



Council of the European Union
General Secretariat

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

Brussels, 08 April 2022

WK 5322/2022 INIT

LIMITE

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From:	CZ Delegation
To:	Working Party on Trade Questions
Subject:	Anti-Coercion Instrument (ACI) - CZ comments on clusters 1 and 2

CZ comments

**Table for MS comments on the 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**

Articles 1 to 6

	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	MS comments or questions	MS drafting suggestions
1	Article 1 Subject-matter		
2	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. This Regulation provides a framework for the Union to respond in such situations with the objective to deter, or have the third country desist from such actions, whilst permitting the Union, in the last resort, to counteract such actions.	The CZ appreciates explicit reference to deterrence as the objective of ACI and response measures only as a last-resort reaction. In order to preserve credibility of the EU (with like-minded partners in WTO in particular) the CZ suggest adding reference in Article 1 (1) clarifying that the main objective of the Regulation is returning to free trade based on WTO rules. The CZ supports binding condition for activation of ACI in form of clear and justifiable breach of international law. The EU needs to ensure legality and legitimacy of the instrument. Therefore, the CZ suggests further clarification of the	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. This Regulation provides a framework for the Union to respond in such situations with the objective to deter, or have the third country desist from such actions, and to return to trade based on WTO rules, whilst permitting the Union, in the last resort, to counteract such actions.

		text and explicit reference to illegality of coercive actions of the third country to avoid any doubts about nature of ACI. Moreover, the Regulation should include reference to EU's commitment to WTO, multilateral trading system and removal of trade barriers and open trade policy (at least in a new recital).	
3	2. Any action taken under this Regulation shall be consistent with the Union's obligations under international law and conducted in the context of the principles and objectives of the Union's external action.	The CZ fully supports the assurance in the text that any action taken under this Regulation shall be consistent with obligations under international law. To increase clarity, we suggest adding reference also to MS's obligations not only Union's. We would also appreciate clarification from the Commission how would it be ensured in practice that any action under the regulation would be conducted in the context of objectives of the Union's external action.	2. Any action taken under this Regulation shall be consistent with the Union's and its Member States' obligations under international law and conducted in the context of the principles and objectives of the Union's external action.
4	Article 2 Scope		
5	1. This Regulation applies where a third country: – interferes in the legitimate sovereign choices of the Union or a Member State by seeking to prevent or obtain the cessation,	We understand the intention to set the scope of the ACI even for situations where a third country is threatening to apply measures. However, the EU response	

	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.	measures should not be in any case applied when the threat of coercion has not materialised. We thus see the primary solution to threat of applying measures should be through diplomatic channels and the EU's negotiations.	
6	For the purposes of this Regulation, such third-country actions shall be referred to as measures of economic coercion.		
7	2. In determining whether the conditions set out in paragraph 1 are met, the following shall be taken into account:	The CZ appreciates introduction of criteria for an assessment of economic coercion. It will contribute to legitimacy of the instrument. Moreover, it is essential to substantiate any decision about the existence of economic coercion and its severity with clear, objective and indisputable facts and data. Moreover, the Commission should specify in more detail how the criteria would be assessed (e.g., through guidelines). The CZ believes that clarity of this process does not interfere with the deterrent effect of the Regulation and could increase credibility of the EU and ACI in the desired manner.	2. A determination In determining whether the conditions set out in paragraph 1 are met, shall be based on best data available and shall involve objective examination of the following—shall be taken into account:

8	(a) the intensity, severity, frequency, duration, breadth and magnitude of the third country's measure and the pressure arising from it;		
9	(b) whether the third country is engaging in a pattern of interference seeking to obtain from the Union or from Member States or other countries particular acts;		
10	(c) the extent to which the third-country measure encroaches upon an area of the Union's or Member States' sovereignty;		
11	(d) whether the third country is acting based on a legitimate concern that is internationally recognised;		
12	(e) whether and in what manner the third country, before the imposition of its measures, has made serious attempts, in good faith, to settle the matter by way of international coordination or adjudication, either bilaterally or within an international forum.		
13	Article 3 Examination of third-country measures	Member States should be closely involved in the examination of third country measures. They should be given opportunity to submit information on criteria set in Art. 2.2 and the Commission should carefully consider their comments. Such consultation or coordination procedure should be reflected in the text of the Regulation.	
14	1. The Commission may examine any measure of a third country in order to determine whether it meets the conditions set out in Article 2(1). The Commission shall act expeditiously.		1. The Commission in cooperation with Member States may examine any measure of a third country in order to determine whether it meets

			the conditions set out in Article 2(1). The Commission shall act expeditiously.
15	2. The Commission may carry out the examination referred to in paragraph 1 on its own initiative or following information received from any source. The Commission shall ensure the protection of confidential information in line with Article 12, which may include the identity of the supplier of the information.	Initiation of examination of third country measures should be based on reliable information, not mere allegations. Moreover, MS involvement should be clearly stated in the text.	2. The Commission may carry out the examination referred to in paragraph 1 on its own initiative or following reliable information received from any source. The Commission shall ensure the protection of confidential information in line with Article 12, which may include the identity of the supplier of the information. Member States may inform the Commission if a third country applies or threatens to apply measures affecting trade or investment and those measures appear to call for examination in line with Article 3(1). This information shall contain the evidence available, as determined on the basis of the criteria laid down in Article 2(2). The Commission shall immediately pass this information on to all the Member States.

16	3. The Commission may seek information about the impact of the measures of the third country concerned.	Gathering evidence is essential part of examination, therefore we suggest replacing “may” with “shall”	3. The Commission may shall seek information about the impact of the measures of the third country concerned. The Commission shall inform and conduct consultations with Member States and take utmost account of the information gathered during such consultations.
17	The Commission may publish a notice in the Official Journal of the European Union or through other suitable public communication means with an invitation to submit information within a specified time limit. In that event, the Commission shall notify the third country concerned of the initiation of the examination.	It seems from the current text that the Commission is only obliged to inform the third country concerned in cases when it publishes an invitation to submit information. In our opinion, informing the third country concerned about the examination itself should be done in any case. According to us, this may contribute to the legitimacy of the ACI.	
18	Article 4 Determination with regard to the third-country measure	ACI needs to avoid any doubt about its compliance with international law and the EU needs to retain its credibility as a leading advocate of multilateral trading system and an upholder of stable trade rules. Establishing that international law has been breached is a crucial element of the instrument.	
19	Following an examination carried out in accordance with Article 3, the Commission shall adopt a decision determining whether the		

	measure of the third country concerned meets the conditions set out in Article 2(1). The Commission shall act expeditiously.		
20	Prior to adopting its decision, the Commission may invite the third country concerned to submit its observations.	The third country concerned should be always given an opportunity to submit its comments, it is especially important whenever the Commission intends to determine that the conditions set out in Article 2(1) are met. Moreover, prior to any decision pursuant to Article 4 Member States should receive clear justification that conditions in Article 2 (1) are met. Also, Member States should be involved, in an appropriate manner, in the determination process.	Prior to adopting its decision, the Commission may shall invite the third country concerned to submit its observations. Prior to adopting its decision, the Commission shall inform Member States about result of examination pursuant to Article 3 and invite them to submit their observations. The Commission should take utmost account to those observations.
21	Where the Commission decides that the measure of the third country concerned meets the conditions set out in Article 2(1), it shall notify the third country concerned of its decision and request it to cease the economic coercion and, where appropriate, repair the injury suffered by the Union or its Member States.	We assume the Commission intends to inform also MS and to do it in advance. However, currently it is not reflected in the text. We suggest addition to the text – see line 20.	
22	Article 5 Engagement with the third country concerned	We fully support Article 5. Negotiated solution should always be the EU's first choice. In our view, the instrument should inherently include procedures seeking return to free trade based on multilateral trade rules. To reflect this, we suggest changes in wording of last sentence in Article 5, in order	

		to show that diplomatic efforts would be further pursued as much as possible even in case of adoption of response measures.	
23	The Commission shall be open to engage on behalf of the Union with the third country concerned, to explore options with a view to obtaining the cessation of the economic coercion. Such options may include:		
24	– direct negotiations;		
25	– mediation, conciliation or good offices to assist the Union and the third country concerned in these efforts;		
26	– submitting the matter to international adjudication.		
27	The Commission shall seek to obtain the cessation of the economic coercion by also raising the matter in any relevant international forum.		
28	The Commission shall keep the European Parliament and the Council informed of relevant developments.		
29	The Commission shall remain open to engage with the third country concerned after the adoption of Union response measures pursuant to Article 7. The Commission may pursue these efforts, as the case may be, in conjunction with a suspension, pursuant to Article 10(2), of any Union response measures.		The Commission shall remain open to engage with the third country concerned after the adoption of Union response measures pursuant to Article 7. The Commission may shall pursue these efforts, as appropriate the case may be , in conjunction with a suspension, pursuant to Article 10(2), of any Union response measures.

30	Article 6 International cooperation	The Czech Republic puts great emphasis on cooperation with strategic and like-minded partners to find a solution to challenges and irritants of international trade. We appreciate inclusion of Article 6 on cooperation with a view to obtaining the cessation of the coercion. In addition, we suggest adding reference to international cooperation also with an aim to deter and prevent economic coercion.	
31	The Commission shall enter into consultations or cooperation, on behalf of the Union, with any other country affected by the same or similar measures of economic coercion or with any interested third country, with a view to obtaining the cessation of the coercion. This may involve, where appropriate, coordination in relevant international fora and coordination in response to the coercion.		The Commission shall enter into consultations or cooperation, on behalf of the Union, with any other country affected by the same or similar measures of economic coercion or with any interested third country, with a view to obtaining the cessation of the coercion. This may involve, where appropriate, coordination in relevant international fora and coordination in response to the coercion. The Commission shall be open to enter into consultations or cooperation, on behalf of the Union, with any other country, with a view to prevent use of economic coercion in general.
	END	END	END