



Council of the European Union
General Secretariat

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

Brussels, 15 February 2023

WK 2298/2023 INIT

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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Trade Questions
Subject:	ACI – Commission drafting proposal on definitions and Union Interest

Delegations will find enclosed a Commission drafting proposal, to the technical level within the framework of the trilogue negotiations, on definitions and Union Interest.

Line	COM compromise text of 9/1/23	Council proposal/comments 1/2/23	COM compromise text of 17/2/23
38d	1. "measure of economic coercion" means a third country interfering 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;	"economic coercion" means a third country interfering 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; <i>Comment: Instead of changing the text of the definition, we would propose to change the phrase to which the definition refers. The text refers very often to "economic coercion" and not to "measure(s) of economic coercion". This is notably the case of most recitals, as well as Article 1(1a), Articles 5, 7, 9, and 10. Hence, it seems preferable to define economic coercion as such.</i>	1/ Keep the definition ‘measures of economic coercion’; 2/ Replace ‘economic coercion’/‘coercion’ with ‘measures of economic coercion’ for consistency and better clarity where they appear in the following lines: 15, 15a, 16, 17, 18b, 19 (not the first “coercion” though), 21, 21a, 23, 24, 24a, 24b, 28a (second mention), 32, 33, 37a, 58, 60, 64, 68, 71, 72, 76, 77a, 77c, 78, 79, 79a, 100, 101, 109, 117, 117a, 119, 133e. We recommend keeping ‘economic coercion’/‘coercion’ in the following lines: 13, 14, 19 (first mention of ‘coercion’), 22 (second mention), 28a (first sentence) as it is general, but can be discussed; <i>Comment: ‘measures of economic coercion’ refers to individual instances of economic coercion that are being tackled under this regulation in individual cases; it is necessary to have clarity as action under this regulation against third-country measures will have to be justified under precise conditions – i.e. the elements of the definition; it is deemed useful for the purposes of objectively referring to measures of third countries that are being examined for being coercive or not; and in the concrete application of the regulation – there are multiple references already, including recitals, e.g. 16, 17, 18a, 18b, 19, 21, 22, 26, 27, 29, 98, 105, 110, 113, 114, 122, etc. (not exhaustive!);</i> <i>Economic coercion refers to the problem of economic coercion</i>

			<i>more generally, how it exists and has been perceived, etc.; it is more about the context and narrative or when targeting not EU or MS; it fits in general recitals, and less in the operative part; we do not define economic coercion in general, we do not need to, but of course its meaning can be drawn from the definition of measures of economic coercion, if needed;</i> <i>In the various subsequent amendments of the proposal, in many instances, both terms are used to mean the same, i.e. the individual instance of economic coercion;</i> <i>There are a few provisions where referring only to economic coercion makes more sense and should be preferred;</i>
38e	2. "measure" means any act or omission;	Deleted and merged with L38f	Delete and merge with 38f
38f	3. "third-country measure" means any measure attributable to a third country;	"third-country measure" means any act or omission attributable to a third country under international law; <i>Comment: We should refer to "attributable [...] under international law", since this allows us to make an indirect reference to recital 12, which itself refers to the criteria set out in the draft articles on State responsibility.</i>	"third-country measure" means any act or omission attributable to a third country under international law; <i>Comment: the Council's merger suggestion is taken up;</i>
38g	4. "particular act" means any legal or other act, including an expression of a position by an institution or body of the Union or a Member State;	4. "particular act" means any legal or other act, including an expression of a position, by an institution or body of the Union or a Member State; <i>Comment: coma inserted for clarity.</i>	4. "particular act" means any legal or other act, including an expression of a position by an institution or body of the Union, or a Member State, or a third country, as applicable; <i>Comment: Changes proposed in order to cover both mentions of 'particular act' in Article 2, point raised by EP LS.</i>
38j	7. "country" means any State, separate customs territory or other subject of international law;	Delete this definition <i>Comment: not originally requested by COM or EP but suggested by COM to enable the inclusion of Taiwan among subjects of co-operation in article 6 (L68). In L68 replace "and partner" with "or actor"</i>	7. "third country" means any State, separate customs territory or other subject of international law, other than the Union or a Member State; <i>Comment: this is to be read together with last three sentences of recital 6 (line 14), see below.</i>

			<i>This language is then comfortable for all situations that can arise.</i> “The terms "third country" should be understood to include not only a foreign State, but also a separate customs territory or other subject of international law because these entities are capable of economic coercion. The utilisation of these terms and the application of this Regulation does not have any implication regarding sovereignty. This Regulation should also be applied in conformity with the Union’s position in relation to the third country concerned.”
38k	8. "third country" means any country other than the Union or a Member State;	Delete this definition <i>Comment: Since we are not defining “country”, it becomes redundant to define “third country”.</i>	Delete and merge with 38j
38l	9. "Union response measure" means any measure listed in Annex 1 and adopted pursuant to Articles 7 and 8, or any measure adopted pursuant to other legal instruments that confer specific powers to the Commission.	Delete this definition <i>Comment: Generally from our lawyer linguists we were advised not to have references to Articles in definitions. However, we are flexible on this. Cannot include “any measure adopted pursuant to other legal instruments that confer specific powers to the Commission” in the definition of “union response measures” since it might put those other measures under the rules of the Regulation. Requires discussion.</i>	1/ Delete the definition in line 38l; 2/ Reinstate the reference to Annex I in line 74 (Art 7(1) second subpara) in bold: In the implementing act referred to in the first subparagraph, the Commission shall determine the appropriate Union response pursuant to Annex I. [...] [or the like: from among the measures provided for in Annex I] 3/ Delete the text in line 75a (Art 7(1) third subpara): The Commission may also adopt, pursuant to other legal instruments, measures that are not listed in Annex I. Any such adoption shall be coordinated and consistent with action under this Regulation. 4/ Keep recital 16ter (line 24b) and add as a final sentence the following: Without prejudice to any reporting obligations towards the European Parliament or the Council provided for under

			such other legal instruments, the Commission should keep the European Parliament and the Council informed of actions under such instruments synchronised with action taken under this Regulation. <i>Comment: streamlining the discussion by consolidating all details in the recital;</i>
38m	10. "Union interest" means all the various interests taken as a whole, including the interest in avoiding interference in legitimate sovereign choices of the Union and the Member States, the interests of Union economic operators, including upstream and downstream industries, as well as the interests of Union final consumers. The Union interest shall be determined in accordance with Article 7bis.		Delete the definition. Have only Article 7a on Determination of the Union interest in line 85b – see a suggested text below.

Line 85b (Article 7a)

Determination of the Union interest

The determination of the Union interest in taking, suspending, amending or terminating Union response measures shall consist in an appreciation of the various interests at stake, taken as a whole. The various interests shall include, primarily, the preservation of the ability of the Union and its Member States to make legitimate sovereign choices free from economic coercion, as well as all other interests of the Union or the Member States in individual cases, interests of Union economic operators, including upstream and downstream industries, and of final consumers, affected, or potentially affected, by the measures of economic coercion or by Union response measures. The determination shall be based on all information available.