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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Trade Questions
Subject:	Anti-coercion instrument - Fourth Presidency compromise proposal

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Pursuant to Article 3(5) of the Treaty on European Union (TEU), in its relations with the wider world, the Union is to uphold and promote its values and interests and contribute to the protection of its citizens and **is to contribute**, among other things, to solidarity and mutual respect among peoples and the strict observance and the development of international law, including respect for the principles of the United Nations Charter (**the “UN Charter”**).
- (2) Pursuant to Article 21(1) ~~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 states that the Union is to promote multilateral solutions to common problems.
- (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.
- (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 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.
- (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.

- (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 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.
- (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~~ **is without prejudice to other existing Union instruments and international agreements, including and actions taken thereunder, in the area of the common commercial policy, as well as to other Union policies,** ~~including Regulation (EU) 2021/167 of the European Parliament and of the Council¹, given the specificity of the 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.~~
- (7bis) Economic coercion by third countries may target foreign policy actions of the Union or a Member State, while a determination of the existence of economic coercion, and responses thereto, may have significant implications for relations with third countries. It is necessary to ensure consistent responses in distinct but related policy areas, and this Regulation is without prejudice to a possible Union action pursuant to specific provisions in Chapter 2 of Title V of TEU on the Union's common foreign and security policy, to which due consideration should be given when considering any response to economic coercion by a third country.**
- (8) **Third countries' measures of economic coercion against a Member State affect the Union's internal market and the Union as a whole. The objectives of this Regulation, in particular counteracting third countries' economic coercion of the Union or a Member States, acting on their own cannot counteract third countries' economic coercion through measures falling under the area of common commercial policy. be** ~~sufficiently achieved by Member States acting on their own, but can be achieved with greater effectiveness at Union level. Given the exclusive competence conferred on the Union by Article 207 of the Treaty on the Functioning of the European Union (TFEU), only the Union may. Moreover, This is because~~ **Member States as distinct actors under international law may not be entitled under international law to respond to counteract third countries economic coercion directed against the Union, whilst the Union is entitled adopt countermeasures in response to economic coercion directed**

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).

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 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. **This Regulation is without prejudice to the division of competences between the Union and its Member States as defined by the Treaties.**

- (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 European Union TEU.
- (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, ~~which encompass all rights and obligations deriving from international agreements concluded by the Union, as well as those applicable by virtue of~~ **including** 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. **Therefore, it is important that** ~~the~~ the Union ~~should~~ continue to support that system, with the WTO at its core.
- (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~~ **consistent with** the Union's international obligations, but also in the non-performance of international obligations

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.

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, **the Union response measures** 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.

- (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.
- (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 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, there should be elements that characterise, both qualitatively and quantitatively, notably the form, the effects and the aim of the measures which the third country is deploying. Applying those criteria would ensure that only economic coercion with a sufficiently serious impact or, where the economic coercion consists in a threat, only a threat of economic coercion that is credible, would fall under this Regulation.** 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, **and notably** the fight against climate change.
- (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 Acts, footnote 1 above.

(13) The Commission **on its own initiative or upon a reasoned request of a Member State** 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~~. **In order to ensure uniform conditions for the implementation of this Regulation, and in view of the effects fact that a decision determining the existence of economic coercion by a third country has on the Union's overall requires an assessment of the Union's interests in the context of its relations with the third country concerned, and under the Regulation implies specific actions vis-à-vis that third country, thus shaping the Union policy in its regard, the implementing powers should be conferred on the Council. Therefore, following the Commission's examination and in the event that the measure of a third country applies or threatens to apply coercive measures affecting trade or investment, the Commission should submit a proposal to the Council to adopt an implementing act determining that the third country is applying a measure of economic coercion. The Council should act expeditiously.** ~~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 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 to cease the economic coercion and, where appropriate, repair any injury.~~

(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 provide** adequate opportunity for consultations with the third country concerned and, **when if** that third country is ready to enter into consultations in good faith, engage with it expeditiously. In the course of such consultations, the Commission should endeavour to resort to means such as mediation, conciliation, **good offices by a third party** or **submitting the matter to** international adjudication, without prejudice to the ~~delimitation~~ **division** of competence ~~of between~~ the Union and ~~the~~ 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 **either** by the **Union, in accordance with the procedure laid down in Article 218 TFEU, or 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.~~

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).

- (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 fora that are geared towards the prevention or elimination of ~~the~~ economic coercion. ~~The Commission should represent the Union and express its the Union position as established by after having consulted the Council, in accordance with the EU Treaties, where appropriate, with the participation of the Member States.~~
- (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, **where appropriate**, 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.
- (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 ~~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 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 and final consumers 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 legal certainty and predictability of the measures for economic operators, and 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 within the Union. Consequently, When the Commission is considering Union response measures affecting authorisations, registrations, licenses or other rights for the purposes of commercial activities, it should prioritise measures valid throughout the Union and based on secondary legislation, or, where no such measures are appropriate, measures in areas where extensive Union legislation exists.~~ 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.
- (16bis) The Union **should be able to designate** ~~could adopt measures with regard to~~ natural or legal persons connected or linked to the government of ~~that the~~ third country **engaging in economic coercion**, ~~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 **and thereby make them subject to Union response measures in order to** induce the prompt cessation of economic coercion. **Such targeted response measures can effectively and or to avoid or minimise the negative effects of such coercion** on Member States' **economies** and Union economic operators **and final consumers**. 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 demonstrate that is connected or linked to that government, including persons that have contributed to economic coercion.

~~(16ter) As a result of economic coercion, Union natural and legal persons **could** may suffer significant harm. Without prejudice to the third country's obligation **under international law** to repair the injury caused by a breach of its international obligations and in order to facilitate effective legal protection of Union operators affected by the third country's measures of economic coercion~~ it could be is appropriate to entitle Union persons to recover their damage from **legal or natural or legal persons, other than governmental officials in the exercise of their functions, that are not only connected or linked to the government of that third country, but that have intentionally or knowingly instigated or otherwise caused the third country's measures of also contributed to economic coercion**. Such contribution may, **for example,** 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**. **Such claim for compensation arises as a result of the afore-mentioned wilful instigation or other form of causation of the economic coercion and is a non-contractual obligation in a civil and commercial matter within the meaning of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).**

(16quater new) To recover the damage suffered Union persons should be able to invoke the responsibility of the person designated to be liable 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. This Regulation does not affect the application of existing rules of private international law regarding jurisdiction or the recognition and enforcement of judgments or applicable law. Accordingly, existing instruments of Union law apply to lawsuits brought to recover damages as provided by this Regulation, in particular, Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) and Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

(16quater ter) 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.

- (17) It is appropriate to set out rules on the origin or nationality of goods, services and 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.
- (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~~ **only** apply **only** with regard to services supplied, or direct investments made, within the Union by one or more legal persons established in the Union **and** which are owned or controlled by persons of the third country concerned, where necessary to ensure the effectiveness of Union response measures and in particular to prevent their avoidance. The decision to impose any such restrictions ~~will~~ **should** be duly justified in implementing acts adopted pursuant to this Regulation in the light of the criteria specified in this Regulation.
- (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 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~~ **these** are appropriate.
- (20) It is essential to provide for opportunities for stakeholder involvement for the purposes of ~~the~~ adoption and amendment of Union response measures, and, **where as** relevant, for the purposes of ~~their~~ suspension and termination, in view of the potential impact on such stakeholders.
- (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 this Regulation.
- (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~~ **and/or** nationality **to take account of relevant developments in international instruments, or of other technical rules necessary for the application of the Regulation**, 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 **in respect of** amending ~~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 to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (23) In order to ensure uniform conditions for the implementation of **Union response measures under** this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 ~~of the European Parliament and of the Council~~.⁶
- (24) The examination procedure should be used for the adoption of Union response measures and their amendment, suspension or termination given that those **acts response measures** determine the Union's responses to economic coercion falling within the scope of this Regulation **and upon which the Council has decided. In exercising implementing powers, special attention should be given to solutions which command the widest possible support among Member States.** 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~~
- (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.
- (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~~ **officials obtaining information under this Regulation** should be carried out in

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).

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. 13).~~

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. 13).**

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.

- (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 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 policies and ~~existing~~ legal instruments. The Commission should report on its assessment to the European Parliament and the Council,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject-matter

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 measures affecting trade or investment, to coerce the Union or a Member State into adopting or refraining from adopting a particular act.
2. This Regulation ~~provides~~ establishes a framework for the Union to respond ~~in such situations to economic coercion~~ with the objective ~~of~~ deterring, or ~~have~~ having the third country desist from such ~~actions~~ coercion, whilst ~~permitting~~ enabling the Union, ~~in the as a~~ last resort, to counteract such ~~actions~~ coercion.
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.

Article 2

Scope

1. This Regulation applies where a third country:

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).

- 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.

2. In determining whether the conditions set out in paragraph 1 are met, the following shall be taken into account:
 - (a) the intensity, severity, frequency, duration, breadth and magnitude of the third country's measure, including its impact on trade or investment relations with the Union, and the pressure arising from it on the Union or a Member State;
 - (b) whether the third country is engaging in a pattern of interference seeking to 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.

Article 3

Examination of third-country measures

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.~~
2. The Commission may shall 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.
- 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 and keep them informed about developments
3. The Commission may request Member States to supply information on the impact of the measures of the third country concerned.

- ~~43.~~ ~~Following the information of Member States pursuant to paragraph 3, the~~ The Commission ~~may~~**shall** seek information about the impact of the measures of the third country concerned.
- 5.** ~~The Commission may.~~**The Commission may by** publishing a notice in the *Official Journal of the European Union* ~~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.
- 6.** **The Commission and Member States shall act expeditiously throughout the examination.**

Article 4

Determination with regard to the third-country measure

1. Following an examination carried out in accordance with Article 3, **in the event that the Commission considers that the measure of the third country concerned meets the conditions of Article 2(1), the Commission it** 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~~ **submit a proposal to the Council to adopt an implementing** a decision determining ~~whether that~~ the measure of the third country concerned meets the conditions set out in Article 2(1). **The Commission That proposal shall, where appropriate, address propose the question of that the country concerned reparation repair the injury suffered by the Union or its Member States due.** ~~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 expeditiously.~~
2. Prior to adopting ~~itsthe~~ **the decisionproposal** referred to in paragraph 1, where useful for the purposes of the determination **referred to in that paragraph**, the Commission ~~may~~**shall** invite the third country concerned to submit its observations ~~within a reasonable period of time, without prejudice to Article 5.~~
- 3.** **The Council shall act expeditiously and adopt the decision referred to in paragraph 1, acting by a qualified majority.**

The Council, acting by a qualified majority, may amend the Commission's proposal.
- 4.** **The Council decision shall be published in the Official Journal of the European Union.**
- 35.** Where the ~~Commission decides that the measure of the third country concerned meets the conditions set out in Article 2(1)~~ **Council adopts the decision referred to in paragraph 3, itthe Commission** shall notify the third country concerned of ~~it'sthethat~~ decision and request it to cease the economic coercion and, where appropriate **and so decided by the Council, request it to** repair the injury suffered by the Union or its Member States.

Article 5

Engagement with the third country concerned

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~~**provide** 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~~**s** into consultations with the Union in good faith, the Commission shall ~~expeditiously enter into engage in such~~ 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 **by a third party** to assist the Union and the third country concerned in these efforts;
 - submitting the matter to international adjudication.
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, in accordance with the Treaty informed consulted** the Council.
 3. The Commission shall keep the European Parliament and the Council informed of **any** relevant developments **pursuant to paragraphs 1 and 2**.
 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)**.

Article 6

International cooperation

The Commission shall enter into consultations or cooperation, ~~on behalf of the Union,~~ with any ~~other third~~ 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, **after having, in accordance with the Treaty, consulted the Council**. 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 and invite, where appropriate, Member States to participate in such consultations and cooperation.**

Article 7

Union response measures

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 **in light of the options available;** and
 - (c) action is in the Union's interest **in accordance with Article 7bis.**

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.

Insofar as the measures of the third country concerned constitute an internationally wrongful act, the Union response measures adopted under this Regulation may consist of measures implying the non-performance of international obligations towards the third country concerned.

~~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).~~

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.
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 **the third country concerned** to negotiate a solution; and
 - (c) inform the third country concerned that the Union response measures will apply, unless the economic coercion ceases.
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.

5. Notwithstanding paragraphs 2, 3 and 4, the ~~implementing act referred to in paragraph 1 may provide that~~ Union response measures ~~may~~ shall 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.

- 5bis. Notwithstanding paragraphs 2 and 4, where economic coercion consists in a threat to apply measures affecting trade or investment in accordance with 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.

- ~~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 5bis shall apply. Those acts shall remain in force for a period not exceeding three months.~~

~~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.~~

Article 97bis

Union's interest

A determination as to whether it is in the Union's interest to ~~act~~ **act** ~~adopt Union response measures~~ under this Regulation shall be based on an appreciation of all the various interests taken as a whole, including the interests of Member States, and Union economic operators, including upstream and downstream industries, and final consumers. 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. **The determination shall be made on the basis of all the information available.** ~~Actions~~ **Union response measures** 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 **measures**.

Article 8 **(new wording)**

Union response measures with regard to natural or legal persons

1. **Natural or legal persons which engage, or may engage in activities covered by Article 207 TFEU and are connected or linked to the government of the third country concerned may be subject to Union response measures pursuant to Annex I.**

2. ~~Natural or legal persons which have intentionally or knowingly instigated or otherwise caused the third country measures of economic coercion shall be liable for any damage suffered by Union natural or legal persons as a result of the economic coercion, to the extent of their contribution to such measures of economic coercion.~~

~~The Union natural or legal person which has suffered damage, be it directly or through a person owned or controlled by it, may seek recovery through judicial proceedings instituted in the courts of a Member State in accordance with Regulation (EU) No 1215/2012. Recovery may also be obtained through judicial proceedings instituted in the courts of Member State where the persons or entities designated in accordance with paragraph 4, as well as persons acting on their behalf or as their intermediary, hold assets.~~

3. **Paragraphs 1 and the first subparagraph of paragraph 2 shall only apply to natural or legal persons designated in accordance with this Article.**

~~3bis. To facilitate the application of paragraph 2, the Commission shall issue guidelines for Union natural or legal persons [by six months from the entry into force of this Regulation] and update them as necessary in light of practice under this Regulation.~~

4. **For the purposes of this Article, [the Commission shall adopt implementing acts in accordance with the examination procedure referred to in Article 15(2)]. Such implementing acts shall designate persons falling under paragraphs 1 or 2, and in**

the case of persons falling under paragraph 1, specify the Union response measures applicable to such persons

5. The implementing act referred to in paragraph 4 of this Article may be adopted simultaneously with the implementing act referred to in Article 7(1), or subsequently.

6. A natural or legal person may be considered as connected or linked to the government of the third country concerned pursuant to paragraph 1 where:

(a) that government beneficially owns more than 50 % of the equity interest in such legal person, exercises directly or indirectly more than 50 % of the voting rights in it, or has the power to appoint a majority of its directors or otherwise to legally direct its actions;

(b) such person benefits from exclusive or special rights or privileges granted in law or in fact by the government of the third country concerned, 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.

7. For the purposes of paragraph 2, Union natural or legal persons include:

(a) any natural person who is a national of a Member State;

(b) any natural person who is a permanent resident in a Member State;

(c) any legal person which is incorporated or constituted under the law of a Member State

8. Where the Commission has grounds to believe that a person should be designated on the basis of paragraph 1 or 2, it shall inform such person of its intention, including grounds for designation, and, where relevant, the possible measures pursuant to Annex I that that person would be subject to. The Commission shall publish a notice in the *Official Journal of the European Union* to this effect and, whenever possible, notify directly the person concerned.

Before deciding on the designation, the Commission shall give:

(a) any persons referred to in the first subparagraph the opportunity to submit observations on the possible designation, in particular on whether they fall under the conditions established in paragraph 1, within a reasonable period of time, in particular on whether they fall under the conditions established in paragraphs 1 or 2; and

(b) other interested parties the opportunity to submit observations on the possible designation.

The Commission may also seek information it considers relevant concerning the potential designation under this Article, including by requesting such information from Member States.

9. Without prejudice to Article 10, the Commission shall review designations under this Article when new substantial evidence is submitted to the Commission and inform the designated natural or legal persons concerned accordingly.

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 person designated connected or linked to the government of the third country concerned in accordance with paragraph 2 and this point (a) shall be subject to one or more Union response measures pursuant to Annex 2; 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 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 their first subparagraph.

Those The implementing act 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.

This: 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.

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 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.

~~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:

- ~~(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 paragraph 3 shall be deemed to be connected or linked to the government of that third country under this paragraph.~~

~~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.

~~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.

~~5.~~ For the purposes of paragraph 1 point (b), Union natural or legal persons include:

- ~~(a)~~ any natural person being a 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.

~~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;

~~4.~~ Where the Commission has grounds to consider that a person should be designated pursuant to paragraph 12, point (a) or point (b) it shall inform such person and publish a provisional list of person of its intention, including grounds for designations, and, where relevant, the possible measures pursuant to Annex I that they would be subject to. The Commission shall carry out such information by publishing a notice in the

Official Journal of the European Union and, whenever possible, by communicating directly with the person concerned.

Before deciding on designation, the Commission shall give

(a) — any persons referred to in the first subparagraph provisionally designated and other interested parties the opportunity to submit comments or observations on the possible designation within a reasonable period of time, in particular whether they fall under the conditions of paragraphs 2 bis 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.

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.

Article 9

Criteria for selecting and designing Union response measures

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.
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 pursuant to Article 7bis, 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;

(abis) the avoidance or minimisation of negative impacts

- on affected Union actors affected by Union response measures, including the availability of alternatives for such affected such actors, for example alternative sources of supply for goods or services,

- on the investment environment in the Union or a Member State, including the impact on employment and regional development policy;

- (b) the potential of the Union response measures to provide relief to Union economic operators within the Union 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;

(dbis) any relevant action in the Union's common foreign and security policy;

- (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.

In selecting Union response measures, the Commission shall give predominant weight to measures which most effectively ensure compliance with criteria (a) and (eabis).

2bis. **Without prejudice to paragraph 2, ~~When~~ selecting and designing an appropriate response measure pursuant to Annex I that affects concerns a procedure whereby organised by a public authority in the Union to grants authorisations, registrations, licenses or other rights to a natural or legal person for the purposes of its their commercial activities, the Commission shall always ~~favour~~ consider measures according to the following hierarchy of steps:**

- (a) measures ~~applying to~~ affecting procedures duly initiated after the entry into force of the ~~implementing act implementing~~ referred to in Article 7(1) or 8(1), ~~respectively, 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~~ affecting procedures ~~not yet completed upon the entry into force of the implementing act referred to in Article 7(1) or 8(1), respectively, 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~~
- (e) ~~measures that are respecting both points (a) and (b), where feasible.~~

Where no ~~one of the such~~ measures referred to in points (a) and (b) of the first subparagraph are available, ~~effective or practicable on the basis of the assessment pursuant to paragraph 2,~~ the Commission may, **in exceptional circumstances, consider apply other response measures, if where it has been demonstrated, in light of the information-gathering exercise conducted pursuant to Article 11, that those other measures would not disproportionately affect** ~~does not indicate that there would be a disproportionate impact on the on the upstream industries, and downstream industries and or final consumers within the Union or impose a~~

disproportionate burden on the process of ~~an~~ administration of relevant national regulations, **whilst ensuring effectiveness.**

In conjunction with the first subparagraph, when selecting and designing a response measure, Commission shall always take into account the level of harmonisation while preferring measures affecting procedures applied on a Union-wide basis or measures affecting procedures applied in area, where extensive Union legislation exists.

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 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;
- (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(1) and in ~~paragraph 1 of~~ Article 8(1) in light of the ~~above~~ criteria referred to in the third paragraph of this Article.

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 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.~~

Article 10

Amendment, suspension and termination of Union response measures

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 European Parliament and the Council informed thereof.
2. Where the third country concerned suspends the **measures of economic coercion**, or where it is necessary in the Union's interest **referred to in Article 7bis**, the Commission ~~may~~ **shall** suspend the application of the respective Union response measure for the duration of the ~~third country's suspension of the measures of economic coercion by the third country~~, or as long as necessary in light of the Union's interest.

~~The Commission shall suspend the Union response measures if~~Where 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, ~~the Commission shall suspend the Union response measures for the duration of the proceedings.~~

The Commission shall, by means of an implementing act **adopted in accordance with the examination procedure referred to in Article 15(2)**, decide to suspend the Union response measure **under this paragraph**. ~~These implementing acts shall be adopted 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 **paragraphs 2 and 3 of Article 9(2)**, or further developments, including the third country's reaction, the Commission may, as appropriate, amend Union response measures adopted in accordance with Articles **7 and 8**, by means of an implementing act, in accordance with the examination procedure referred to in Article 15(2).
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 the Union's interest **referred to in Article 7bis**.

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).

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 from the third country concerned, the Commission shall adopt immediately applicable implementing acts suspending, amending or terminating Union response measures adopted in accordance with Articles 7 and 8. 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.

Article 11

Information gathering related to Union response measures

1. Before the adoption or amendment 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 economic operators and Union's interest, through a notice published in the *Official Journal of the European Union* ~~or~~ and, where appropriate, through other suitable public communication means. The notice shall indicate the period within which the input is to be submitted.
2. The Commission may start the information gathering at any time it deems appropriate.
3. In conducting the information gathering under paragraph 1, the Commission shall inform and consult stakeholders, in particular ~~industry~~ associations acting on behalf of Union economic operators, affected by possible Union response measures, and Member States' authorities involved in the preparation or implementation of legislation regulating the affected fields.
4. Without unduly delaying the adoption of Union response measures, the Commission shall **identify possible options for Union response measures and**, in particular, seek information and views on:
 - (a) the impact of such measures on third-country actors or Union economic operators' 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 **referred to in Article 7bis**.
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). **That is analysis shall include a thorough assessment of impact on both upstream and downstream industries, and final consumers within the Union and, if relevant, point out any potential disproportionate effects.**

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.

Article 12

Confidentiality

1. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.
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.
3. Paragraph 2 shall not preclude the Commission ~~to~~~~from~~ disclosing general information in ~~a~~ summary form, ~~which provided that such disclosure~~ does not contain information allowing ~~to the~~ identify of 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.

Article 13

Rules of origin ~~and~~ nationality

1. The origin or nationality of a good, service, service provider, investment or intellectual property rightholder shall be determined in accordance with Annex II.
2. The Commission is empowered to adopt delegated acts in accordance with Article 14 **concerning to supplement or amend** points 2 ~~and 3 to 4~~ of Annex II ~~in order in order to amend the rules of origin or nationality 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.~~

Article 14

Delegated Acts

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in 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 of this Regulation]. 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.
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.
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.
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.

Article 15

Committee procedure

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.

~~This — Where reference is made to this paragraph, Article 4 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.

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.

3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011 in conjunction with Article 5 thereof, shall apply.

Article 15bis

~~Committee members representing~~ Member States ~~officials obtaining information under this Regulation~~ 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~~ **States officials**.

Article 16

Review

1. The Commission shall evaluate any Union response measure adopted pursuant to Articles 7 and 8 six months after its termination, taking into account stakeholder input and any other relevant information **and shall report to the European Parliament and the Council**. **In this** ~~The~~ evaluation ~~report~~ **the Commission** shall examine the effectiveness and operation of the Union response measure, and, **where appropriate,** ~~possibly~~ draw ~~possible~~ conclusions for future Union response measures and the review of this regulation pursuant to paragraph 2.
2. No later than three years after the adoption of the first implementing act under this Regulation or ~~six-five~~ years after the date of entry into force of this Regulation, whichever is earlier, **and every five years thereafter**, the Commission shall review this Regulation and its implementation and shall report to the European Parliament and the Council. **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.**

Article 17

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX I

Union response measures pursuant to Articles 7 and 8

Measures which may be adopted pursuant to Articles 7 and 8 are:

- (a) the ~~non-performance suspension~~ of applicable international obligations as regards 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;
- (b) the ~~non-performance 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 for goods;
- (c) the ~~non-performance 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;
- (d) the ~~non-performance suspension~~ of applicable international obligations concerning the right to participate in tender procedures in the area of public procurement, as necessary, and:
 - (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~~ 50 % of goods or services ~~originating in~~ of the third country concerned; and/or
 - (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.

Origin shall be determined on the basis of Annex II;

- (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; **such restrictions shall not derogate from applicable international regimes in the field of export controls**;
- (f) the ~~non-performance suspension~~ of applicable international obligations regarding trade in services, as necessary, and the imposition of measures affecting trade in services;
- (g) the ~~non-performance suspension~~ of applicable international obligations, as necessary, and the imposition of measures affecting **the access of** foreign direct investment **to the Union**;

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.

- (h) the ~~non-performance suspension~~ of applicable international obligations with respect to trade-related aspects of intellectual property rights, **granted by a Union institution or agency and valid throughout the Union,** as necessary, and the imposition 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;
- (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;
- ~~(j) 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 under the chemicals 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;~~
- ~~(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.~~

ANNEX II

Rules of Origin and Nationality

1. The origin of a good shall be determined in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council.¹⁰
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~~-nationality of the service provider shall be deemed to be:
 - (a) in the case of a natural person, the country of which the person is a national or where the person has a right of permanent residence;
 - (b) in the case of a legal person any of the following:
 - (i) if the service is provided other than through a commercial presence within the Union, the country where the legal person is constituted or otherwise organised under the laws of that country and in the territory of which the legal person is engaged in substantive business operations;
 - (ii) if the service is provided through a commercial presence within the Union,
 - (a) if the legal person is engaged in substantive business operations in the territory of the Member State where the legal person is established such that it has a direct and effective link with the economy of that Member State the origin of that legal person shall be deemed to be that of the Member State in which it is established
 - (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 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.
 - (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~~-legal 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

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).

have the power to name a majority of its directors or otherwise to legally direct its actions.

3. The nationality of a investment shall be:

- (a) if the investment is engaged in substantive business operations in the territory of the Member State where the investment is established such that it has a direct and effective link with the economy of that Member State the nationality of the investment shall be deemed to be that of the Member State in which it is established;
- (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 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.

4. Regarding trade-related aspects of 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 (TRIPS).