>Official Journal of the European Union</i> or through other suitable public communication means. The notice shall indicate the period	1. Before the adoption <u>or amendment</u> of Union response measures or the amendment of such measures , the Commission shall, and before the suspension or termination of such measures, respectively, the Commission may, seek information and views regarding the economic impact on Union <u>economic</u> operators and Union's interest, through a notice published in the <i>Official Journal of the European Union</i> or <u>and, where appropriate</u> , through other suitable public communication means. The	<u>AT Drafting Suggestion for Third Compromise:</u> 1. Before the adoption <u>or amendment</u> of Union response measures or the amendment of such measures , the Commission shall, and before the suspension or termination of such measures, respectively, the Commission may, seek information and views regarding the economic impact on Union <u>economic</u> operators and Union's interest, through a notice published in the <i>Official Journal of the European Union</i> or <u>and, where appropriate, through other suitable public communication means</u> . The notice shall indicate the period within which the input is to be submitted.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	within which the input is to be submitted.	notice shall indicate the period within which the input is to be submitted.	AT Comment: AT is among the MS which prefer CION seeking information through a notice published in the Official Journal of the European Union.
102	2. The Commission may start the information gathering at any time it deems appropriate.	2. The Commission may start the information gathering at any time it deems appropriate.	
103	3. In conducting the information gathering under paragraph 1, the Commission shall inform and consult stakeholders, in particular industry associations, affected by possible Union response measures, and Member States involved in the preparation or implementation of legislation regulating the affected fields.	3. In conducting the information gathering under paragraph 1, the Commission shall inform and consult stakeholders, in particular industry associations <u>acting on behalf of Union economic operators</u> , affected by possible Union response measures, and Member States involved in the preparation or implementation of legislation regulating the affected fields.	AT Drafting Suggestion for Third Compromise: 3. In conducting the information gathering under paragraph 1, the Commission shall inform and consult stakeholders, in particular industry associations <u>acting on behalf of Union economic operators</u>, affected by possible Union response measures, and Member States <u>involved in the preparation or implementation of legislation regulating the affected fields</u>. AT Comment: AT is not convinced a differentiation should be made among Member States as regards information gathering. See AT Comment on line 4.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
104	4. Without unduly delaying the adoption of Union response measures, the Commission shall, in particular, seek information on: (a) the impact of such measures on third-country actors or Union competitors, users or consumers or on Union employees, business partners or clients of such actors; (b) the interaction of such measures with relevant Member State legislation; (c) the administrative burden which may be occasioned by such measures; (d) the Union's interest.	4. Without unduly delaying the adoption of Union response measures, the Commission shall, in particular, seek information <u>and views</u> on: (a) the impact of such measures on third-country actors or Union <u>economic operators'</u> competitors, users or consumers or on Union employees, business partners or clients of such actors; (b) the interaction of such measures with relevant Member State legislation; (c) the administrative burden which may be occasioned by such measures; (d) the Union's interest.	
105	5. The Commission shall take utmost account of the information gathered during the information gathering exercise. An analysis of the envisaged measures shall accompany the draft implementing act when submitted to the committee in the context of the examination procedure referred to in Article 15(2).	5. The Commission shall take utmost account of the information gathered during the information gathering exercise. An analysis of the envisaged measures shall accompany the draft implementing act when submitted to the committee in the context of the examination procedure referred to in Article 15(2).	AT Drafting Suggestion for Third Compromise: 5. The Commission shall take utmost account of the information gathered during the information gathering exercise. An analysis of the envisaged measures shall accompany the <u>draft implementing actproposal</u> when submitted to <u>the committee in the context of the examination procedure referred to in Article 15(2)Council</u>.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			<i>See AT Comment in line 68.</i> <i>On the horizontal demand to transfer implementing powers to the Council, see “Joint Non-Paper on ACI” (WK 10440 2022 INIT).</i>
106	6. Prior to the adoption of an implementing act in accordance with Article 7(6) or Article 10(5), the Commission shall seek information and views from relevant stakeholders in a targeted manner, unless the imperative grounds of urgency are such that information seeking and consultations are not possible or not needed for objective reasons, for instance to ensure compliance with international obligations of the Union.	6. Prior to the adoption of an implementing act in accordance with Article 7(6) or Article 10(5), the Commission shall seek information and views from relevant stakeholders in a targeted manner, unless the imperative grounds of urgency are such that information seeking and consultations are not possible or not needed for objective reasons, for instance to ensure compliance with international obligations of the Union.	<u>AT Drafting Suggestion for Third Compromise:</u> 6. Prior to the adoption of an implementing act in accordance with Article 7(6) or Article 10(5), the Commission shall seek information and views from relevant stakeholders in a targeted manner, unless the imperative grounds of urgency are such that information seeking and consultations are not possible or not needed for objective reasons, for instance to ensure compliance with international obligations of the Union. <u>AT Comment:</u> AT favours the deletion of Para 6 in its entirety. On the horizontal question of immediately applicable implementing acts, AT is among MS which are not convinced of a need of immediately applicable implementing acts in this Regulation. <i>On the horizontal question of immediately applicable implementing acts, see AT comments in lines 39, 74, 99 and 106.</i>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
107	Article 12 Confidentiality	Article 12 Confidentiality	
108	1. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.	1. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.	
109	2. The supplier of information may request that information supplied be treated as confidential. In such cases, it shall be accompanied by a non-confidential summary or a statement of the reasons why the information cannot be summarised. The Commission, the Council, the European Parliament, Member States or their officials shall not reveal any information of a confidential nature received pursuant to this Regulation, without specific permission from the supplier of such information.	2. The supplier of information may request that such information supplied be treated as confidential. In such cases, it shall be accompanied by a non-confidential summary of the information concerned or a statement of the reasons explaining why the information concerned cannot be summarised. The Commission, the Council, the European Parliament, Member States or their officials shall not reveal any information of a confidential nature received pursuant to this Regulation, without specific permission from the supplier of such information.	
110	3. Paragraph 2 shall not preclude the Commission to disclose general information in a summary form,	3. Paragraph 2 shall not preclude the Commission to from disclos inge general information in a summary	

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	which does not contain information allowing to identify the supplier of the information. Such disclosure shall take into account the legitimate interest of the parties concerned in not having confidential information disclosed.	form, which <u>provided that such disclosure</u> does not contain information allowing to the <u>identify of</u> the supplier of the information to be known . Such disclosure shall take into account the legitimate interest of the parties concerned in not having confidential information disclosed.	
111	<i>Article 13</i> Rules of origin	<i>Article 13</i> Rules of origin <u>and nationality</u>	
112	1. The origin or nationality of a good, service, service provider, investment or intellectual property rightholder shall be determined in accordance with Annex II.	1. The origin or nationality of a good, service, service provider, investment or intellectual property rightholder shall be determined in accordance with Annex II.	<u>AT Drafting Suggestion for Third Compromise:</u> 1. The origin or nationality of a good, service, service provider, <u>investment</u> or intellectual property rightholder shall be determined in accordance with Annex II. <u>AT Comment:</u> AT's concern is AT's investment climate and the Union investment climate. AT is of the opinion that the EU-FDI-Screening-Regulation allows all Member States that choose to enact a national FDI-Screening-Mechanism to safeguard their interest of security and public order. As a small open economy, AT is opposed to a further downgrading of investment climate.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
113	2. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend points 2 to 4 of Annex II in order to amend the rules of origin and add any other technical rules necessary for the application of the Regulation, to ensure its effectiveness and to take account of relevant developments in international instruments and experience in the application of measures under this Regulation or other Union acts.	2. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend points 2 and 3 to 4 of Annex II in order to amend the rules of origin <u>or nationality</u> and add any other technical rules necessary for the application of this Regulation, to ensure its effectiveness and to take account of relevant developments in international instruments and experience in the application of measures under this Regulation or other Union acts.	<u>AT Drafting Suggestion for Third Compromise:</u> 2. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend points 2 and 3 to 4 of Annex II in order to amend the rules of origin <u>or nationality</u> and add any other technical rules necessary for the application of this Regulation, to ensure its effectiveness and to take account of relevant developments in international instruments and experience in the application of measures under this Regulation or other Union acts. <u>AT Comment:</u> AT as a small open economy is among MS which are opposed to measures affecting foreign direct investment (FDI) as Union reaction measures in this Regulation. Consequently, AT is in favor of the deletion of the part of Annex II which deals with the origin of an investment. Consequently, AT favours the deletion of the power of CION here to change the relevant part in Annex II. <i>On the horizontal question of imposition of measures affecting FDI, see horizontal AT comment in line 148 in particular, with further references.</i>
114	Article 14 Delegated Acts	Article 14 Delegated Acts	

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
115	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	
116	2. The power to adopt delegated acts referred to in Articles 7(7) and 13(2) shall be conferred on the Commission for an indeterminate period of time from [date of entry into force].	2. The power to adopt delegated acts referred to in Articles 7(7) and 13(2) shall be conferred on the Commission for an indeterminate period of time five years from [date of entry into force <u>of this Regulation</u>]. <u>Such delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.</u>	<u>AT Drafting Suggestion for Third Compromise:</u> 2. The power to adopt delegated acts referred to in Articles 7(7) and 13(2) shall be conferred on the Commission for an indeterminate period of time five years from [date of entry into force <u>of this Regulation</u>]. <u>Such delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.</u> <u>AT Comment:</u> AT is among MS which favour the wording of the Second Compromise Proposal here. <i>On the horizontal AT opposition against the power to CION to adopt delegated acts referred to in Article 7(7), see lines 36, 75 and 116.</i> <i>On the power to adopt delegated acts referred to in Article 13(2), see line 113.</i>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
117	3. The delegation of power referred to in Articles 7(7) and 13(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	3. The delegation of power referred to in Articles s 7(7) and 13(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	<u>AT Drafting Suggestion for Third Compromise:</u> 3. The delegation of power referred to in Articles s 7(7) and 13(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force. <u>AT Comment:</u> AT is among MS which favour the wording of the Second Compromise Proposal here. <i>On the horizontal AT opposition against the power to CION to adopt delegated acts referred to in Article 7(7), see lines 36, 75 and 116.</i>
118	4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.	4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.	<u>AT Drafting Suggestion for Third Compromise:</u> 4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
119	5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council. A delegated act adopted pursuant to Articles 7(7) and 13(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.	5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council. A delegated act adopted pursuant to Articles 7(7) and 13(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.	<u>AT Drafting Suggestion for Third Compromise:</u> 5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council. A delegated act adopted pursuant to Articles 7(7) and 13(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council. <u>AT Comment:</u> AT is among MS which favour the wording of the Second Compromise Proposal here. <i>On the horizontal AT opposition against the power to CION to adopt delegated acts referred to in Article 7(7), see lines 36, 75 and 116.</i>
120	Article 15 Committee procedure	Article 15 Committee procedure	<u>AT Drafting Suggestion for Third Compromise:</u> Article 15

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			Committee procedure<u>Commission Expert Group</u> AT Comment: <i>On the horizontal demand to transfer implementing powers to the Council, see “Joint Non-Paper on ACI” (WK 10440 2022 INIT).</i> AT is among Member States of the opinion that a CION expert group should be maintained in the text, as the CION design of a proposal to be adopted by Council by virtue of the implementing powers transferred to it under this Regulation should come from Commission and Commission should rely on the invaluable expertise of Member States experts in the drafting. As the implementing powers should be given to COUNCIL, but based on a proposal by CION, the Expert Group can ensure advance preparation of acts with appropriate Member State expert involvement.
121	1. The Commission shall be assisted by a Committee. That committee shall be a committee within the meaning of Article 3 of Regulation (EU) No 182/2011.	1. The Commission shall be assisted by a Committee. That committee shall be a committee within the meaning of Article 3 of Regulation (EU) No 182/2011.	AT Drafting Suggestion for Third Compromise: 1.—The Commission shall be assisted by a <u>Committee</u><u>Commission expert group</u>. <u>That committee shall be a committee within the meaning of Article 3 of Regulation (EU) No 182/2011.</u> The Commission expert group shall consist of members representing

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			<u>Member States. It shall be chaired by Commission.</u> AT Comment: <i>See AT Comment in line 120.</i>
122		<u>1bis. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.</u>	AT Drafting Suggestion for Third Compromise: <u>1bis. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.</u> <i>See AT Comment in line 120.</i>
123	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. <u>Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.</u>	AT Drafting Suggestion for Third Compromise: <u>2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.</u> <u>Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.</u> <i>See AT Comment in line 120.</i>
124	3. Where reference is made to this	3. Where reference is made to this	AT Drafting Suggestion for Third Compromise:

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	paragraph, Article 8 of Regulation (EU) No 182/2011 in conjunction with Article 5 thereof, shall apply.	paragraph, Article 8 of Regulation (EU) No 182/2011 in conjunction with Article 5 thereof, 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. <i>See AT Comment in line 120.</i>
125		<u>4. Committee members representing Member States shall be subject to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties. A secure and encrypted system shall be provided by the Commission to support direct cooperation and exchange of information with Committee members.</u>	AT Drafting Suggestion for Third Compromise: <u>4. Committee members representing Member States shall be subject to a duty of professional secrecy with regard to any confidential information which has come to their knowledge in the course of the performance of their official duties. A secure and encrypted system shall be provided by the Commission to support direct cooperation and exchange of information with Committee members.</u> <i>See AT Comment in line 120.</i>
126	Article 16 Review	Article 16 Review	
127	1. The Commission shall evaluate any Union response measure adopted pursuant to Article 7 six months after its termination, taking into account stakeholder input and any other	1. The Commission shall evaluate any Union response measure adopted pursuant to Articles 7 <u>and 8</u> six months after its termination, taking into account stakeholder input and	AT Drafting Suggestion for Third Compromise: The Commission shall evaluate any Union response measure adopted pursuant to Articles <u>7</u> and 8 six months after its termination, taking

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	relevant information. The evaluation report shall examine the effectiveness and operation of the Union response measure, and draw possible conclusions for future measures.	any other relevant information. The evaluation report shall examine the effectiveness and operation of the Union response measure, and <u>possibly</u> draw possible conclusions for future <u>Union response</u> measures <u>and the review of this regulation pursuant to paragraph 2.</u>	into account stakeholder input and any other relevant information. The evaluation report <u>report</u> shall examine the effectiveness and operation of the Union response measure, and <u>possibly</u> draw possible conclusions for future <u>Union response</u> measures <u>and the review of this regulation pursuant to paragraph 2.</u> <i>See AT Comment on Article 8 in line 77.</i>
128	2. No later than three years after the adoption of the first implementing act under this Regulation or six years after the entry into force of this Regulation, whichever is earlier, the Commission shall review this Regulation and its implementation and shall report to the European Parliament and the Council.	2. No later than three years after the adoption of the first implementing act under this Regulation or six <u>five</u> years after the <u>date of</u> entry into force of this Regulation, whichever is earlier, <u>and every five years thereafter,</u> the Commission shall review this Regulation and its implementation and shall report to the European Parliament and the Council. <u>In the course of such review, the Commission shall give particular consideration to any issues which may arise as regards the relationship of this Regulation to other existing Union instruments.</u>	<u>AT Drafting Suggestion for Third Compromise:</u> 2. No later than three years after the adoption of the first implementing act under this Regulation or six <u>five</u> years after the <u>date of</u> entry into force of this Regulation, whichever is earlier, <u>and every five years thereafter,</u> the Commission shall review this Regulation and its implementation and shall report to the European Parliament and the Council. <u>In the course of such review, the Commission shall give particular consideration to any issues which may arise as regards the relationship of this Regulation to other existing Union instruments.</u> <u>AT Comment:</u> <i>For a general AT stance to include the relationship of this Regulation to other existing Union instruments in the review instead of clearly setting it out in this</i>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			<i>regulation, see AT comment on the corresponding Recital in line 41.</i> The relationship to existing Union instruments should be clearly stated in the main body of this Regulation! <i>For the relationship to TER and WTO-law, see AT Comment in lines 15 and 18.</i>
129	Article 17 Entry into force	Article 17 Entry into force	
130	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 enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	
131	This Regulation shall be binding in its entirety and directly applicable in all Member States.	This Regulation shall be binding in its entirety and directly applicable in all Member States.	
132	Done at Brussels,	Done at Brussels,	

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
133	<i>For the European Parliament</i>	<i>For the European Parliament</i>	
134	<i>The President</i>	<i>The President</i>	
135	<i>For the Council</i>	<i>For the Council</i>	
136	<i>The President</i>	<i>The President</i>	
137	<u>ANNEX I</u> Union response measures pursuant to Articles 7 and 8	<u>ANNEX I</u> Union response measures pursuant to Articles 7 and 8	<u>AT Drafting Suggestion for Third Compromise:</u> <u>ANNEX I</u> Union response measures pursuant to Articles <u>7</u> <u>and 8</u> <u>AT Comment:</u>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			<i>See AT Comment on Article 8 in line 77.</i>
138	Measures which may be adopted pursuant to Articles 7 and 8 are:	Measures which may be adopted pursuant to Articles 7 and 8 are:	AT Drafting Suggestion for Third Compromise: Measures which may be adopted pursuant to Articles 7 <u>and 8</u> are: AT Comment: <i>See AT Comment on Article 8 in line 77.</i>
139	(a) the suspension of any tariff concessions, as necessary, and the imposition of new or increased customs duties, including the re-establishment of customs duties at the most-favoured-nation level or the imposition of customs duties beyond the most-favoured-nation level, or the introduction of any additional charge on the importation or exportation of goods;	(a) the <u>non-performance</u> suspension of <u>applicable international obligations as regards</u> any tariff concessions, as necessary, and the imposition of new or increased customs duties, including the re-establishment of customs duties at the most-favoured-nation level or the imposition of customs duties beyond the most-favoured-nation level, or the introduction of any additional charge on the importation or exportation of goods;	<i>"[...] non-performance suspension of applicable international obligations as regards [...]":</i> AT Drafting Suggestion for Third Compromise: (a) the <u>non-performance</u> suspension of <u>applicable international obligations as regards</u> any tariff concessions, as necessary, and the imposition of new or increased customs duties, including the re-establishment of customs duties at the most-favoured-nation level or the imposition of customs duties beyond the most-favoured-nation level, or the introduction of any additional charge on the importation or exportation of goods; AT comment: The Impact Assessment of Commission

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			Proposal discusses the risk that third countries subject to an EU measure could bring violations of a WTO agreement or a bilateral trade agreement with the EU before the WTO dispute settlement system. At the same time, it is claimed that there are no violations of these agreements if a countermeasure has been taken and that proceedings in the WTO dispute settlement system are unlikely to be brought by the third country because it has taken the "first to step outside the international legal order" (Impact Assessment, pp. 41-42). This argument makes little sense, especially because the risk of being sued before WTO dispute settlement bodies does not depend on who first committed a violation of international law, but on whether the EU measures fall within the competence of these bodies or within the scope of the WTO treaties. In addition, primary norms of international law (such as WTO law) could oblige a state or an organisation to use other (e.g. contractually mandated) means before taking countermeasures according to the secondary norms of state responsibility, which is why invoking the right to countermeasures alone cannot prove the conformity of the entire project with WTO law. AT is awaiting CLS written clarification on the risk that third countries subject to an EU measure could bring violations of a WTO agreement or a bilateral trade agreement with the EU before the WTO dispute settlement

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			system. Could a coercing third country still “seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered [WTO] agreements or an impediment to the attainment of any objective of the covered [WTO] agreements” in the sense of Article 23 WTO DSU against an EU response measures in Annex I (regardless of Union motivation to counter economic coercion)? Pending that outstanding CLS written clarification, AT’s preliminary drafting suggestion for a Third Compromise Proposal is to delete all areas for EU response measures in Annex I going beyond traditional trade measures, in any case going beyond the areas enumerated in the Trade Enforcement Regulation (TER) (i.e. trade in goods, trade in services, trade-related aspects of intellectual property rights). <i>See horizontal AT Comment in line 4, with further references.</i>
140	(b) the suspension of applicable international obligations, as necessary, and the introduction or increase of restrictions on the importation or exportation of goods, whether made effective through quotas, import or export licences or other measures, or on the payment	(b) the <u>non-performance</u> suspension of applicable international obligations, as necessary, and the introduction or increase of restrictions on the importation or exportation of goods, whether made effective through quotas,	<u>AT Drafting Suggestion for Third Compromise:</u> (b) the <u>non-performance</u> suspension of applicable international obligations, as necessary, and the introduction or increase of <u>quantitative</u> restrictions on the importation or exportation of goods, whether made effective through

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	for goods;	import or export licences or other measures, or on the payment for goods;	quotas, import or export licences or other measures, <u>or on the payment for goods</u> ; AT Comment: AT prefers the wording in Article 5(1) (b) TER. <i>See horizontal AT Comment in line 4, with further references.</i>
141	(c) the suspension of applicable international obligations, as necessary, and the introduction of restrictions on trade in goods made effective through measures applying to transiting goods or internal measures applying to goods.	(c) the <u>non-performance</u> suspension of applicable international obligations, as necessary, and the introduction of restrictions on trade in goods made effective through measures applying to transiting goods or internal measures applying to goods.	AT Drafting Suggestion for Third Compromise: <u>Delete letter (c) in its entirety.</u> AT Comment: This letter goes beyond Commercial policy measures foreseen in TER. <i>See horizontal AT Comment in line 4, with further references.</i>
142	(d) the suspension of applicable international obligations concerning the right to participate in tender procedures in the area of <u>public procurement</u> , as necessary, and:	(d) the <u>non-performance</u> suspension of applicable international obligations concerning the right to participate in tender procedures in the area of <u>public procurement</u> , as necessary, and:	AT Drafting Suggestion for Third Compromise: <u>(dc) only if compatible with international obligations of the European Union, for example with Article XX(3) Government Procurement Agreement, the non-performance suspension of applicable international obligations concerning the right to</u>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			participate in tender procedures in the area of public procurement <u>procedures with an estimated value above a threshold to be determined by the Commission, as necessary</u>, and: AT comment: AT is among the MS not convinced Article XX(3) GPA permits cross-retaliation. A “de minimis” threshold (for contracts, lots, call-offs from framework agreements) must be established otherwise the Regulation would apply to all procurement procedures (even below the Union thresholds as set out in the Procurement Directives). This would not be acceptable for AT! As in IPI, the estimated value could be equal to or above EUR 15 000 000 net of VAT for works and concessions, and equal to or above EUR 5 000 000 net of VAT for goods and services.
143	(i) the exclusion from public procurement of goods, services or suppliers of goods or services of the third country concerned or the exclusion of tenders the total value of which is made up of more than a specified percentage of goods or services of the third country concerned; and/or	(i) the exclusion from public procurement of goods, services or suppliers of goods or services of the third country concerned or the exclusion of tenders the total value of which is made up of more than a specified percentage <u>50 %</u> of goods or services <u>originating in</u> of the third country concerned; and/or	

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
144	(ii) the imposition of a mandatory price evaluation weighting penalty⁹ on tenders of goods, services or suppliers of goods or services of the third country concerned. 9. Mandatory price evaluation weighting penalty means an obligation for contracting authorities or entities conducting public procurement procedures to increase, subject to certain exceptions, the price of goods or services falling under this paragraph that have been offered in contract award procedures.	(ii) the imposition of a mandatory price evaluation weighting penalty⁹ on tenders of goods, services or suppliers of goods or services of the third country concerned. 9. Mandatory price evaluation weighting penalty means an obligation for contracting authorities or entities conducting public procurement procedures to increase, subject to certain exceptions, the price of goods or services falling under this paragraph that have been offered in contract award procedures.	AT Drafting Suggestion for Third Compromise: (ii) the imposition of a <u>score adjustment</u> mandatory price evaluation weighting penalty⁹ on tenders of goods, services or suppliers of goods or services of the third country concerned. <u>The score adjustment shall apply only for the purpose of the evaluation and ranking of tenders. It shall not affect the price to be paid under the contract to be concluded with the successful tenderer.</u> AT comment: A mandatory “price” adjustment would be ineffective in procedures where the price is irrelevant or of marginal importance (for ex. concessions, innovative procurement, intellectual services). A right balance for the minimum/maximum margin for the adjustment measure has to be struck. Currently the proposal does not contain any indication how the adjustment measure should look like.
145	Origin shall be determined on the basis of Annex II;	Origin shall be determined on the basis of Annex II;	AT Drafting Suggestion for Third Compromise: <u>Such measures shall only apply to public procurement procedures, which are covered by an ACI measure and have been launched between the entry into force of that measure and its expiry, withdrawal or suspension. Contracting authorities and contracting entities shall include a reference to the application of this Regulation and any applicable measure in the public</u>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			<u>procurement documents for procedures falling within the scope of a measure.</u> <u>Contracting authorities and contracting entities may on an exceptional basis decide not to apply the non-performance of applicable international obligations with respect to a public procurement procedure where only tenders from economic operators originating in a third country subject to an ACI measure meet the tender requirements or the decision not to apply the ACI measure is justified for overriding reasons relating to the public interest, such as public health or protection of the environment.</u> Origin shall be determined on the basis of Annex II; <u>AT Comment:</u> AT supports in principle the suspension of international obligations in the field of procurement in the context of coercion (in conformity with international obligations). An appropriate transparency mechanism is needed to ensure that the exclusion or adjustment measure is applicable in practice. CA/CE must be informed as to which companies from which 3rd countries (new) exclusion grounds or adjustment measures should apply to. – see comment to line 86! Furthermore, such measures shall only apply to procurement procedures initiated after the

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			publication of union response measures. A respective clarification in the text is absolutely necessary! For specific circumstances, exceptions to ACI must be implemented (like in IPI)!
146	(e) the suspension of applicable international obligations, as necessary, and the imposition of restrictions on the exportation of goods falling under the Union export control regime;	(e) the non-performance suspension of applicable international obligations, as necessary, and the imposition of restrictions on the exportation of goods falling under the Union export control regime ;	AT Drafting Suggestion for Third Compromise: <i><u>Delete letter (e) in its entirety.</u></i> AT Comment: <i>See horizontal AT Comment in line 4, with further references.</i> In addition, it is the responsibility of member state authorities to provide or deny licenses for exporting goods within the framework of the Dual Use Regulation 2021/821 or other relevant export control provisions. In ATs view, it is questionable whether, within the framework of the proposed autonomous trade instrument, interference with export control rules, especially the Dual Use Regulation, is permissible.
147	(f) the suspension of applicable international obligations regarding trade in services, as necessary, and the imposition of measures affecting trade in services;	(f) the non-performance suspension of applicable international obligations regarding trade in services , as necessary, and the imposition of measures affecting trade in services;	AT Drafting Suggestion for Third Compromise: (fd) the non-performance suspension of applicable international obligations regarding trade in services, as necessary, and the imposition of measures affecting restrictions on <u>trade in services</u>;

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			AT Comment: AT is among MS who prefer the wording in TER. <i>On ATs horizontal concern regarding the contradiction between a broad arrange of measures for unilateral ACI as compared to multilateral TER, see line 4.</i>
148	(g) the suspension of applicable international obligations, as necessary, and the imposition of measures affecting foreign direct investment;	(g) the <u>non-performance</u> suspension of applicable international obligations, as necessary, and the imposition of <u>measures affecting foreign direct investment</u> ;	AT Drafting Suggestion for Third Compromise: <i><u>Delete letter (g) in its entirety.</u></i> AT Comment: <i>See horizontal AT Comment in line 4, with further references.</i> From a legal perspective, AT takes note of CLS' written opinion, according to which the area for Union response measure set out in - inter alia - Annex I letter g (i.e. imposition of measures affecting foreign direct investment) is expressly provided for in Article 207(1) TFEU. From a policy perspective, however, AT is among MS which are opposed to this Regulation foreseeing Union response measures in the area of foreign direct investment (FDI). AT favours the deletion of this area for EU

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			response measures under ACI. <u>Justification:</u> AT regards AT's national FDI-Screening mechanism within the framework of "Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments", according to which AT is able to adopt restrictive measures relating to foreign direct investment on the grounds of security or public order, as sufficient. To impose measures affecting foreign direct investment under ACI may further deteriorate investment climate in AT and the EU, may undermine legal certainty for investors in AT and may endanger AT investments abroad, as it suggests to third countries the possibility to impose like measures. <i>On the horizontal question of imposition of measures affecting FDI, see also lines 31, 32, 92, 113 above and 164-167 below.</i>
149	(h) the suspension of applicable international obligations with respect to trade-related aspects of intellectual property rights, as necessary, and the imposition of restrictions on the protection of such intellectual property rights or their commercial exploitation, in relation	(h) the <u>non-performance</u> suspension of applicable international obligations with respect to <u>trade-related aspects of intellectual property rights</u> , as necessary, and the imposition of restrictions on the protection of such intellectual property rights or their commercial exploitation, in relation	<u>AT Drafting Suggestion for Third Compromise:</u> (he) the <u>non-performance</u> suspension of applicable international obligations with respect to <u>trade-related aspects of intellectual property rights</u> granted by a Union institution or agency and valid throughout the Union, and the imposition

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	to right-holders who are nationals of the third country concerned;	to right-holders who are nationals of the third country concerned;	of restrictions on the protection of such intellectual property rights or their commercial exploitation, in relation to right-holders who are nationals of the third country concerned AT Comment: AT prefers the wording in TER. <i>On ATs horizontal concern regarding the contradiction between a broad arrange of measures for unilateral ACI as compared to multilateral TER, see line 4.</i>
150	(i) the suspension of applicable international obligations with respect to financial services, as necessary, and the imposition of restrictions for banking, insurance, access to Union capital markets and other financial service activities;	(i) the non-performance suspension of applicable international obligations with respect to financial services , as necessary, and the imposition of restrictions for banking, insurance, access to Union capital markets and other financial service activities;	AT Drafting Suggestion for Third Compromise: <i><u>Delete letter (i) in its entirety.</u></i> AT Comment: <i>See horizontal AT Comment in line 4, with further references.</i> <i>See Question to CLS in line 4: If, for example, access to EU programs or the financial markets are taken as retaliation, can this be done in accordance with article 207 under the TFEU?</i>
151	(j) the suspension of applicable international obligations with respect to the treatment of goods, as necessary, and the imposition of restrictions on registrations and	(j) the non-performance suspension of applicable international obligations with respect to the treatment of goods, as necessary, and the imposition of restrictions on	AT Drafting Suggestion for Third Compromise: <i><u>Delete letter (j) in its entirety.</u></i>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	authorisations under the chemicals legislation of the Union;	registrations and authorisations under the chemicals legislation of the Union;	AT Comment: See horizontal AT Comment in line 4, with further references.
152	(k) the suspension of applicable international obligations with respect to the treatment of goods, as necessary, and the imposition of restrictions on registrations and authorisations related to the sanitary and phytosanitary legislation of the Union;	(k) the non-performance suspension of applicable international obligations with respect to the treatment of goods, as necessary, and the imposition of restrictions on registrations and authorisations related to the sanitary and phytosanitary legislation of the Union;	AT Drafting Suggestion for Third Compromise: <i>Delete letter (k) in its entirety.</i> AT Comment: See horizontal AT Comment in line 4, with further references.
153	(l) the suspension of applicable international obligations, as necessary, and the imposition of restrictions on access to Union-funded research programmes or exclusion from Union-funded research programmes.	(l) the non-performance suspension of applicable international obligations, as necessary, and the imposition of restrictions on access to Union-funded research programmes or exclusion from Union-funded research programmes	AT Drafting Suggestion for Third Compromise: <i>Delete letter (l) in its entirety.</i> AT Comment: See horizontal AT Comment in line 4, with further references. See Question to CLS in line 4: If, for example, access to EU programs or the financial markets are taken as retaliation, can this be done in accordance with article 207 under the TFEU?

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
154	<u>ANNEX II</u> Rules of Origin	<u>ANNEX II</u> Rules of Origin <u>and Nationality</u>	
155	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.¹⁰ 10. 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).	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.¹⁰ 10. 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).	<u>AT Drafting Suggestion for Third Compromise:</u> 1. The origin of a good shall be determined in accordance with <u>Article 60 of</u> Regulation (EU) No 952/2013 of the European Parliament and of the Council.¹⁰ <u>AT Comment:</u> The rules of origin should be aligned with the respective rules of origin in IPI – a differing legislative approach could cause great problems.
156	2. The origin of a service, including a service supplied in the area of public procurement, shall be determined on the basis of the origin of the natural or legal person providing it. The origin of the service provider shall be deemed to be:	2. The origin of a service, including a service supplied in the area of public procurement, shall be determined on the basis of the origin of the natural or legal person providing it. The origin <u>nationality</u> of the service provider shall be deemed to be:	
157	(a) in the case of a natural		<u>AT Drafting Suggestion for Third Compromise:</u>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	person, the country of which the person is a national or where the person has a right of permanent residence;	(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;	(a) in the case of a natural person, the country of which the person is a national or where the <u>that</u> person has a right of permanent residence; <u>AT Comment:</u> The rules of origin should be aligned with the rules of origin in IPI. (cf. Art. 3 lit. a IPI).
158	(b) in the case of a legal person any of the following:	(b) in the case of a legal person any of the following:	
159	(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;	(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;	<u>AT Drafting Suggestion for Third Compromise:</u> (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; <u>AT Comment:</u> Alignment with IPI!
160	(ii). if the service is provided		

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	through a commercial presence within the Union,	(ii). if the service is provided through a commercial presence within the Union,	
161	(a) if the legal person is engaged in substantive business operations in the territory of the Member State where the legal person is established such that it has a direct and effective link with the economy of that Member State the origin of that legal person shall be deemed to be that of the Member State in which it is established	(a) if the legal person is engaged in substantive business operations in the territory of the Member State where the legal person is established such that it has a direct and effective link with the economy of that Member State the origin of that legal person shall be deemed to be that of the Member State in which it is established	<u>AT Drafting Suggestion for Third Compromise:</u> (a) if the legal person is engaged in substantive business operations in the territory of the Member State where the legal person is established such that it has a direct and effective link with the economy of that Member State the origin of that legal person shall be deemed to be that of the Member State in which it is established <u>the country under the laws of which the legal person is constituted or otherwise organised and in the territory of which the legal person is engaged in substantive business operations</u> <u>AT Comment:</u> Alignment with IPI!
162	(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	(b) if the legal person providing the service is not engaged in substantive business operations such that it has a direct and effective link with the economy of the Member State in which it is established, the origin of that legal person shall be deemed to	<u>AT Drafting Suggestion for Third Compromise:</u> (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 <u>in</u>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	State in which it is established, the origin of that legal person shall be deemed to be the origin of the natural or legal persons which own or control it. The legal person shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled" by persons of a given country if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.	be the origin of the natural or legal persons which own or control it. The legal person shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled" by persons of a given country if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.	<u>the territory of the country in which it is constituted or otherwise organised, the origin of the legal person is to be that of the person or persons who may exercise, directly or indirectly, a dominant influence on the legal person by virtue of their ownership of that legal person, their financial participation therein, or the rules which govern that legal person.</u> the origin of that legal person shall be deemed to be the origin of the natural or legal persons which own or control it. The legal person shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled" by persons of a given country if such persons have the power to name a majority of its directors or otherwise to legally direct its actions. <u>That person or persons shall be presumed to have a dominant influence on the legal person in any of the following cases in which they directly or indirectly hold the majority of the legal person's subscribed capital; control the majority of the votes attaching to shares issued by the legal person; or can appoint more than half of the legal person's administrative, management or supervisory body.</u> <u>AT Comment:</u>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			Alignment with IPI! See in this regard the corresponding provision in Art. 3 lit. b IPI.
163	(iii). By derogation from sub-paragraph (ii)(a), if it is decided that Union response measures should apply to legal persons falling under subparagraph (ii)(a), the origin of that person shall be the nationality or the place of permanent residence of the natural or juridical person or persons who own or control the legal person in the Union. The legal person shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled" by persons of a given country if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.	(iii) By derogation from sub-paragraph (ii)(a), if it is decided that Union response measures should apply to legal persons falling under subparagraph (ii)(a), the origin of that person shall be the nationality or the place of permanent residence of the natural or juridical <u>legal</u> person or persons who own or control the legal person in the Union. The legal person shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled" by persons of a given country if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.	
164	3. The nationality of an investment shall be:	3. The nationality of an investment shall be:	AT Drafting Suggestion for Third Compromise: <u>Delete para 3 in its entirety.</u> AT Comment: <i>On the horizontal question of imposition of</i>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
			<i>measures affecting FDI, see horizontal AT comment in line 148 in particular, with further references.</i>
165	(a) if the investment is engaged in substantive business operations in the territory of the Member State where the investment is established such that it has a direct and effective link with the economy of that Member State the nationality of the investment shall be deemed to be that of the Member State in which it is established;	(a) if the investment is engaged in substantive business operations in the territory of the Member State where the investment is established such that it has a direct and effective link with the economy of that Member State the nationality of the investment shall be deemed to be that of the Member State in which it is established;	AT Drafting Suggestion for Third Compromise: <u>Delete para 3 in its entirety.</u> AT Comment: <i>On the horizontal question of imposition of measures affecting FDI, see horizontal AT comment in line 148 in particular, with further references.</i>
166	(b) if the investment is not engaged in substantive business operations such that it has a direct and effective link with the economy of the Member State in which it is established, the nationality of the investment shall be deemed to that of the natural or legal persons which own or control it. The investment shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled"	(b) if the investment is not engaged in substantive business operations such that it has a direct and effective link with the economy of the Member State in which it is established, the nationality of the investment shall be deemed to that of the natural or legal persons which own or control it. The investment shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled" by persons of a given country if such persons have the power to name a majority of its	AT Drafting Suggestion for Third Compromise: <u>Delete para 3 in its entirety.</u> AT Comment: <i>On the horizontal question of imposition of measures affecting FDI, see horizontal AT comment in line 148 in particular, with further references.</i>

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	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;	directors or otherwise to legally direct its actions;	
167	(c) by derogation from sub-paragraph (a), if it is decided that Union response measures should apply to legal persons falling under subparagraph (a), the nationality of the investment shall be the nationality or the place of permanent residence of the natural or juridical person or persons who own or control the investment in the Union. The investment shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled" by persons of a given country if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.	(c) by derogation from sub-paragraph (a), if it is decided that Union response measures should apply to legal persons falling under subparagraph (a), the nationality of the investment shall be the nationality or the place of permanent residence of the natural or legal juridical person or persons who own or control the investment in the Union. The investment shall be considered to be "owned" by persons of a given country if more than 50 % of the equity interest in it is beneficially owned by persons of that country and "controlled" by persons of a given country if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.	AT Drafting Suggestion for Third Compromise: <u>Delete para 3 in its entirety.</u> AT Comment: <i>On the horizontal question of imposition of measures affecting FDI, see horizontal AT comment in line 148 in particular, with further references.</i>
168	4. Regarding trade-related aspects of	4. Regarding trade-related aspects of	

	Commission Proposal	Second Compromise Proposal	AT draft suggestions
	intellectual property rights, the term “nationals” shall be understood in the same sense as it is used in the paragraph 3 of Article 1 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.	intellectual property rights, the term “nationals” shall be understood in the same sense as it is used in the paragraph 3 of Article 1 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.	