



Council of the European Union
General Secretariat

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

Brussels, 08 April 2022

WK 5324/2022 INIT

LIMITE

POLCOM

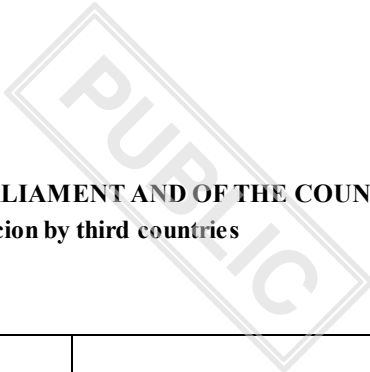
COMER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From: CZ Delegation
To: Working Party on Trade Questions

Subject: Anti-Coercion Instrument (ACI) - CZ comments on clusters 3 and 4



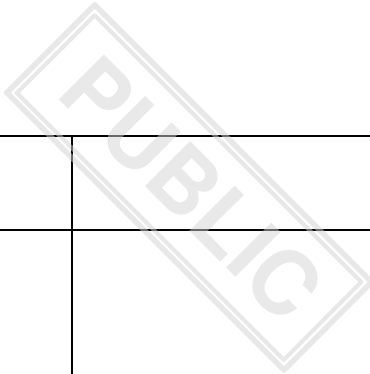
CZ comments

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

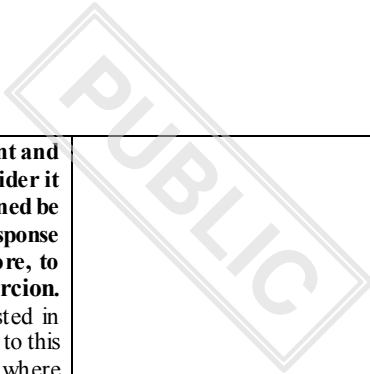
Articles 7 to 17

	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
32	Article 7 Union response measures		
33	1. The Commission shall adopt an implementing act determining that it shall take a Union response measure where:	The CZ is of the opinion that an implementing act of the Commission (adopted in accordance with the examination procedure) is not appropriate for a decision with such far-reaching foreign policy implications. By adopting response measures the EU steps outside the WTO rules and argues that there has been a violation of international law. Therefore, such decision should not be treated as ordinary trade policy procedure. To preserve credibility of the EU, such decision should be made by QMV of Member States. This should be adjusted further in the text where is original reference to implementing acts.	The Council on a proposal from the Commission shall adopt an implementing act determining that it shall take a Union response measure where:
34	(a) action pursuant to the Articles 4 and 5 has not resulted in the cessation of the economic coercion and reparation of the	We suggest including a condition explicitly stating the EU has exhausted all possibilities to end the coercion with	(a) all possibilities to reach amicable solution where exhausted

	injury it has caused to the Union or a Member State within a reasonable period of time;	mutually acceptable solution. It is in line with the aim of the Regulation to create a last-resort tool. It may be useful to add Article 6 in point (a). We believe the EU should first try to solve the coercion through international cooperation before relying on unilateral measures.	and action pursuant to the Articles 4 and 5 and 6 has not resulted in the cessation of the economic coercion and reparation of the injury it has caused to the Union or a Member State within a reasonable period of time;
35	(b) action is necessary to protect the interests and rights of the Union and its Member States in that particular case, and	The CZ requests a further explanation from the Commission on how the assessment of this criterion would take place in practice, in particular how the MS would be involved.	
36	(c) action is in the Union's interest.	The CZ requests a further explanation from the Commission on what would be the part of the Union's interest test in case of economic coercion. How would the MS be involved and what other stakeholders would be consulted and how? Although the concept of Union's interest test is known from other legislation it might be useful to further clarify its scope particularly for the ACI. Unlike antidumping (or similar TDIs) the ACI would not be technical instrument. It would certainly have overlap in international law and CFSP.	
37	In the implementing act, the Commission shall also determine the appropriate Union response from among the measures provided for in Annex I. Such measures may also apply with regard to natural or legal persons designated in accordance with Article 8. The Commission may also adopt measures which it can take pursuant to other legal instruments.	The last sentence may violate the principle of transparency and predictability. The CZ asks for further clarification. If the sentence refers to the measures described in Commission's Communication, it should be clearly stated in the text.	

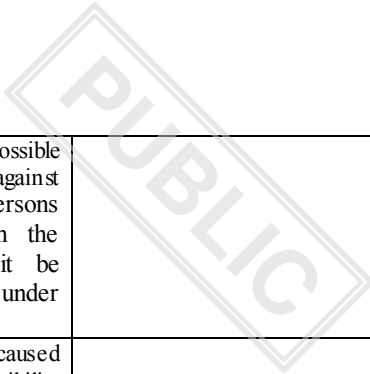


38	The implementing act shall be adopted in accordance with the examination procedure referred to in Article 15(2).	see comment on line 33	
39	2. The Union response measures shall apply from a specified date after the adoption of the implementing act referred to in paragraph 1. The Commission shall set this date of application, 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.		
40	3. The Commission shall, upon adoption of the implementing act, notify the third country concerned of the Union response measures adopted pursuant to paragraph 1. In the notification, the Commission shall, on behalf of the Union, call on the third country concerned to promptly cease the economic coercion, offer to negotiate a solution, and inform the third country concerned that the Union response measure will apply, unless the economic coercion ceases.		
41	4. The implementing act referred to in paragraph 1 shall state that the application of the Union response measures shall be deferred for a period specified in that implementing act, where the Commission has credible information that the third country has ceased the economic coercion before the start of application of the adopted Union response measures. In that event, the Commission 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 Union response measures start to apply, the Commission shall terminate the Union response measures in accordance with Article 10.		

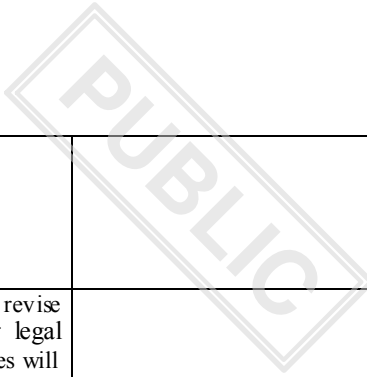


42	<p>5. Notwithstanding paragraphs 2, 3 and 4, the Union response measures may apply without the Commission, on behalf of the Union, first calling, once more, on the third country concerned to cease the economic coercion or without the Commission first notifying it that Union response measure will apply, where this is necessary for the preservation of the rights and interests of the Union or Member States, notably of the effectiveness of Union response measures.</p>	<p>For the legality of the instrument and the credibility of the EU, we consider it essential that the country concerned be informed in advance of the response measures and asked, once more, to cease the economic coercion. Therefore, we would be interested in clarifying and justifying exception to this rule. How would the EC assess, where this is necessary for the preservation of the rights and interests of the Union or Member States? This paragraph should be removed completely, or at least amended to ensure that applying measures without notifying the third country concerned, could happen only in extremely exceptional and duly justified cases.</p>	
43	<p>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 5 shall apply. Those acts shall remain in force for a period not exceeding three months.</p>	<p>Immediate action must be limited to very exceptional cases where any delay could cause irreparable and extreme damage, and even in the case of urgency the interests of the MS must be taken into account. What criteria will the EC consider when deciding whether something is extremely urgent? Validity of immediately applicable implementing acts imposing Union response measures must be limited only for the time necessary for the proper adoption of the Council implementing act (but not longer than 3 months, as specified in the proposal). We would appreciate the EC's explanation of why the wording "shall" is used here instead of "may".</p>	<p>On exceptional and duly justified imperative grounds of urgency to avoid extreme irreparable damage to the Union or its Member States by the measures of economic coercion in case of any delay 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 5 shall apply. Those acts shall remain in force for a period not exceeding three months.</p>

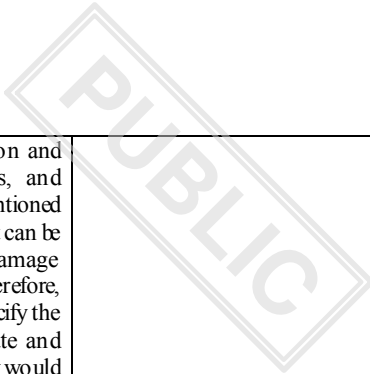
44	7. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend the list provided for in Annex I in order to provide additional types of measures to respond to a third country's measure. The Commission may adopt such delegated acts where the types of response measures would:	The CZ does not agree with using delegated acts to amend the list provided for in Annex I. List of possible measures to respond to a third country's coercion is essential part of the Regulation and should be part of the legislative text, not an annex.	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:
45	(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;		(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;
46	(b) provide as effective or more effective relief to economic operators within the Union affected by the 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;
47	(c) avoid or minimise the negative impact on affected actors; or		(c) avoid or minimise the negative impact on affected actors; or
48	(d) avoid or minimise administrative complexity and costs.		(d) avoid or minimise administrative complexity and costs.
49	Article 8 Union response measures with regard to natural or legal persons	We consider it important to ensure that the natural or legal persons against which the Union's response measures would be applied have a clear link with the government of the third country concerned and the economic coercion.	
50	1. The Commission may provide, in the implementing act referred to in Article 7(1), or in a separate implementing act, that:	We would like to ask for clarification whether Article 8 also applies to legal or natural persons established in the EU and linked to the government of the third country concerned.	



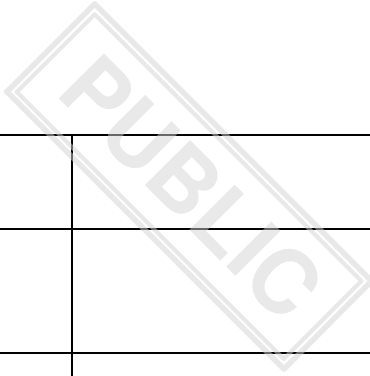
51	(a) legal or natural persons designated in accordance with paragraph 2 point (a) shall be subject to Union response measures; or	According to the current text it is possible to impose EU response measures against specific legal or natural persons without their connection with the economic coercion. Would it be possible to justify such action under international law?	
52	(b) without prejudice to the responsibility of the third country under international law, Union natural or legal persons affected by the third country's measures of economic coercion shall be entitled to recover, from persons designated pursuant to paragraph 2, point (b), 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.	How would be the damage caused calculated? How would be the possibility to recover damages enforced in practice? What would be the role of Member States in the process?	
53	Those measures shall apply as of the same date of application as the Union response measures adopted pursuant to Article 7, or as of a later date specified in the implementing act pursuant to this paragraph.		
54	Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).		
55	2. The Commission may designate a natural or legal person where it finds:	We would like to ask for explanation of the division of persons into 2 categories. We believe that the condition of being "involved in or connected with the economic coercion" should apply in any case.	
56	(a) that such person is connected or linked to the government of the third country concerned; or,		(a) that such person is connected or linked to the government of the third country concerned; or,



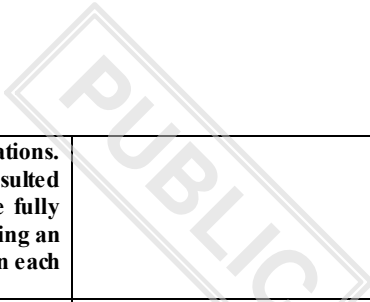
57	(b) that such person is connected or linked to the government of the third country concerned and has additionally caused or been involved in or connected with the economic coercion.		
58	3. In making this designation the Commission shall examine all relevant criteria and available information, including 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.	Would it be possible to review or revise the EC decisions on natural or legal person against which the measures will be applied according to Article 8? How would MS be involved in the decision on the determination of natural or legal persons?	
59	4. Where the Commission has grounds to consider that persons should be designated pursuant to paragraph 2, point (a) or point (b) it shall publish a provisional list of persons and, where relevant, the possible measures pursuant to Annex I that they would be subject to. Before deciding on designation, it shall give any persons provisionally designated and other interested parties the opportunity to submit comments on the possible designation, in particular whether they fall under the conditions of paragraph 2, point (a) or point (b). The Commission may also seek additional information it considers pertinent concerning the potential designation.	How would the submitted comments be taken into account? We believe it might be useful to further specify the procedure under this paragraph (e.g. "other interested parties", timeframe).	
60	Article 9 Criteria for selecting and designing Union response measures		
61	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	Proportionality of the EU response measures to the damage suffered by the EU or the Member States is a crucial element to ensure legality of ACI. The CZ fully agrees with this requirement, as	



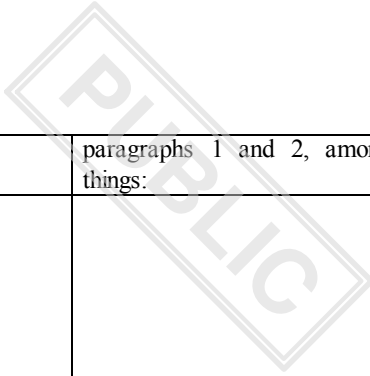
	<p>economic coercion, taking into account the gravity of the third country's measures and the rights in question.</p>	<p>a basic condition for the selection and design of EU response measures, and appreciates that it is explicitly mentioned in the draft regulation. However, it can be very difficult to quantify the damage caused by economic coercion. Therefore, we would like to ask the EC to specify the procedure for finding appropriate and proportionate measures – e.g. how would the injury be quantified? What would be the involvement of MS and other stakeholders in the consultation?</p>	
62	<p>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, on the basis of available information, including as collected pursuant to Article 11, and the following criteria:</p>	<p>The CZ considers it essential that the EU response measures do not cause worse economic and other consequences than the economic coercion. We therefore believe that the Commission should take maximum account of the criteria for selecting response measures, and in this regard, we would prefer to strengthen the wording of Article 9 (2).</p> <p>Moreover, we consider the wording "...taking into account the determination" ambiguous. It should be clear that the EC may only design response measure in case economic coercion was determined.</p> <p>We would also like to ask for clarification, why only Union's interest is mentioned here and "interests and rights of the Union and its Member States in that particular case" are not. We believe both are relevant for selecting and designing appropriate measures.</p>	<p>2. <u>On the basis of determination pursuant to Article 4, the Commission shall <u>may</u> select and design an appropriate response measure <u>provided the measure of the third country concerned meets the conditions set out in Article 2(1). The Commission shall take utmost account to taking into account the determination made pursuant to Article 4, the criteria set out in Article 2(2), interests and rights of the Union and its Member States in that particular case</u> and the Union's interest, on the basis of available information, including as collected pursuant to Article 11, and the following criteria:</u></p>



63	(a) the effectiveness of the measures in inducing the cessation of the economic coercion;		
64	(b) the potential of the measures to provide relief to economic operators within the Union affected by the economic coercion;		
65	(c) the avoidance or minimisation of negative impacts on affected actors by Union response measures, including the availability of alternatives for affected actors, for example alternative sources of supply for goods or services;		
66	(d) the avoidance or minimisation of negative effects on other Union policies or objectives;		
67	(e) the avoidance of disproportionate administrative complexity and costs in the application of the Union response measures;		
68	(f) the existence and nature of any response measures enacted by other countries affected by the same or similar measures of economic coercion, including where relevant any coordination pursuant to Article 6;		
69	(g) any other relevant criteria established in international law.	<p>We would like to ask what is meant by this point. Could the EC give any examples? Furthermore, we believe MS' obligations under international law need to be taken into account. We asked for inclusion of MS' obligations in Article 1(2). If Article 1(2) cannot be amended, we request an addition to Article 9(2). EU response measure cannot in any case violate</p>	<p><u>(h) Member State's obligation under international law</u></p>

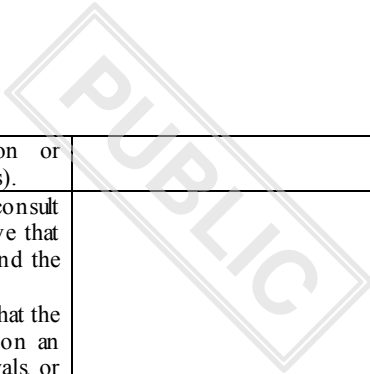


		<p>MS's international obligations. Therefore, MS need to be consulted and their comments need to be fully taken into account while designing an appropriate response measure in each case.</p>	
70	<p>3. The Commission may decide to apply Union response measures under Articles 7 or 8 consisting of restrictions 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 application where Union response measures not covering such situations would be insufficient to effectively achieve the objectives of this Regulation, in particular where such measures could be avoided. In assessing whether to adopt such a decision the Commission shall consider, in addition to the criteria in paragraphs 1 and 2, amongst other things:</p>	<p>In order to apply EU response measures to persons established in the EU, the CZ considers it absolutely necessary to prove their relationship to violations of international law in order not to violate the principle of non-discrimination under EU law. We consider the current condition (“legal persons established in the EU is owned or controlled by persons of the third country concerned”) too general.</p> <p>It is necessary to specify the criteria according to which a legal person is considered to be owned in a third country. At the same time, we believe that, in addition to ownership in the third country concerned, the persons established in the Union should be linked to the economic coercion to ensure that the EU measures comply with both international and Union law.</p> <p>In addition, the CZ sees a greater risk of negative economic impacts of these response measures on subjects in the EU. Therefore, these measures should be considered solely as a means of last resort.</p>	<p>3. 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 application <u>in exceptional cases where there are no 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 and</u> Union response measures not covering such situations would be insufficient to effectively achieve the objectives of this Regulation, in particular where such measures could be avoided. In assessing whether to adopt such a decision the Commission shall consider, in addition to the criteria in</p>

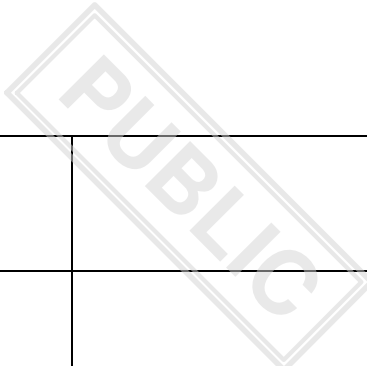


			paragraphs 1 and 2, amongst other things:
71	(a) the patterns of trade in services and investment in the sector targeted by the envisaged Union response measures and the risk of avoidance of any Union response measures not applying to services supplied, or direct investments made, within the Union;		
72	(b) the effective contribution of such intra-Union restrictions to the objective of obtaining the cessation of the measure of economic coercion;		
73	(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.	This should be the main condition for applying measures within the internal market. The Commission should only adopt measures under article 9(3) if there are no 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.	(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.]
74	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 in light of the above criteria.		
75	Article 10 Amendment, suspension and termination of Union response measures	The Czech Republic would welcome further clarification from the EC of the process for reviewing measures. We believe that it would be appropriate for the Member States to be involved in the process. MS should be able to initiate	

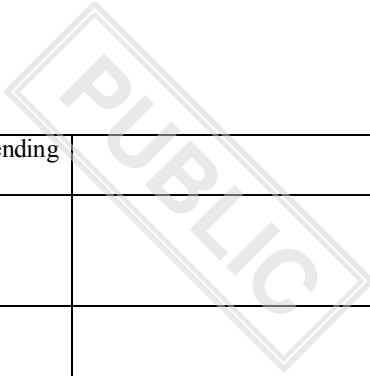
Okomentoval(a): [LL1]: moved to 9(3) above



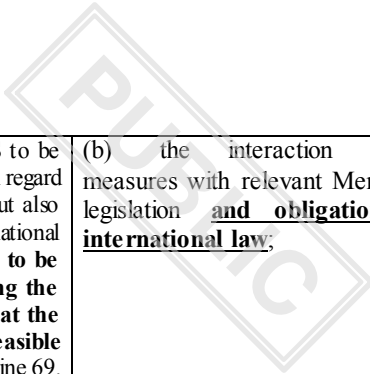
		a review (initiate termination or modification of response measures).	
76	1. The Commission shall keep under review the measures of economic coercion deployed by a third country that have triggered the Union response measures, the effectiveness of the Union response measures adopted and their effects on the Union's interests and shall keep the European Parliament and the Council informed thereof.	How would the Commission consult other parties involved? We believe that simply keeping the Parliament and the Council informed is insufficient. Does the Commission envisage that the review process will take place on an ongoing basis, or at some intervals, or upon request? We believe that measures in force should be under continuous monitoring, so the EU would be able to adjust them accordingly. Also, for reasons of legal certainty, we believe that the process should be set out in more detail.	
77	2. Where the third country concerned suspends the economic coercion, or where it is necessary in the Union's interest, the Commission may suspend the application of the respective Union response measure for the duration of the third country's suspension, or as long as necessary in light of the Union's interest. The Commission shall suspend the Union response measures if the third country concerned has offered, and the Union 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, by means of an implementing act, decide to suspend the Union response measure. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).		2. Where the third country concerned suspends the economic coercion, or where it is necessary in the Union's interest, the Commission may shall suspend the application of the respective Union response measure for the duration of the third country's suspension, or as long as necessary in light of the Union's interest.
78	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 9(2), or further developments, including the third country's reaction, the		



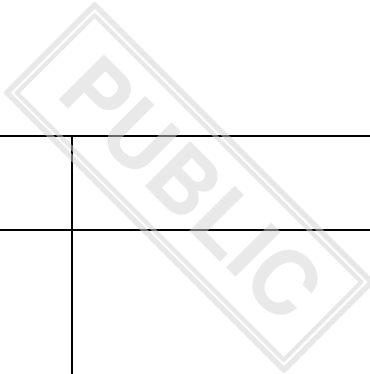
	Commission may, as appropriate, amend Union response measures adopted in accordance with Article 7, by means of an implementing act, in accordance with the examination procedure referred to in Article 15(2).		
79	4. The Commission shall terminate Union response measures under any of the following circumstances:		
80	(a) where the economic coercion has ceased;		
81	(b) where a mutually agreed solution has otherwise been reached;		
82	(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;		
83	(d) where it is appropriate in light of the Union's interest.		
84	The termination of Union response measures adopted in accordance with Article 7 shall be decided, by means of an implementing act, in accordance with the examination procedure referred to in Article 15(2).		
85	5. On duly justified imperative grounds of urgency, the Commission shall adopt immediately applicable implementing acts suspending, amending or terminating Union response measures adopted in accordance with Article 7. 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.	We believe that immediately applicable implementing acts are appropriate for suspending or terminating Union response measures. On duly justified imperative grounds of urgency, the Commission could adopt immediately applicable	



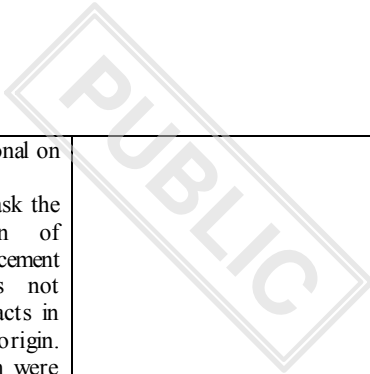
		implementing acts also for amending Union response measures.	
86	Article 11 Information gathering related to Union response measures		
87	1. Before the adoption of Union response measures or the amendment of such measures, the Commission shall, and before the suspension or termination of such measures, respectively, the Commission may, seek information and views regarding the economic impact on Union operators and Union's interest, through a notice published in the Official Journal of the European Union or through other suitable public communication means. The notice shall indicate the period within which the input is to be submitted.		
88	2. The Commission may start the information gathering at any time it deems appropriate.		
89	3. In conducting the information gathering under paragraph 1, the Commission shall inform and consult stakeholders, in particular industry associations, affected by possible Union response measures, and Member States involved in the preparation or implementation of legislation regulating the affected fields.		
90	4. Without unduly delaying the adoption of Union response measures, the Commission shall, in particular, seek information on:		
91	(a) the impact of such measures on third-country actors or Union competitors, users or consumers or on Union employees, business partners or clients of such actors;		



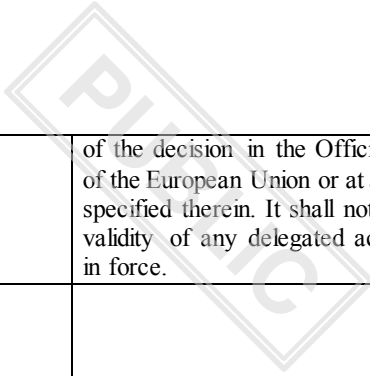
92	(b) the interaction of such measures with relevant Member State legislation;	We consider it necessary for MS to be properly consulted, inter alia, with regard to relevant national legislation, but also with regard to their international obligations. These aspects need to be duly taken into account during the collection of information so that the Union's response measures are feasible in practice. See also comment in line 69.	(b) the interaction of such measures with relevant Member State legislation and obligations under international law;
93	(c) the administrative burden which may be occasioned by such measures;		
94	(d) the Union's interest.		
95	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).		
96	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.		
97	Article 12 Confidentiality		



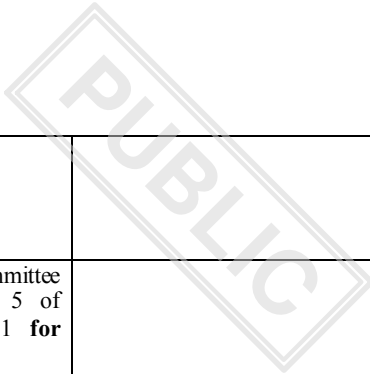
98	1. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.		
99	2. The supplier of information may request that information supplied be treated as confidential. In such cases, it shall be accompanied by a non-confidential summary or a statement of the reasons why the information 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.		
100	3. Paragraph 2 shall not preclude the Commission to disclose general information in a summary form, which does not contain information allowing to identify the supplier of the information. Such disclosure shall take into account the legitimate interest of the parties concerned in not having confidential information disclosed.		
101	Article 13 Rules of origin		
102	1. The origin or nationality of a good, service, service provider, investment or intellectual property rightholder shall be determined in accordance with Annex II.		
103	2. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend points 2 to 4 of Annex II in order to amend the rules of origin and add any other technical rules necessary for the application of the Regulation, to ensure its effectiveness and to take account of relevant	Procedures for determining the rules of origin and any other technical rules need to be harmonized for all EU regulations (and, of course, in accordance with WTO rules). The power of the Commission to adopt delegated acts to amend points 2 to	



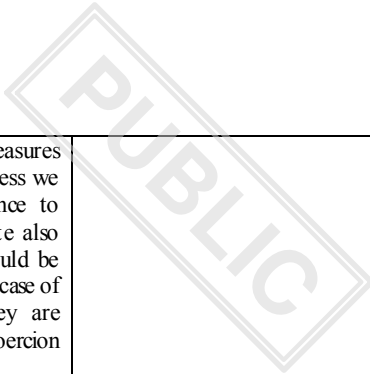
	developments in international instruments and experience in the application of measures under this Regulation or other Union acts.	4 of Annex II should be conditional on compliance with this rule. In this respect we would like to ask the Commission for clarification of following situation. In Enforcement regulation the Commission is not empowered to adopt delegated acts in order to amend the rules of origin. Therefore, if the rules of origin were changed in ACI regulation then they would differ from rules of origin in Enforcement regulation. This divergency could affect clarity of EU legislation.	
104	Article 14 Delegated Acts	The CZ does not agree with using delegated acts to amend the list provided for in Annex I (Article 7(7)). Annex I is an essential part of the Regulation.	
105	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.		
106	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 from [date of entry into force].		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 from [date of entry into force].
107	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		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



	specified therein. It shall not affect the validity of any delegated acts already in force.		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.
108	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.		
109	5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.		
110	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.		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.
111	Article 15 Committee procedure		



112	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.		
113	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.	<p>The CZ does not agree with committee procedure according to Article 5 of Regulation (EU) No 182/2011 for adopting EU response measures.</p> <p>By adopting response measures the EU steps outside the WTO/trade rules and argues that there has been a violation of international law. Therefore, such decision is not usual trade policy decision and would have far-reaching foreign policy implications and should not be treated as ordinary trade policy issue. Such decision should be made by QMV of Member States by Council implementing act pursuant to Article 291 (2) TFEU.</p>	
114	3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011 in conjunction with Article 5 thereof, shall apply.	<p>The CZ fully supports use of committee procedure pursuant to Article 8 of Regulation (EU) No 182/2011 where the economic coercion has ceased or 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, or where a mutually agreed solution has been reached.</p>	
115	<p style="text-align: center;">Article 16</p> <p style="text-align: center;">Review</p>		



116	1. The Commission shall evaluate any Union response measure adopted pursuant to Article 7 six months after its termination, taking into account stakeholder input and any other relevant information. The evaluation report shall examine the effectiveness and operation of the Union response measure, and draw possible conclusions for future measures.	It is important to evaluate the measures after their termination, nevertheless we see as of the same importance to continuously monitor and evaluate also measures in force, so the EU would be able to deduce for example, in the case of long-lasting measures, why they are unsuccessful in cessation of the coercion and how to properly adjust them.	
117	2. No later than three years after the adoption of the first implementing act under this Regulation or six years after the entry into force of this Regulation, whichever is earlier, the Commission shall review this Regulation and its implementation and shall report to the European Parliament and the Council.		
118	Article 17 Entry into force		
119	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	We reserve the right to comment at a later stage; after detailed discussion on practical implementation of some of the individual measures (e.g. services, investment, IPR) at national level.	
120	This Regulation shall be binding in its entirety and directly applicable in all Member States.		
	END	END	END

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**

Annexes 1 and 2

	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
121	<p style="text-align: center;"><u>ANNEX I</u></p> <p>Union response measures pursuant to Articles 7 and 8</p>	<p>The CZ is of the opinion that measures which may be adopted pursuant to Articles 7 and 8 are essential part of the Regulation and as such should be part of the Regulation text, not an annex.</p> <p>We would appreciate from the Commission some concrete examples for each of the category of proposed measures.</p>	
122	Measures which may be adopted pursuant to Articles 7 and 8 are:		
123	(a) the suspension of 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;		

124	(b) the 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;		
125	(c) the 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.		
126	(d) the suspension of applicable international obligations concerning the right to participate in tender procedures in the area of public procurement, as necessary, and:	<p>We would like to ask the Commission to clarify whether the measures would apply to all goods, services or suppliers of goods or services of the third country concerned or merely to specific suppliers linked to coercion. Or would it be decided on a case-by-case basis?</p> <p>We draw attention to the cumulation of measures in the area of public procurement (foreign subsidies instrument, IPI, ACI). It is necessary to properly consider the cumulative effects of these measures and ensure their use does not go against the interests of the EU.</p> <p>It is important to ensure coherence among different regulations in order to avoid two or more parallel systems with different rules. Compliance with different set of rules would lead to legal uncertainty and significant complications in procurement procedures, and last but not least, would place a significant burden on contracting authorities.</p>	

127	(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 of goods or services of the third country concerned; and/or		
128	(ii) the imposition of a mandatory price evaluation weighting penalty on tenders of goods, services or suppliers of goods or services of the third country concerned.		
129	1 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.	Would the price penalty affect the final price to be paid or is it intended only for the purpose of evaluation?	
130	Origin shall be determined on the basis of Annex II;		
131	(e) the suspension of applicable international obligations, as necessary, and the imposition of restrictions on the exportation of goods falling under the Union export control regime;	We would like to point out that such measure should be used only in exceptionally severe situations. Export controls are subject to rules adopted by consensus of all members of multilateral control regimes. The EU is not a member of all of them. In this respect it is unclear how would the EC unilaterally suspend such international obligations of Member States, considering that export controls are also in Member States' competence. We would also like to ask about specific examples of these restrictions that the Commission has in mind.	


132	(f) the suspension of applicable international obligations regarding trade in services, as necessary, and the imposition of measures affecting trade in services;	<p>The CZ has many questions about the practical functioning of response measures in this area.</p> <p>Firstly, we would like to note that it might be difficult for measures of this kind to be adopted and suspended quickly.</p> <ul style="list-style-type: none"> • Could the Commission comment on what modes of supply would be affected (e.g. limiting cross-border provision of some services is difficult to imagine). • In addition, for supplying some services no licence or permit is needed (at national level no specific legislation applies, professional chambers do not function as a regulator). Therefore, restrictions in those fields would be difficult to implement and enforce at national level. • It is also not clear how the service sectors, to which the measures should apply, would be determined (on basis of what criteria etc). • How does the Commission intend to ensure that measures are set up in such a way that they do not harm EU actors more than is absolutely necessary? • Would a similar approach to the Enforcement Regulation be in place (harmonized services at EU level, graded/prioritised approach)? 	
-----	---	--	--

		<ul style="list-style-type: none"> • Would some sectors be implicitly excluded in some way from consideration because restricting them would harm the EU (logistics, ICT)? 	
133	(g) the suspension of applicable international obligations, as necessary, and the imposition of measures affecting foreign direct investment;	<p>We assume that these measures would mean refusing market access in investment (pre-investment phase) and would be limited to FDI.</p> <p>However, could the EC specify what exactly should the measures look like? Would an investment ban apply in a specific case, specific sector, or in general to all investments from a given third country?</p> <p>How would the measure be implemented at national level? For the CZ it is important to avoid any overlap or interconnection with the investment screening mechanism for security reasons. Investment screening has a different purpose and its own specific national processes (notifications, deadlines, government approval) are in place.</p>	
134	(h) the suspension of applicable international obligations with respect to trade-related aspects of intellectual property rights, 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;	<p>The CZ considers application of measures in this area problematic - for example how to determine the right degree of equivalence and how to target only the country in question and its entities.</p> <p>Given the fact that IPR protects unique and innovative products, there may be a risk that by refusing to protect them, they will not enter the EU market at all, which could cause more damage to EU subjects and interests.</p>	

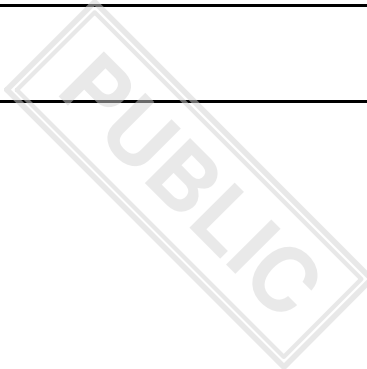
		<p>Moreover, implementation at national level could be also problematic (especially regarding the speed of action). Protection of IPR is based on national / EU legislation. How would the suspension of applicable international obligations work in practice? Limiting the scope of the measures to rights granted by a Union institution or agency and valid for the whole Union (as in the Enforcement Regulation) might be more feasible option. However, there is in any case a risk of undermining the EU's credibility (and legal certainty for foreign investors and bearers of technology and know-how). We also see particular problem in terminating the measures – it is difficult to restore IPR if, for example, the technologies in question have already been adopted by others.</p>	
135	(i) the 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;	<p>The CZ would like to ask for further explanation from the EC. What types of measures could be considered? Could it be, for example, a ban on a financial institution to operate in the territory of a Member State/EU? If so, it is not clear how would the interests of third parties (such as clients of the financial institution concerned) be protected. Furthermore, we would like the EC to specify how would cooperation between the competent authorities (regulators at national level) and the Commission work in imposing such restrictions.</p>	
136	(j) the suspension of applicable international obligations with respect to the treatment of goods, as necessary, and the	<p>The CZ has doubts about the use of these measures.</p>	

	imposition of restrictions on registrations and authorisations under the chemicals legislation of the Union;	<p>Firstly, preventing imports into the EU may be more problematic for the users of the substance than for the third country concerned.</p> <p>Secondly, if the importer met all the registration requirements for the chemical and did not receive the registration, it would not be compliant with REACH.</p> <p>Finally, the chemicals legislation of the Union should be means of protecting health, etc. Using it for other purposes, may undermine the EU's credibility.</p>	
137	(k) the 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;	The CZ has doubts about the use of these measures and ask for further clarification from the EC on how it should work to ensure compatibility with WTO rules and credibility of the EU. SPS measures should only be taken to protect human, animal and plant life or health and must have sufficient scientific evidence for their adoption. Also, as regards certification procedures, they should be carried out and completed without undue delay.	
138	(l) the 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.	No comments at this stage. The CZ would appreciate further information from the EC on how these measures would be applied.	
139	<u>ANNEX II</u> Rules of Origin		
140	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. 2		

141	2 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJL 269, 10.10.2013, p. 1).		
142	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 of the service provider shall be deemed to be:		
143	(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;		
144	(b) in the case of a legal person any of the following:		
145	(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;		
146	(ii) if the service is provided through a commercial presence within the Union,		
147	(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		

148	<p>(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.</p>		
149	<p>(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 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 have the power to name a majority of its directors or otherwise to legally direct its actions.</p>		
150	<p>3. The nationality of an investment shall be:</p>		
151	<p>(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</p>		

	the investment shall be deemed to be that of the Member State in which it is established;		
152	(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;		
153	(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 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.		
154	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.		



	END	END	END
--	------------	------------	------------

PUBLIC