



Council of the European Union
General Secretariat

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

Brussels, 25 April 2022

WK 5902/2022 INIT

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WORKING DOCUMENT

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



Council of the European Union
General Secretariat

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

Brussels, 21 February 2022

WK 2463/2022 INIT

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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Trade Questions
Subject:	Anti-Coercion Instrument (ACI) - Request for written comments on clusters 1 and 2

Delegations are kindly invited to submit their views and comments in writing on clusters 1 and 2 (articles 1, 2, 3, 4, 5 and 6) of the Anti-Coercion Instrument **by 11 March (cob)** to the Presidency (Francois.BAZANTAY@dgtresor.gouv.fr and sarah.morvan@dgtresor.gouv.fr) and Polcom secretariat (polcom@consilium.europa.eu).

Presidency intention is to consolidate all the comments thereafter.

**Table for MS comments on the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the protection of the Union and its Member States from economic coercion by third countries**

Articles 1 to 6

	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of the Union and its Member States from economic coercion by third countries	MS comments or questions	MS drafting suggestions
1	Article 1 Subject-matter		
2	1. This Regulation lays down rules and procedures in order to ensure the effective protection of the interests of the Union and its Member States where a third country seeks, through measures affecting trade or investment, to coerce the Union or a Member State into adopting or refraining from adopting a particular act. This Regulation provides a framework for the Union to respond in such situations with the objective to deter, or have the third country desist from such actions, whilst permitting the Union, in the last resort, to counteract such actions.		
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.		
4	Article 2 Scope		

5	1. This Regulation applies where a third country: – interferes in the legitimate sovereign choices of the Union or a Member State by seeking to prevent or obtain the cessation, 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.	How will the Commission classify something as a threat? How does the Commission plan on quantifying a threat (as opposed to a specific action by a third country) in order to be able to respond in a matter that is proportionate with the injury suffered by the EU?	DK suggests deleting: "<i>or threatening to apply</i>"
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;		
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		
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.	How and when will Member States be kept informed when the Commission is examining a certain third country measure?	DK suggests adding: " <i>The Commission shall inform Member States of any such examinations.</i> "
15	2. The Commission may carry out the examination referred to in paragraph 1 on its own initiative or following information received from any source. The Commission shall ensure the protection of confidential information in line with Article 12, which may include the identity of the supplier of the information.		
16	3. The Commission may seek information about the impact of the measures of the third country concerned.	The impact of the measures of the third country concerned should be included in the examination.	DK suggests replacing "may" with "shall".
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.		DK suggests replacing "may" with "shall".
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	Will this decision be published in the Official Journal of the European Union?	DK suggests adding: " <i>The Commission shall publish a notice of initiation in the Official Journal of the European Union</i> "

	measure of the third country concerned meets the conditions set out in Article 2(1). The Commission shall act expeditiously.	Will the decision be in the form of a "notice of initiation of an investigation"?	<i>"The Commission shall provide information to the Member States concerning its analysis prior to the publication of the notice of initiation"</i>
20	Prior to adopting its decision, the Commission may invite the third country concerned to submit its observations.	For the sake of deterrence, the Commission should commit to engaging with the third country this stage.	DK suggests changing "may" to "shall".
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.		
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:		
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.	Could the Commission provide examples of what would constitute relevant developments and (more importantly) what would be irrelevant developments?	DK suggests amending the sentence, replacing " <i>relevant</i> " with " <i>any</i> ".
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.	We note that there is nothing in the articles on time limits for the Commission in the engagement with third countries - how long does the Commission intend to engage in negotiations with the third country, before moving on to Union response measures in line with Article 7?	
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.	Article 5 and 6 both refer to relevant international fora - is it the WTO that is referred to here? What are examples of other relevant international fora?	
	END	END	END