



Council of the European Union
General Secretariat

**Interinstitutional files:
2021/0406 (COD)**

Brussels, 13 February 2023

WK 2118/2023 INIT

LIMITE

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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Trade Questions

Subject:	ACI - Presidency note to steer the discussion at the meeting of the WPTQ on 16 February 2023
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Presidency note to steer the discussion at WPTQ on the 16th of February 2023

At the Working Party of the 16th of February, the Presidency will debrief from the technical meeting with the European Parliament held on the 9th of February. MS are invited to express views on all clusters previously discussed in the Working Party (listed in document WK 1065/2023 INIT).

The next technical meeting with the EP is scheduled to hold on the 27th of February and will focus on clusters 1.1, 3.2-3.7 and Annex I. **Member States are welcome to share additional comments on these clusters by the 23rd of February.**

A political trilogue is scheduled for 27th of March.

Ahead of the Working Party on the 16th of February, an updated 5-column-document that is color-coded in agreement with the EP will be circulated. The parts which are uncontroversial or identical in the Council and the EP mandates are marked green. Differences that can be addressed at technical level are marked in yellow and substantial divergences that most likely need to be discussed at political level are marked in red.

Given that a detailed line-by-line discussion of the clusters has already taken place at the Working Party, and that no new language has yet been provisionally agreed with the EP on any of the lines discussed, the Presidency proposes to hold a general discussion on the issues which the EP has chosen to colour as “red”, indicating their assessment that the issue require further discussions at political level. These issues are:

- **Council implementing powers** for the determination of injury and the request of reparation (article 4) (L56)
- Issues related to **reparation of injury** in general (including criteria for appropriateness for requesting reparation in article 4) (L56a)
- **Urgency procedure** to impose measures (art 7.6) (L80)
- **Designation** according to art 8 (L94)
- Rights to claim **civil damages** from listed entities (article 8) (L89)
- Imposition of, and criteria to select, **union response measures** including hierarchy of measures, union interest and reference to CFSP in this regard (articles 7.1, 9) (L72, L98, 103a, 106a)
- **Suspension** (issues of union interest and third part adjudication) (article 10) (L114)
- **Termination** (link to reparation) (article 10 p 4) (L117)
- **Information gathering** (link to union interest) (article 11 p 4d) (L131)
- **Single contact point** (CTEO) (article 11a) (L133b)
- **Delegated powers** to the Commission to change annex 1 (art 7 and art 14) (L143)

- The **no-opinion-no-action** clause in Commission implementing powers (article 15 (2)) (L150)
- **Horizontal provisions/information of EP** (Article 16) (L153)
- **Annex I** (L163-179)

Given that the Presidency sees a need to limit the number of issues subject to political-level discussions, **Member States are encouraged to present its views and priorities regarding on which of the issues listed above that the Presidency should intensify its efforts to reach an agreement with the EP, also when this will would require a certain deviation from the Council mandate.**

There has been an exchange of views on Annex I with the EP, with the aim to better understand the EP's view of the Councils deletions of certain points under Annex I. The EP has explained that it prefers for the Annex I to be as extensive as possible to ensure maximum flexibility, and thereby also impact, in designing the measures. The EP has indicated that it sees merits in the signalling effect of several of the points deleted by the Council. The EP has not indicated which of the deletions by the Council are of greater concern, other than the deletion of the point on export control and the changes in the point on IPR.

Please find below a table containing the measures which have been deleted or changed in the Council mandate, a list of comments provided by the Commission on the potential impact of the measures as well as the Presidency's remarks on the background to the Council position.

Member States are encouraged to express their views on the comments provided by the Commission and the Presidency.

Annex I – potential countermeasures Council mandate changes to the Commission original proposal	Commission's comments (provided in the non-paper on packages around decision-making and countermeasures of January 9th)	Presidency comments
Public procurement (L168-170); <i>Council mandate:</i> Subparagraph (i) where 50% derives from ER and subparagraph (ii) which derives from IPI.	-	In subparagraph (i), 50% derives from the Enforcement Regulation and subparagraph (ii) derives from IPI. COM compromise proposal of January 9 th proposes the original wording “ <i>a specified percentage</i> ” rather than “50 %”

Export controls (deleted) (L172)	The ability to impact goods possibly subject to export controls which may be of interest to 3rd countries in crucial areas would provide leverage in terms of responding to coercion.	Not listed in the Enforcement Regulation. “restrictions on the exportation of goods” in any case covered by point (b) Member states raised worries that EU and Member states’ commitments under multilateral export control regimes (e.g. Australia Group, the Wassenaar Arrangement, the Nuclear Suppliers Group, and the Missile Technology Control Regime) might be affected by ACI measures under point (e).
FDI measures (174) <i>Council mandate:</i> FDI measures limited to market access;	3rd country investors either wanting to gain access to the EU or already in the EU could be subject to measures. This mimics the situation in 3rd countries where EU investors seeking to gain access or active in the 3rd country may be subject to coercive measures.	Not listed in the Enforcement Regulation. Post-establishment measures might require the non-performance of obligations under MS-BITs and the Energy Charter Treaty, possibly affecting MS standing to parties of that treaty.
IPR (L175) <i>Council mandate:</i> Aligning IPR measures to the limited scope provided under the Enforcement Regulation Line 175	IPR actions fall fully under Article 207. The limits imposed by the Council position would only effectively allow action for geographical indications and plant varieties. IPR is an area of potential significant leverage over potentially coercing countries;	Aligned with the Enforcement Regulation (Council mandate wording) Measures in the IPR-field might require the non-performance of obligations under the Paris Convention and the Berne Convention, possibly affecting EU:s and MS standing to parties of the convention.
Chemicals (restrictions on registration and authorisation) (L177) <i>Council mandate:</i> Deletion	The ability to explicitly leverage the EU’s internal market in responding to coercion would be significant. Relevant assurances are provided in Article 9 (as amended by the Council)	Not listed in the Enforcement Regulation. In essence, similar effect (restriction on trade in goods) may be obtained via points a-c, in cases in combination with article 8. Measures would be dependent on an application for

		registration/authorisation to be pending at the moment of coercion. Supply-side-constraint, including dominant market players, often present in the field. Implementation issues. Measure might require the non-performance of obligations under the Rotterdam Convention, possibly affecting EU and MS standing to parties of the convention.
SPS (restrictions on registration and authorisation) (L178) <i>Council mandate:</i> Deletion	The ability to explicitly leverage the EU's internal market in responding to coercion would be significant. Relevant assurances are provided in Article 9 (as amended by the Council)	Not listed in the Enforcement Regulation. In essence, similar effect (restriction on trade in goods) may be obtained via points a-c, in cases in combination with article 8 Measures might require the non-performance of obligation under the SPS-agreement, possibly affecting EU:s and MS standing in organisations such as the FAO/WHO Codex Alimentarius Commission, the Office International des Epizooties; and to parties of the FAO International Plant Protection Convention.
Measures relating to EU-funded research programmes <i>Council mandate:</i> Deletion Line 179	Exclusion from EU-funded research programmes is already possible via the Horizon Europe regulation. Hence this falls under pre-existing Commission powers and can be deleted from the list. For visibility, useful to keep a reference in the recitals.	Measures are not covered by the article 207 legal basis. Replaced by recital 16ter.