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WORKING DOCUMENT

From:	PT Delegation
To:	Working Party on Trade Questions

Subject:	Anti-Coercion Instrument (ACI) - PT comments on clusters 1-4
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Portuguese comments on the draft 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 (2022-03-31)

1. GENERAL COMMENTS

Portugal welcomes this draft Regulation that represents a new step in completing the EU trade toolbox. It can be very useful in the defense of EU's interests.

We agree with article 207(2) of the TFEU as the legal basis for this Regulation, but we still have doubts if it is sufficient to support all the provisions of this proposal (that is the case of article 5 and 8).

New articles should also be added in order to ensure the legal certainty needed to handle these complex and politically sensitive issues under this Regulation, and also transparency on its implementation. Therefore, we propose the following:

- “Definitions”. To clarify concepts on definitions such as “economic coercion” and “Union interest”;
- “Relationship of this Regulation with other instruments”. There are several situations where actions under this Regulation could be taken in parallel or as an alternative to others taken through different instruments or legal bodies. We consider the need to provide due clarification in the operative part or in the recitals;
- “Reporting”. The Commission should report, in a regular basis, on the implementation of this Regulation to the Council and the European Parliament).

Moreover, we also suggest the amendment of provisions regarding:

- the possibility of acting against threats. If this instrument is minted to be a deterrent against economic coercion, this should be sufficient to prevent such kind of coercive actions from third countries. In addition, acting against “threats” may raise substantive questions of legality under international law and escalate into a diplomatic irritant. Therefore, we suggest deleting that reference in article 2(1) second indent;
- the examination of third-country measures, by introducing clear formal steps on the procedure;
- the role of MS, namely on matters that go beyond the scope of the Common Trade Policy, as well as on its involvement in the several steps laid down in this instrument;
- the amendment of Annexes I and II, as it doesn't seem adequate to use delegated acts to introduce amendments to these two annexes, as these constitute essential elements of the Regulation. Understanding the Commission's argument for a timely action, we consider that this requires further discussion, however, we present as a solution a strengthened scrutiny by MS before the adoption of a delegated act;
- Shorter deadlines for the review of the regulation, which should be carried out in a regular basis, and not in a onetime review as foreseen in the current proposal, considering that global environment is in constant evolution.

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2. SPECIFIC COMMENTS ON 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.		
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.		
			(New) Article 2 Definitions
			<u>(a) "Economic coercion"</u> <u>(b) "Interested party"</u> <u>(c) "Legitimate choices of sovereignty of a Member State"</u> <u>(d) "Union interest"</u> <u>(e) "Other suitable public communication means"</u> <u>(f) "relevant international fora"</u>
4	Article 2 Scope		
5	1. This Regulation applies where a third country:	How will the Commission determine the existence of interference with the legitimate	1. This Regulation applies where a third country: — interferes in the legitimate sovereign choices of the Union or a Member State by

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	— 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.	choices of sovereignty of a Member State? We would like the Commission to further explain how it intends to articulate with the MS target of coercion (We believe such MS must be consulted on this issue). If this instrument is minted to be a deterrent against economic coercion, this should be sufficient on its own to prevent such kind of coercive actions from third countries. Moreover, acting against “threats” may raise substantive questions of legality under international law and escalate into a diplomatic irritant.	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.
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:		
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;		

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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	At this stage the investigation is still examining if the measures meet the conditions set out in Article 2(1). Therefore, these should be referred as “alleged” measures. This procedure should be called an investigation (in line with the vocabulary from other trade policy instruments).	Article 3 <u>Investigation on alleged third-country measures of economic coercion</u>
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.	Deleted (integrated in the next paragraph; we find it redundant to have this content in a separate paragraph).	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.
	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.	After listening the explanations given during the WPTQ held on 2 nd February, we still consider that an investigation (not examination) should be formally triggered through the publication of a notice on the OJEU. Moreover, we also consider more adequate to call the authors of a complaint as “interest parties” in line with other EU’ trade policy instruments.	<u>21. If the Commission considers it to be in the interest of the Union it</u> The Commission may, carry out the examination referred to in paragraph 1 <u>on its own initiative or upon a substantiated complaint of an interested party or a Member State, initiate an investigation into 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 without unreasonable delay by publishing a notice in the Official Journal of the European Union or through other suitable public communication means. The notice of initiation shall include the Commission's preliminary assessment of the third country</u>

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		The third country concerned should be always notified and invited to submit its views, as a matter of good diplomacy and transparency.	<u>measure and invite interested parties and Member States to provide all relevant information to the Commission within a specified period of time.</u> expeditiously, 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. <u>Upon publication of the notice, the Commission shall invite the third country concerned to submit its views.</u>
16	3. The Commission may seek information about the impact of the measures of the third country concerned.	Additional drafting taking into account the explanations given by the Commission during the WPTQ held on 2nd February.	32. The Commission may seek additional information about the impact of the measures of the third country concerned, <u>in the need to complement the information received from interested parties or Member States.</u>
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.	Deleted due to the suggested drafting on paragraph 1.	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.
18	Article 4 Determination with regard to the third-country measure		
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		<u>1.</u> Following an examination investigation carried out in accordance with Article 3, the Commission shall inform the third country concerned of its findings and invite to submit further observations, before adopt submitting to the Committee referred in article in article 15 a decision report

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			determining whether the measure of the third country concerned meets the conditions set out in Article 2(1) <u>and what should be the adequate course of action.</u> The Commission shall act expeditiously <u>without unreasonable delay.</u>
20	Prior to adopting its decision, the Commission may invite the third country concerned to submit its observations.	Deleted due to suggested drafting in previous paragraph.	Prior to adopting its decision, the Commission may invite the third country concerned to submit its 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.	New drafting to align with previous paragraph.	<u>2.</u> Where the Commission decides <u>finds</u> 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 <u>definitive findings</u> and request it to cease the economic coercion and, where appropriate, repair the injury suffered by the Union or its Member States.
		New paragraph to consider the situation where the Commission concludes that the alleged measure of the third country concerned does not meet the conditions set out in Article 2(1).	<u>3. Where the Commission finds that the alleged measure of the third country concerned does not meet the conditions set out in Article 2(1), it shall terminate the investigation, notify the third country and the Member States within the Committee refereed in article 15, accordingly, and publish a notice of termination in the Official Journal of the European Union.</u>
22	Article 5 Engagement with the third country concerned		
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:	MS need to be consulted in each step of the procedures under this instrument.	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

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			coercion. <u>The Commission shall consult Member States within the Committee referred in article 15 on which would be the best such options to pursue, that</u> 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.	MS need to be informed regularly	The Commission shall <u>regularly inform the Member States within the Committee referred in Article 15,</u> 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.		
30	Article 6 International cooperation		
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.		<u>1.</u> 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.

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		MS need to be informed regularly	<u>2. The Commission shall regularly inform the Member States within the Committee referred in Article 15, the European Parliament and the Council of relevant developments.</u>
	END	END	END

Portugal reserves the right to make further comments in the near future.

1. GENERAL COMMENTS

We propose two new articles, in order to clarify the relationship with other instruments, as well as the periodic reporting to the European Parliament and to the Council on the application of this Regulation.

We agree with article 207(2) of the TFEU as the legal basis for this Regulation, but we still have doubts if it is sufficient to support all the provisions of this proposal (e.g., article 8).

According to Article 290(1) of the TFEU, a legislative act may only delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

2. SPECIFIC COMMENTS ON 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:		
34	(a) action pursuant to the Articles 4 and 5 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		
36	(c) action is in the Union's interest.		
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.	We propose the addition of a new article YY, in order to clarify the relationship of ACI with other existing instruments.	In the implementing act, the Commission shall also determine the appropriate Union response from the measures provided for in Annex I. Such measures may also apply with regard to natural or legal persons designated in

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			accordance with Article 8. The Commission may also adopt measures which it can take pursuant to other legal instruments, <u>in accordance with article YY.</u>
38	The implementing act shall be adopted in accordance with the examination procedure referred to in Article 15(2).		
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.		

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42	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.		
43	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.		
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:	We believe the list provided for in Annex I to be an essential element of the Regulation. As such, the power to adopt non-legislative acts for its amendment cannot be delegated to the Commission. We need to further discuss the Commission's argument that the use of delegated acts is needed to swiftly amend Annex I. In this case an alternative solution should be sought (Cf. our drafting suggestion on article 14(4) [N.108]).	
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;		
46	(b) provide as effective or more effective relief to economic operators within the Union affected by the measures of economic coercion;		

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47	(c) avoid or minimise the negative impact on affected actors; or		
48	(d) avoid or minimise administrative complexity and costs.		
49	Article 8 Union response measures with regard to natural or legal persons	This is another example of an Article that may fall beyond the scope of Article 207 TFEU, in relation, for instance, to the determination of liability for damages (1.b), the Commission's investigation powers (3) or publication of the list of practitioners of coercion. Thus, we reiterate the request for an opinion from the CLS in order to clarify article 207 TFEU as an adequate (and sufficient) legal basis, also in relation to this article.	
50	1. The Commission may provide, in the implementing act referred to in Article 7(1), or in a separate implementing act, that:		
51	(a) legal or natural persons designated in accordance with paragraph 2 point (a) shall be subject to Union response measures; or		
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.		
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).		

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55	2. The Commission may designate a natural or legal person where it finds:		
56	(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.		
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.		
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 economic coercion, taking into account the gravity of the third country's measures and the rights in question.		
62	2. The Commission shall select and design an appropriate response measure taking into account the determination made pursuant to Article 4, the criteria		

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	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:		
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.		
70	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		

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	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:		
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.		
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		
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.		
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		

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	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)		
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.		

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	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.		
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;		

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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		

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	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 right holder 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 developments in international instruments and experience in the application of measures under this Regulation or other Union acts.	We believe that Points 2 to 4 of Annex II are an essential element of the Regulation. As such, the power to adopt non-legislative acts for their amendment cannot be delegated to the Commission. In particular, a delegated act should not change a relevant definition provided by an international agreement. In this sense, paragraph 4 of Annex II should be excluded from the scope of Article 13(2) [Cf. N. 154] We need to further discuss the Commission's argument that the use of delegated acts is needed to swiftly amend Annex I. In this case an alternative solution should be sought (Cf. our drafting suggestion on article 14(4) [N.108]).	<i>[We propose this paragraph to be deleted. If this is not the case, we propose the following redaction:]</i> 2. The Commission is empowered to adopt delegated acts in accordance with Article 14 to amend points 2 to 4 and 3 of Annex II ...
104	Article 14 Delegated Acts		
105	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.		

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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].		
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 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.	We disagree with the use of delegated acts to amend both Annexes I and II of this Regulation, as these are essential elements from the Regulation. [Cf. N. 44 and N.103] We consider that this needs further discussion. An alternative solution could be sought through our drafting suggestion.	4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State <u>within the Committee mentioned under article 15,</u> in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. <u>The Commission shall take in serious consideration Member States' experts views and back out of its intention to adopt a delegated act that receives considerable negative feedback.</u>
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		

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	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.	The implementation act should only be adopted if the committee delivers a positive opinion.	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. <u>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.</u>
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.		
			<u>Article YY</u> <u>Relationship to other instruments</u>
		In order to ensure the legal certainty, it is important to include an article clarifying the relationship of ACI with other instruments, such as the Blocking Statute. We consider that Article 1 is not sufficient to ensure such precision. Furthermore, to invoke the conclusions from the Impact	(Drafting example, subject to the Presidency and Commission's discretion) <u>1. This Regulation is without prejudice to the application of Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation, and its amendments.</u>

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		Assessment Report does not have any legal strength. The fact that some cases arising from economic coercion might be dealt through different ways or even none, as explained by the Commission during the WPTQ meeting of 15th March, underpins the need of having a provision explaining how ACI would be implemented in conjunction with other instruments. Also, such provision should serve to clarify the boundaries of ACI, for instance in what regards bilateral investment agreements (BIT) celebrated between MS and a third countries	<u>2. This Regulation is without prejudice to any ongoing dispute under WTO Dispute Settlement mechanism of or under any bilateral agreement celebrated by the EU or its Member States.</u> <u>3. Measures pursuant to this Regulation shall not be imposed or maintained in case such measures would be contrary to the Union's or Member States obligations under other relevant international agreements.</u>
			<u>Article WW</u> <u>Reporting</u>
			<u>Three years after the date of entry into force of this Regulation and at least every two years thereafter, the Commission shall submit a report to the European Parliament and to the Council on the application of this Regulation.</u>
115	Article 16 Review		
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.	We agree with the need to carry out such evaluation in order to ensure the necessary effectiveness and efficiency of measures under ACI.	1. The Commission shall evaluate any Union response measure adopted pursuant to Article 7 six months after its termination, taking into account stakeholders' inputs and any other relevant information. This evaluation report

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		Furthermore, we believe such evaluation should to be presented to MS experts within the ACI Committee.	shall examine the effectiveness and operation of the Union response measure, and draw possible conclusions for <u>the imposition of future measures, and shall be taken into account in the reviews foreseen under article WW. The Commission shall report such evaluation to the experts designated by each Member State within the Committee mentioned under article 15.</u>
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.	This review and report exercise should be regular.	No later than three years after the adoption of the first implementing act under this Regulation or six five years after the entry into force of this Regulation, whichever is earlier, <u>and every five years thereafter,</u> the Commission shall review <u>the scope, functioning and efficiency of</u> 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.		
120	This Regulation shall be binding in its entirety and directly applicable in all Member States.		
	END	END	END

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3. SPECIFIC COMMENTS ON ANNEXES 1 AND 2

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121	<u>ANNEX I</u> Union response measures pursuant to Articles 7 and 8		
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:	It should be clearly stated that such suspension will not be applicable to tender procedures already ongoing	
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	It should be clearly stated that such exclusions will not be applicable to tender procedures already ongoing	

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128	(ii) the imposition of a mandatory price evaluation weighting penalty ¹ on tenders of goods, services or suppliers of goods or services of the third country concerned.	It should be clearly stated that such penalties will not be applicable to tender procedures already ongoing.	
		It should be clearly stated that such suspensions, exclusions or penalties will not be applicable to tender procedures already ongoing, in order to avoid legal uncertainty and an unnecessary administrative burden to the contracting authorities or entities responsible for public procurement procedures.	<i>[additional text to (d), after (i) and (ii)]:</i> <u>The suspensions, exclusions or penalties referred to in this paragraph shall only be applicable to tender procedures initiated after the entering into force of the act implementing such suspensions, exclusions or penalties.</u>
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.		
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;		
132	(f) the suspension of applicable international obligations regarding trade in services, as necessary, and the imposition of measures affecting trade in services;		
133	(g) the suspension of applicable international obligations, as necessary, and the imposition of measures affecting foreign direct investment;		
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;		
135	(i) the suspension of applicable international obligations with respect to financial services, as necessary, and the imposition of restrictions for		

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	banking, insurance, access to Union capital markets and other financial service activities;		
136	(j) the 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;		
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;		
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.		
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 (OJ L 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:	Text similar to Article 6(2) of Regulation N. 654/2014 (enforcement) – which cannot be altered by a delegated act. As such, an amendment to this text could originate a divergence between this proposal and the enforcement regulation.	
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:		

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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	(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.		
149	(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.		
150	3. The nationality of an investment shall be:		
151	(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		

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	State the nationality of 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.	A delegated act should not be entitled to adopt a different definition of "nationals" other than the one provided by TRIPS [Cf. N. 103]. Same text as in Article 6(3) of Regulation N. 654/2014 (enforcement) – which cannot be altered by a delegated act. As such, any amendment to this text would originate a divergence between this proposal and the enforcement regulation.	
	END	END	END

Portugal reserves the right to make further comments in the near future.