



Council of the European Union  
General Secretariat

**Brussels, 28 October 2022**

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**WK 13454/2022 REV 2**

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**WORKING DOCUMENT**

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**From:** European Commission  
**To:** Working Party on Trade Questions

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**Subject:** Draft statement on the use of the examination procedure under the EU Anti-coercion instrument (ACI) – second revision

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Brussels, 28 October 2022

**SENSITIVE\***

**NOTE FOR THE ATTENTION OF THE WORKING PARTY ON TRADE  
QUESTIONS**

**SUBJECT:** *Draft statement on the use of the examination procedure under the EU Anti-coercion instrument (ACI) – second revision*

**ORIGIN:** Commission DG Trade Unit F2/F3

[REDACTED]

**OBJECTIVE:** *For information*

**REMARKS:**

1. Delegates will find enclosed a draft statement by the Commission on the use of the examination procedure under the EU Anti-coercion instrument, prepared and shared in the context of the ongoing legislative procedure on the file. The revised statement aims to provide further clarity on the use of the examination procedure in light of the discussions within the Working Group (meeting of 25 October 2022) and previous exchanges.
2. The draft statement is a revised version of the drafts distributed to delegates on 10 October 2022 (see WK 13454/2022 INIT) and on 21 October (see WK 13454/2022 REV 1). This (second) revision appears in **red bold italic font**, and the first revision appears in **red bold font** as previously. For the better understanding of the revision, delegates will find a clean version and a version in track changes as compared to the first revision.
3. The text is revised in two main respects:

- First, the phrase ‘strive for’ is replaced with ‘work towards’ for better clarity of the intent of the Commission;
- The additional text now covers the use of the examination procedure in case there is recourse to the appeal committee. First, it replicates the goal of a positive opinion as for the committee, and second, there is a commitment of to restraint in the event of no opinion on appeal.

Otherwise, there is a change in the order of paragraphs, without any change in substance: the second paragraph was the final paragraph in the previous versions, but remains unchanged.

4. These revisions aim to address in particular the concerns about the appropriate/adequate involvement of Member States in the decision-making, expressed in the non-paper of 15 July 2022 by a number of Member States (ref. WK 10440/2022 INIT). More specifically, the revisions take forward the idea of an alternative solution to the Council decision by qualified majority on a measure, as referred to in that non-paper, and provide for a similar result.
5. It is shared in a draft form with the same purpose and under the same conditions as the previous versions (see WK 13454/2022 INIT), i.e.:
  - The purpose of the draft statement is to illustrate the commitment that the Commission would be open to make to address Member States’ concerns about decision-making under the instrument, as a contribution to the ongoing discussions in the Working Group, and in the interests of facilitating the establishment of a Council position for the trilogue negotiations, and eventually the successful outcome of the latter;
  - It develops ideas presented in the Commission non-paper of 16 September 2022;
  - It is, logically, prepared to accompany a solution where the Commission assumes implementing powers for the imposition of the Union response measures. It presupposes that a no-opinion clause is included under the regulation.
  - The final approval of the statement is subject to a decision by the College of Commissioners with the package adopted by the Council although it should be noted that the revised text has been approved within the Commission ;
  - The Commission can confirm that the draft statement can be part of the outcome of the trilogue negotiations.
6. As a further clarification regarding formal process, the intention is that the statement accompanies the regulation, once adopted, and it appears right after the text of the regulation in the L series of the Official Journal of the EU in a way that it is an integral part of the text. See such an example [here](#) (this concerns the EU trade Enforcement Regulation). This formality is nevertheless also subject to an agreement by the Council and the European Parliament in the legislative process.

The Commission hopes that the draft statement can contribute to the progress of the file in the Council by providing Member States comfort on the intended exercise of implementing powers.

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## ANNEX

### **Draft statement by the European Commission on the use of examination procedure for countermeasures under the EU Anti-coercion instrument**

**[clean version]**

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

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

In this regard, in the exercise of its implementing powers under the regulation, and following the rules and general principles established by the European Parliament and the Council and laid down in Regulation (EU) No 182/2011, the Commission will pay particular attention to affording early and effective opportunities to the committee of EU Member States to examine any draft implementing act and express views before voting, and, at all times, **to work towards** solutions which command the widest possible support by the EU Member States **within the committee.**

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

## ANNEX

### Draft statement by the European Commission on the use of examination procedure for countermeasures under the EU Anti-coercion instrument

[with track changes]

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

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

In this regard, in the exercise of its implementing powers under the regulation, and following the rules and general principles established by the European Parliament and the Council and laid down in Regulation (EU) No 182/2011, the Commission will pay particular attention to affording early and effective opportunities to the committee of EU Member States to examine any draft implementing act and express views before voting, and ~~to striving~~, at all times *for, to work towards* solutions which command the widest possible support by the EU Member States *within the committee.*

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