

EU anti-coercion instrument

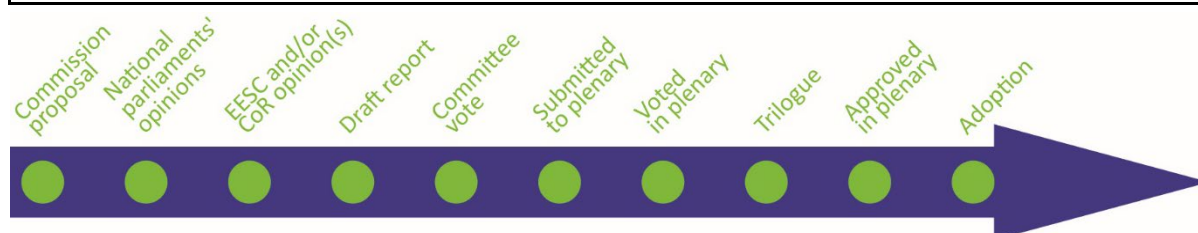
OVERVIEW

It is widely held that geopolitical tensions in the world are on the rise. One of the clear indicators of this phenomenon is the increasing use of economic tools for the pursuit of strategic and geopolitical goals. This can take the form of coercion used by one country against another through restrictions on trade or investment in order to interfere with their sovereign choices. In response to the EU and its Member States becoming the target of deliberate economic coercion in recent years, on 8 December 2021 the Commission published a proposal for the adoption of an anti-coercion instrument that would allow the EU to respond more effectively to such challenges on a global scale.

While the new framework is primarily designed to deter economic coercive action through dialogue and engagement, it also allows – as a last resort – retaliation, with countermeasures comprising a wide range of restrictions relating to trade, investment and funding. While there is broad support for creating a legislative tool to address the growing problem of economic coercion, expert opinions were divided as regards the severity of countermeasures and the manner of establishing when they should be imposed.

The Parliament adopted its position in plenary in October 2022, and trilogue negotiations concluded successfully in June 2023. Parliament approved the agreement in plenary by a large majority on 3 October 2023 and the final act was signed on 22 November 2023. The regulation entered into force on 27 December 2023.

Regulation (EU) 2023/2675 of the European Parliament and of the Council of 22 November 2023 on the protection of the Union and its Member States from economic coercion by third countries		
<i>Committee responsible:</i>	International Trade (INTA)	COM(2021) 775 8.12.2021
<i>Rapporteur:</i>	Bernd Lange (S&D, Germany)	2021/0406(COD)
<i>Shadow rapporteurs:</i>	Anna-Michelle Asimakopoulou (EPP, Greece) Marie-Pierre Vedrenne (Renew, France) Reinhard Bütikofer (Greens/EFA, Germany) Roman Haider (ID, Germany) Michiel Hoogeveen (ERC, Belgium) Helmut Scholz (The Left, Germany)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Procedure completed:</i>	Regulation (EU) 2023/2675 OJ L 2023/2675, 07.12.2023	



Introduction

The Commission defines [economic coercion](#) as: 'interfering with 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'. The European Parliament and a number of Member States first expressed concerns about economic coercion in 2020, during the legislative process launched to amend the [EU Trade Enforcement Regulation](#). The Commission shared these concerns and took note of the Parliament's call for new measures to address them. This resulted in a [joint declaration](#) of the Commission, the Council and the Parliament on an instrument to deter and counteract coercive action by third countries, which was published together with the amended Trade Enforcement Regulation. As per the commitment made in its [2021 work programme](#), the Commission tabled a legislative proposal on 8 December 2022.

Context

The EU is a staunch advocate and a major beneficiary of the [rules-based international order](#), which is underpinned by multilateral cooperation and a globalised economy interconnected through free markets, open trade and finance. It is widely held that this order is increasingly [challenged](#): in the area of trade and economy, this finds expression in issues such as a [weakened role of the WTO](#), the rise of [protectionism](#), and increasing deployment of economic policy as a [geopolitical tool](#). The pandemic has exacerbated other undesirable trends, such as increased uncertainty, aggravated tensions between major players and a switch to [unilateral measures](#), which all pose [threats to stability](#). The EU responds to these challenges by building up its [open strategic autonomy](#): even if the exact definition of this concept is still being [debated](#), it essentially means taking an active role in shaping global economic governance, strengthening multilateralism, reinforcing existing alliances and forging mutually beneficial new relations, while remaining open to trade and investment. At the same time, it means that the EU is becoming more assertive and resilient to unfair and abusive practices and economic distortions, while shaping a greener and fairer world. The scope of the policy toolbox related to strategic autonomy has been [expanding](#) for some time, and the 2021 [trade policy review](#), as shown in Table 1 below, adds further details on planned initiatives.

Table 1 – EU trade and investment initiatives contributing to open strategic autonomy

Tackle economic distortions	Defend against economic coercion & extraterritoriality	Link values and sustainability	Ensure resilience of critical infrastructure & supply
Trade defence instruments	Anti-coercion Instrument	Carbon Border Adjustment Mechanism	Foreign direct investment screening framework
Foreign Subsidies Regulation	Blocking statute	Due diligence & conflict minerals	Strategic dependencies: industrial alliances , IPCEI , critical raw materials
International Procurement Instrument	Financial resilience	Dual-use export controls & human rights sanctions	International partnerships
Enforcement Regulation & Chief Trade Enforcement Officer	INSTEX	EU trade agreements & export credits strategy	5G toolbox

Data source: Author's compilation based on T. Gerhke, [Threading the trade needle on Open Strategic Autonomy](#), 2021.

As underlined by the Commission Executive Vice-President responsible for Trade, [Valdis Dombrovskis](#), 'at a time of rising geopolitical tensions, trade is increasingly being weaponised and the EU and its Member States [are] becoming targets of economic intimidation'. Coercive practices aim to influence the sovereign choices of the EU and its Member States; for example, a third country may attempt to deter them from introducing a measure or to shape their future regulatory initiatives by introducing or threatening to introduce – which can also be effective – its own measures affecting their trade and investment in ways that are unfavourable to them.

In the 2021 [public consultation](#) it held before tabling the proposal, the Commission gathered examples of what stakeholders consider to be relevant coercive measures applied by various countries.¹ These include enforcing administrative rules in an excessively strict and burdensome way, causing deliberate delays, denying or delaying the granting of licences or authorisations necessary to engage in business activities, or extending the processing time for product authorisations issued to foreign manufacturers. Other examples include imposing scientifically unjustified sanitary and phytosanitary measures or placing new barriers to market entry, such as higher local-content requirements in public procurement. Yet other examples include introducing extra, discriminatory import duties and targeted border or safety checks on goods from a given EU country. A final set of examples includes illegal expatriation and an overall state-organised boycott against the goods or investors from a country that criticises the actions of a coercive country.

The [repercussions](#) and pressure such actions create are felt in the EU in a variety of ways. For instance, enterprises directly engaged in trade and investment in a third country could bear direct economic costs, such as a loss of jobs or opportunities, which may negatively affect their growth and business model. Importantly, even short-term coercive measures may have long-term effects on third-country consumers who refrain from purchasing EU products. Sometimes not the measures themselves but just the [threat](#) of introducing them is sufficient, as it creates uncertainty, unsettles business strategies and has negative impacts on commercial contractual relations. Furthermore, some measures are introduced instantly or overnight, making any advance reaction or dialogue impossible. Another issue is the under-reporting of coercive measures by EU companies and even entire sectors, due to fear of retaliation or further escalation.

Case in point – Lithuania and China

In May 2021, Lithuania announced its withdrawal from the [17+1 format](#): a cooperation [framework](#) between China and eastern European countries. Following that, Lithuania's military intelligence and Defence Ministry highlighted risks to [national security and cybersecurity](#) posed by Chinese technology companies operating in Lithuania. In July 2021, the Lithuanian Foreign Ministry announced the forthcoming opening of a 'Taiwanese representative office' in Vilnius and a Lithuanian trade office in Taipei. The [Taiwanese office](#) opened in Vilnius on 18 November 2021 (other Taiwanese offices in Europe and the United States use the name Taipei).

In September 2021, [Lithuanian businesses](#) reported that their Chinese trading partners were not renewing their existing contracts or concluding new ones with them and that they were having problems with the supply of some raw materials. Their Chinese providers blamed [power cuts](#) for the shortages. [Reports](#) surfaced about threats to the [future of Lithuanian enterprises](#) in China, refusals of food export permits to Lithuanian firms, and closure of various financial institutions cooperating with Lithuanian exporters. On 1 December 2021, Lithuania [disappeared](#) from the Chinese customs administration's country list, which effectively meant Lithuanian exporters were no longer able to file customs paperwork. Lithuania reappeared on China's customs' list a week later, but shipments were still not being cleared and [import applications](#) from Lithuania were being rejected. China also started [blocking imports](#) from other EU countries that contained [components from Lithuania](#). Beijing denied having launched a [trade boycott](#) against Lithuania. The combination of trade and investment sanctions could lead to a drop in Lithuania's GDP by 0.6 % in 2022 and 1.5 % in 2023, and heavily affect some sectors, such as laser production. Medium and long-term [effects](#) may be more severe.

Not only is economic coercion on the rise but global trade and economic [interdependencies](#) are increasingly weaponised as well. A number of empirical studies illustrate this trend. For instance, a 2021 [paper](#) concludes that open military conflicts have to a large extent been replaced by economic coercion, and that the latter represents the new exercise of power among countries. A 2020 paper

highlights that the 2010-2020 decade had the highest average number of [trade sanctions](#) imposed per decade since the 1950s, increasing by 80 % from the 2000s. While noting the increase, an article by the [Danish Institute for Foreign Studies](#) analyses Chinese coercive policies and their impact, and concludes that 'International reporting often overdramatizes the economic damage done by China by not weighing the relative value of restricted goods with the targeted country's total trade'. The institute argues that thus far Beijing has been applying limited economic pressure on its trading partners to suit its own trade and investment interests, but this may change particularly if China achieves greater [self-reliance](#) in strategic sectors. The EU is now the [largest target](#) of Chinese coercive measures (including economic coercion); some experts say risks are on the [rise](#).

A 2021 [joint report](#) by the Asia Society Policy Institute and the Perth USAsia Centre also concludes that coercive practices are growing and posing a significant threat to the global trading system. Coercion infringes on the core WTO principles of non-discrimination and transparency. Furthermore, it disproportionately affects small and medium-sized countries, which do not have the capacity to retaliate, and erodes trust in rules-based approaches to trade.

Existing situation

In the explanatory memorandum to the proposal, the Commission states that it aims to close an important legislative gap concerning the increasingly prominent issue of economic coercion. As things stand, the EU does not have a legislative instrument to address this issue.

The [impact assessment](#) accompanying the proposal explains its broader context: 'Coercive measures by third countries targeting the EU or Member States can be considered a breach of customary international law, which prohibits certain forms of interference in the affairs of another subject of international law when there is no basis in international law for doing so'. The EU and its Member States have the right to launch countermeasures if the coercive act breaches international law. If this is not the case, they still have the right to resort to 'retorsion'.² However, the means under international law cannot be deployed by the EU unless it is granted the respective powers to act, namely through the [principle of conferral](#).

Explicit coercion

This type of coercion is based on the use of formal measures. For instance, the US Trade Act of 1974 ([Section 301](#)) has been used to launch trade-restrictive actions (or to threaten to deploy them) with the aim to influence a foreign country to cease applying a measure that the US perceived as unreasonable and unfairly harmful to its commercial interests. More specifically, the US has used threats to impose [import duties](#) on some EU Member States in its attempt to influence their stance on the digital services taxes. It is these moves, among others, that kindled the debate on a future anti-coercion instrument.

Countries affected by economic coercion tend to resort to the WTO dispute settlement system. [Australia](#), frequently subjected to coercive practices by China, shared its [concern](#) with the WTO bodies, alleging that these practices infringe WTO rules.³ Similarly, Canada successfully asked for the establishment of a panel in another possibly coercive case.⁴ The EU has also launched a [case against China](#) for its treatment of Lithuania. However, some experts believe that the WTO dispute settlement system, already weakened, is not [effective](#) in addressing all the infringements. They blame this on lengthy procedures, lack of interim relief measures, problems with enforcement of decisions and the fact that the dispute settlement system is not [fit](#) to offer remedies for victims of trade coercion, including because it does not offer compensation for [past injuries](#).

Importantly, the Commission impact assessment explains that economic coercion falls outside the [WTO's scope](#): 'WTO disputes can only deal with the WTO-inconsistency of the measures in question, not the separate infringement of general international law that lies in the coercive act and intention. The latter does not fall in the remit of the WTO dispute settlement system'. For example, in countries where the economy is controlled by the ruling political party, there is a wide range of [informal coercive measures](#) (such as ordering companies to stop imports of goods or ordering travel agencies to stop tourism to a country that is subject to sanctions), which are [not covered](#) by the WTO rulebook yet are increasingly deployed. Therefore, the impact assessment argues that a dedicated instrument

that addresses such coercive practices is needed. Targeted countries deal with coercion in many ways that are not obvious, ranging from accepting it and trying to minimise the commercial damage, not reporting it to international bodies, or giving disguised responses outside a rules-based framework. The EU cannot act in this way, since it needs a legal basis for an EU-level response.

Comparative elements

The US has a tool that can be used to [coerce](#) other countries but also to address measures directed against it: [Section 301](#) of the 1974 US Trade Act allows for actions to be taken against acts, policies or practices that are unjustifiable (i.e. inconsistent with US international legal rights). Such actions include imposition of duties or other import restrictions and withdrawal or suspension of trade agreement concessions. It has been used mostly in relation to [WTO cases](#). In October 2021, a bipartisan [Countering China Economic Coercion Act](#) was submitted to Congress for consideration. If approved, it would set up a high-level inter-agency [task force](#) to streamline tools and mechanisms for deterring and targeting China's economic coercion. It is also aimed at boosting cooperation with the domestic private sector and with US allies and partners.

Australia has chosen to [redirect its exports](#) away from China by focusing on some new free trade agreements. [The Agri-Business Expansion Initiative](#) gives grants, market information and technical assistance to businesses to help them expand abroad beyond the Chinese market.

China, despite being a textbook case of a country deploying coercion – or maybe because of that – adopted its own [Anti-Foreign-Sanctions Law](#) in June 2021. This law prohibits Chinese and foreign organisations and individuals from helping to enforce 'harmful' foreign policy of other states, and provides financial compensation to Chinese companies affected by the measures imposed on them abroad. It also provides for far-reaching countermeasures against a wide range of players and actions. These players cover any individual, their spouses and immediate family members and any organisation and its management, which are directly or indirectly involved in the formulation, adoption and implementation of the foreign 'harmful actions'. The countermeasures include a ban on travel to mainland China, Hong Kong and Macao, freezing of assets, and prohibition or restriction on doing business with listed persons and organisations and entities associated with them.

Parliament's starting position

During the legislative process on amending the Enforcement Regulation, the Parliament [insisted](#) that the Commission come up with the proposal for an instrument allowing the EU to deter and counteract third countries' attempts to force policy choices on the EU. This has been reiterated in the resolutions on a [Trade Policy Review](#) and on [trade related aspects and implications of COVID-19](#).

Council starting position

In the [joint declaration](#) annexed to the adopted Trade Enforcement Regulation, the Council (together with the Parliament) committed to fulfilling its institutional role as co-legislator and to considering the anti-coercion instrument (ACI) proposal in a timely manner. This would be done by 'taking into account the Union's obligations under public international law and WTO law as well as relevant developments in international trade'.

Czechia and Sweden submitted [preliminary comments](#) on the ACI to the Commission in November 2021, arguing that 'the use of the instrument must remain an exceptional and last resort

Disguised coercion

This type of coercion occurs when an instrument set up with a legitimate purpose is abused. An example is the excessive or discriminatory use of sanitary and phytosanitary measures. For example, in 2014, the Russian food hygiene authorities [banned imports](#) of fruit and vegetables from Poland on the grounds of public health concerns, following Poland's introduction of sanctions after Russia invaded Ukraine. The [Commission](#) considers that 'the internationally illegal coercion in these cases is unrelated to the question of the possible WTO-illegality of the trade-restrictive measures chosen'.

solution'. They also believe that the ACI would have extensive foreign policy impacts and that therefore the Member States should be fully involved in the decision-making on this proposed instrument. The two countries follow France in holding the [rotating presidency](#) of the Council, and may be involved in shaping the instrument's final form. The French Presidency considered the ACI a [priority](#).

According to the *Financial Times*, Estonia, Finland and Italy are [sceptical](#) towards the ACI, questioning the need for it and being wary of its possibly harmful effects such as escalating trade disputes. Reportedly, Ireland cautions that the instrument should not lead to more [protectionism](#), while France and Germany broadly support it, as it would help the EU defend its interests in an increasingly challenging global environment. Lithuania is in favour of rapid adoption of the ACI.

Preparation of the proposal

The Commission engaged in an intensive [consultation process](#) to collect a wide range of comments from all parties: a stakeholder consultation on the inception impact assessment was followed by a general public consultation, an online stakeholder meeting and exchanges with specific groups including businesses, academia, Member States and governments of third countries.

The feedback received confirmed that economic coercion is a growing and pressing problem that needs to be addressed by a dedicated legislative instrument. A number of examples were given and all stakeholder groups supported the deterrence objective of the instrument, giving priority to non-interventionist measures (e.g. diplomacy). They considered the use of countermeasures as a last resort, arguing that deploying them requires careful advance consideration due to their likelihood of causing collateral damage and escalation of trade conflicts. Before countermeasures are triggered, their impact should be thoroughly analysed and the affected entities properly consulted.

There was also strong emphasis on designing the instrument in a way that is compatible with international law and for engaging in international cooperation against coercive practices. The instrument should be broad enough to also cover informal economic coercion, and the EU should be able to choose from a wide range of response options. The views were mixed on the possible creation of a financial compensation scheme for players affected by coercive measures. Many stakeholders also underlined that the instrument must be coherent with the planned upcoming (Q2 2022) Commission [initiative](#) on reforming the Blocking Statute.

The Commission impact assessment set out three options: 1) no policy change; 2) a new legal instrument (ACI) based on several design parameters; and 3) adding a resilience office overseeing the functioning of the ACI.⁵ Policy option 2 was the preferred one. It would cover explicit, disguised, silent coercion and boycotts as well as extraterritorial sanctions targeting the EU or its Member States. If extraterritorial sanctions are used to pressurise private economic operators, they would be covered by the Blocking Statute, once it is revised. The ACI would be based on a two-step approach, deploying non-interventionist measures before countermeasures are used as a last resort. The [Regulatory Scrutiny Board](#) gave a positive opinion with reservations, asking for instance for greater clarity on the coherence of the new instrument with existing legislative tools (such as the EU

Silent coercion or boycott

These types of coercion manifest as informal restrictions applied by private players who are unofficially instructed to do so by a country's government or are called upon to do so by state-controlled media. For example, EU firms such as Adidas and H&M were subjected to a 'popular boycott' – an increasingly deployed Chinese [sanctions tactic](#) – after the EU imposed travel and financial sanctions on four Chinese officials involved in human rights violations in Xinjiang. Other methods used included [removing the location](#) of stores from maps and ride-hailing applications, removing brands altogether from [major e-commerce apps](#) and removing the apps of sanctioned firms that were previously available for download from the [Huawei app store](#). This was after the companies announced they would stop sourcing cotton from Xinjiang due to the use of forced labour there. There have also been examples of Chinese [travel agents](#) discontinuing the sale of group tours to South Korea after the latter deployed a US anti-missile system, and [Chinese students](#) being warned not to go to Australia due to the risk of racist incidents after the latter asked for an inquiry into the origin of the coronavirus pandemic.

Blocking Statute) and for clearer criteria on the procedure for launching a case and for adopting measures. The assessment was revised accordingly. The EPRS, in its [initial appraisal](#) of the impact assessment, concluded that it focuses mostly on economic impacts, yet addresses social and environmental impacts only briefly. While the proposal generally reflects policy option 2, some elements such as the objectives and definition of economic coercion differ.

The changes the proposal would bring

The aim of the ACI is to effectively protect the EU and its Member States from coercive external measures affecting trade and investment. This is to be achieved by a new framework enabling the EU to respond to such actions through deterrence and – as a last resort – through countermeasures. The figure annexed to this briefing gives a detailed overview of the ACI procedure.

The proposed regulation would apply when two cumulative conditions are fulfilled: i) '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'; such interference involves ii) 'applying or threatening to apply measures affecting trade or investment'. To determine coercion, the Commission should take into account the intensity, severity, frequency, duration, breadth and magnitude of the measure and the pressure it creates. The Commission should examine whether the third country is engaging in a pattern of interference and determine the extent to which the measure encroaches upon an area of sovereignty. It should also take into account whether the third country has made serious attempts, in good faith, to settle the matter through international coordination or adjudication, either bilaterally or through the relevant international forum. The Commission may launch an examination of the coercive measures on its own initiative or following information received from any source. It may also look for information about the impact of the measures and may invite the third country concerned to submit its observations. If existence of coercion is established, the Commission will notify the third country concerned and request it to discontinue its coercive practices and, where appropriate, repair the injury suffered by the EU or its Member States.

Cooperation with the US

Another way of addressing economic coercion is through international cooperation. The US Secretary of State Antony Blinken mentioned during his [2021 speech](#) at NATO headquarters that the US and its allies should work together to reduce common vulnerabilities. That could be achieved by integrating the US' and the allies' economies more closely than the integration they have with their principal competitors and coercers. The joint EU-US June 2021 [summit statement](#) announced increased cooperation as well as information and expertise exchanges in order to counter economic coercion. Furthermore, one of the priority working groups of the EU-US [Trade and Technology Council](#) was tasked with work on common concerns related to economic coercion. Addressing economic coercion has also been discussed at the [high-level meeting](#) of the EU-US Dialogue on China.

The Commission would be open to engage on behalf of the EU with the third country concerned, in order to explore options that would lead to the termination of coercive practices, either through direct negotiations, mediation, good offices or international adjudication. It may also raise the matter in any relevant international forum. The proposal also allows for engagement in international cooperation with other third countries affected by the same or similar measures of economic coercion in order to cease it through finding a multilateral solution.

If no solution can be found and if taking action is deemed necessary and in the EU's interest, the Commission can adopt an implementing act (see box at the end of this section) which specifies the appropriate countermeasures (prepared with the involvement of relevant stakeholders) and a set deadline for its application. When designing the measures, the Commission must seek information on their impact on third-country players or EU competitors, users or consumers; on EU employees, business partners or clients thereof. The Commission must also explore the interaction of such measures with relevant Member State legislation; the possible administrative burden; and the EU's interest. The Commission would notify the third country concerned about the implementing act

and call on that country to abandon the economic coercion, while offering to negotiate a solution. If the coercion ceases before the deadline, the countermeasures would be lifted.

The Commission has the possibility to launch a wide range of countermeasures that are detailed in [Annex I](#) to the proposal, together with any measures pursuant to other legal instruments. The countermeasures may also apply with regard to natural or legal persons when they can be linked to the government of a coercive country or to economic coercion. The measures should be proportionate and effective, and avoid or minimise negative impacts on EU policies and actors.

Potential countermeasures include: i) suspension of tariff concessions and imposition of duties and new charges on goods; ii) import or export restrictions; iii) restrictions on trade in goods, including measures on transiting goods or other internal measures applying to goods; iv) suspension of rights to participate in tender procedures, including exclusions or introduction of a mandatory price evaluation weighing penalty; v) restrictions on the export of goods falling under the EU export control framework; vi) measures affecting trade in services; vii) restrictions on foreign direct investment; viii) constraints on intellectual property rights; ix) restrictions on financial services, including access of banking and insurance firms to EU capital markets; x) imposition of restrictions on registrations and authorisations under the EU chemicals legislation and the EU sanitary and phytosanitary legislation; and xi) exclusion or limited access to EU-funded research programmes.⁶

[Annex II](#) contains specific provisions on determining the rules of origin of goods and services and 'nationality of investments', which would determine if they are the object of the countermeasures. Furthermore, the [communication](#) accompanying the proposal contains information on possible further ways to counter coercion through actions related to EU funding granted to third countries. It mentions actions such as not engaging in new financial commitments, opposing new financing operations, or refraining from proposing new macro-financial assistance to a country in question. The EU may also consider obstructing financing through the [European Investment Bank](#) or the [European Bank for Reconstruction and Development](#).

The adoption, amendment, suspension or termination of countermeasures would be rendered effective through an implementing act adopted by the Commission, subject to the examination procedure under the EU [comitology procedure](#). The latter provides that a committee composed of representatives from all the Member States votes on a formal opinion on the proposed measures. A [qualified majority](#) (55 % of EU countries representing at least 65 % of the total EU population) is necessary for adoption. The proposal provides an exception to this rule: 'On duly justified imperative grounds of urgency to avoid irreparable damage ... the Commission shall adopt immediately applicable implementing acts imposing Union response measures'. These would then be submitted for consideration to the relevant committees. Such implementing acts would remain in force for a maximum of three months. The Parliament would only be able to scrutinise these implementing acts but not to stop them. Widening the range of possible countermeasures and adapting the rules of origin would be carried out through [delegated acts](#), a process through which the Commission prepares and adopts these acts after consulting with [expert groups](#) composed of representatives from each EU country meeting regularly or occasionally. The Parliament should receive all documents in a timely manner, to be able to take part in the preparation of delegated acts; it would have the power to revoke them.

Advisory committees

Neither the European Economic and Social Committee nor the European Committee of the Regions examined the ACI in detail.

National parliaments

The question of the proposal's conformity with the principle of subsidiarity does not apply, as third countries' measures of economic coercion and the EU responses to these fall under common commercial policy, an area in which the EU has exclusive competence. The [national parliaments](#) of Czechia, Germany and Ireland have completed their scrutiny processes. The [Czech Senát](#) stated that the ACI does not afford the Member States sufficient involvement in the decision-making process. It also called for the introduction of a procedure that would allow the Member States to scrutinise

the Commission when it adopts response measures. The [German Bundesrat](#) recommended adding protective mechanisms to the instrument so that it could be handled sensitively and allow easy de-escalation. It also called for giving the Member States a bigger role.

Stakeholder views⁷

According to [BusinessEurope](#) Deputy Director-General, Luisa Santos, the ACI's main purpose must be deterrence. The threat of using countermeasures should be sufficient to persuade their target to abandon their coercive measures.

[Aegis Europe](#), a manufacturing industry alliance, strongly recommends that the [EU-China Comprehensive Agreement on Investment](#) only be ratified after substantial progress has been made on the ACI, which aims 'to provide an adequate level of protection against distortions of competition originating from China'. In its contribution to the consultation with stakeholders, Aegis suggested that the ACI should cover not only actions targeting the EU or its Member States but also actions targeting EU economic operators. It would also like the Commission to have the power to 'require the cooperation of any operator having an EU interest and/or conducting economic activity on the EU market in its investigations' and to impose sanctions in cases of non-cooperation.

The [Federation of German Industries](#) (BDI) supports a legislative solution, but argues that the proposed regulation must not be state-centred, as it is businesses that are primarily affected and bear the brunt of such measures. The BDI supports governments (Council) being in the driving seat, taking decisions based on continuous, structured feedback on economic coercion. It would also like to see the ACI cover secondary financial sanctions and other forms of extraterritoriality.

The European Semiconductor Industry Association ([ESIA](#)) voices support for the ACI, but argues that countermeasures should only be used as a last resort, as they may be counterproductive and cause problems for businesses operating in global supply chains. It prefers that extraterritorial sanctions are covered by a separate instrument.

The [Confederation of Swedish Enterprise](#) calls for assessing the added value of the ACI in relation to the current sanctions framework and to 'the development of a toolbox for countering hybrid threats within the framework of the EU's [Strategic Compass](#) in the field of security and defence'. It voices its support for enabling the ACI to address forms of coercion not directly violating international law. However, it opposes countermeasures that undermine the functioning of the market economy, such as restricting third-country intellectual property rights in the EU, suspending equivalence decisions on the rights of financial operators from third countries, and using food safety regulations or standards for consumer products to block the goods coming into the EU.

[Economiesuisse](#), the federation of Swiss business, argues that lifting countermeasures only after the coercive measures have ceased, limits the room for a negotiated solution. It also warns that the ACI should not create negative effects for uninvolved economic players.

The proposal was open for further [feedback](#) until 1 April 2022, which mostly came from business associations. Most stakeholders welcomed it, underlining that it must be WTO-compliant, that it should not be used lightly, and that it should lead to deterrence and de-escalation of trade conflicts.

Academic views

Niclas Poitiers, a research fellow at [Bruegel](#), claims that, as the ACI is aimed at tackling rapidly evolving trade disputes, it is better suited to react to coercion than the WTO. He also adds that decisions regarding the ACI will not have to be taken with unanimity, as required for decisions on [EU foreign policy](#), and that the ACI therefore stands a better chance to be a believable deterrent.

On the other hand, the [Swedish National China Centre](#), (part of the Swedish Institute of International Affairs) argues that the ACI will not deter China from its increasingly confrontational [course](#), because China will estimate the cost of countermeasures to be lower than the cost of backing away from what it perceives as 'defending its red lines'. This is likely to lead to a damaging spiral of escalating

measures and countermeasures. The centre also believes that, since most cases of coercion are not reported or found out, they would fall outside the scope of the ACI. Instead, it proposes to 'absorb' the effects of coercion by providing support to affected EU players and states – perhaps through a solidarity mechanism – to mitigate the economic fallout and render coercion attempts ineffective.

Law professors Baetens and Bronckers, in an analysis published on the blog of the [European Journal of International Law](#), conclude that 'the exacerbating circumstances listed in the ACI suggest that only instances of *grave* economic coercion will provoke the EU into action'. They argue that the limited scope of the instrument, aimed at deterring the EU's major trading partners from heavy-handed interference, makes sense from the point of view of both international law and politics. However, this should be clearly stated, so that the EU's smaller trade partners would not fear being targeted by the ACI. They recommend deploying the ACI only in major cases and with significant economies in mind. This would also help avoid situations where developing countries benefitting from the General Scheme of Preferences (GSP+, under which the EU can [demand](#) the adoption of certain policies in return for granting zero duties), might claim that it is the EU that is coercing them.

The [European Council on Foreign Relations](#) (ECFR) argues that, as some illegal secondary or extraterritorial coercive measures may remain unaddressed by the ACI, the latter should include a 'flexible resilience mechanism' under which particularly serious instances of such coercion would trigger countermeasures, subject to acceptance by the Member States. The ECFR also proposes including 'withholding investment' in a coercive country in the countermeasures.

The [Danish Institute for Foreign Studies](#) supports using the ACI to deter coercive acts but underlines that it is only a part of the solution: coerced countries need to apply multiple policy approaches to build deterrence, such as launching market diversification strategies and working together to create a joint fund for affected companies and sectors. The institute also proposes offering coerced countries political risk- and credit insurance and pushing the WTO reform. The [Asia Society Policy Institute and the Perth USAsia Centre](#) recommend creating like-minded coalitions to counter coercive practices based on shared intelligence and information, and on coordinated diplomatic responses. Going a step further, the [Center for a New American Security](#) favours applying joint pressure on China by the US, the EU and like-minded allies, through common anti-coercive measures (within international rules and norms and at limits agreed together).

Legislative process

In the European Parliament, the file was allocated to the INTA committee, to which the Commission presented the proposal and its technical aspects on 8 December 2021. The INTA Chair, Bernd Lange (S&D, Germany), was appointed rapporteur on 9 December 2021. A first exchange of views in INTA took place on 25 January 2021, and a [draft report](#) was published on 19 April.

The vote in the INTA committee took place on 10 October 2022. Members put forward some 280 [amendments](#). INTA Members strengthened the binding nature of the new law by linking it to the international law on state responsibility for internationally wrongful acts codified by the UN. They also clarified and widened the definition of coercion and key related notions such as 'third country action or measure' (any type of action or measure, failure to act or threat thereof) and 'Union interest'. Furthermore, the Committee introduced deadlines for identifying coercion and for adopting the response, so that the instrument can be applied in a swift manner. The measures taken should be effective in repairing the injury caused by the economic coercion. The report also requests that the regulation be reviewed three years after entry into force and at the latest every four years thereafter, to ensure its complementarity with the review of the Blocking Statute. It also proposes to task the chief trade enforcement officer with overseeing the functioning and implementation of the instrument. Finally, the [report](#) contains a series of measures to ensure robust democratic scrutiny at all stages, including by the European Parliament. The committee decision to enter into interinstitutional negotiations was confirmed during the second October 2022 plenary session.

The Council agreed on its [negotiating position](#) on 16 November 2022. It sought to hold the power to decide whether or not the EU is being coerced – on the basis of an initial suggestion and recommendation from the Commission – with the final decision to be taken by a qualified majority of Member States. It proposed that the Commission should retain implementing powers in decisions on the EU's response measures but proposes to increase the Member States' involvement in those decisions. The Council's position was that the Commission should not adopt specific trade countermeasures unless the committee responsible in the Council agrees on a common position. The Council also wanted to clarify the notion of 'Union interest' which is used to determine which measures are to be used and their severity. The Council sought to limit the scope of potential retaliatory measures the EU might take and to remove some of them, such as the ban on taking part in tenders or export controls. The Member States also sought more possibilities for consultation and an obligation on the Commission to notify a party about the possibility that it may be targeted by the measures – even before a final decision is taken that they will indeed be targeted.

The trilogue negotiations [commenced](#) in November 2022 and made a [breakthrough](#) on the main outstanding issues after three negotiating rounds in March 2023. Trilogues concluded in June 2023, when Parliament's negotiating team, led by INTA committee Chair, Bernd Lange (S&D, Germany), struck a [final political agreement](#) with the Swedish Presidency. The agreed text clearly defines economic coercion, and permits the EU to act in cases where a third country threatens to apply coercive measures. On Parliament's initiative, the agreed text now features clear timeframes for EU action under the instrument, including for the response to coercion. It was agreed that the Council will determine formally, through a qualified majority vote, whether coercion exists. This determination will be based on a Commission proposal and evidence gathered. The Commission can obtain information on its own initiative or receive it from any reliable source, including a Member State, the European Parliament, economic operators or trade unions. The Commission will then have [implementing powers](#) to decide on possible counter-measures. To increase its transparency and boost its deterrent effect; Parliament's negotiators successfully included a full list of possible responses in the annex to the regulation. Any retaliatory measure should be 'proportionate' to the damage caused and in compliance with international norms. Possible responses include imposition of new or increased customs duties, restrictions in trade of goods and services (through measures such as quotas, import or export licences), intellectual property rights and foreign direct investment (equivalent to non-performance of applicable international obligations). The EU will also be able to impose constraints on access to the public procurement market and capital market. Furthermore, Parliament's negotiators introduced robust democratic controls with regard to the substance and the procedure. Parliament also ensured that the EU would be able to request that the third country repair the injury caused by its economically coercive practices. The Commission may also apply measures to enforce these reparations.

The INTA committee approved the agreement on 26 June 2023. Parliament adopted the text in plenary on 3 October 2023. The final act was signed on 22 November and published on 7 December 2023. The regulation entered into [force](#) on 27 December 2023, 20 days after its publication in the Official Journal of the EU.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

[EU response to economic coercion by third countries](#), Initial Appraisal of a European Commission Impact Assessment, Véronique Girard, EPRS, May 2022.

[Extraterritorial sanctions on trade and investments and European responses](#), Policy Department for External Relations, European Parliament, November 2020.

OTHER SOURCES

[Protection against economic coercion by third countries](#), Legislative Observatory (OEIL), European Parliament.

ENDNOTES

- ¹ They mentioned China, Indonesia, Libya, Nigeria, Russia, Turkey, Tunisia, and the US.
- ² The IA says: 'Retorsion is the accepted term in international law scholarship to designate a state's response to another state's action when the response is not in departure from international obligations which the responding state has'.
- ³ These concern alleged use of anti-dumping and countervailing measures on Australia's [wine](#) and [barley](#) in retaliation for its advocating for an independent investigation into the origins and early handling of the Covid-19 outbreak.
- ⁴ These concern alleged the use of import restrictions on [canola seed](#) by China, allegedly retaliating for the [arrest of Huawei executive](#) Meng Wanzhou in Canada.
- ⁵ The assessment considered establishing an office as unnecessary, since the Commission can perform the same tasks.
- ⁶ It is worth noting that the 'price evaluation weighting penalty' in public procurement is similar to the 'price adjustment measures' proposed under the International Procurement Instrument.
- ⁷ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

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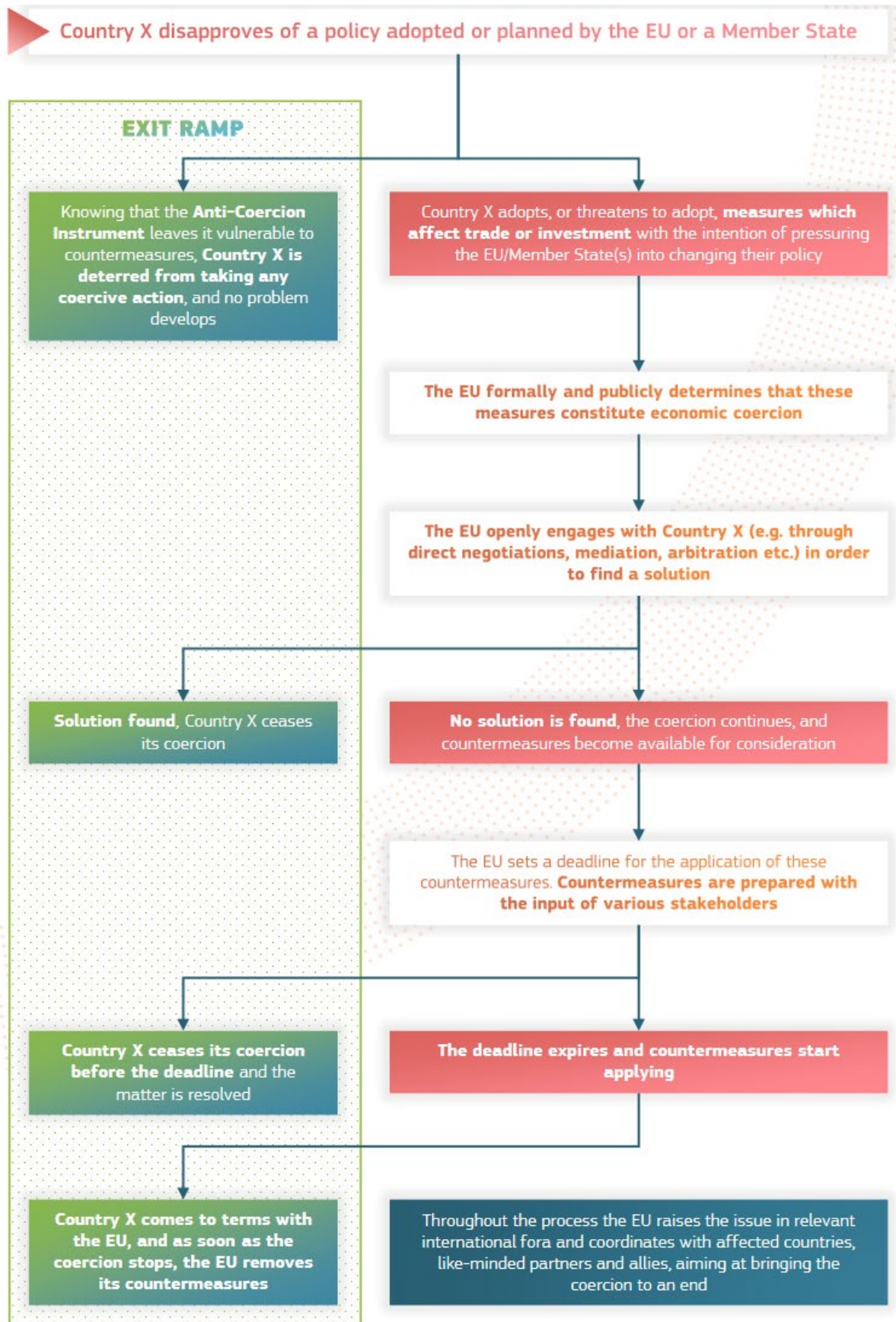
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www.europarl.europa.eu/thinktank (internet)

<http://epthinktank.eu> (blog)

Fourth edition. The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.

Annex – The anti-coercion instrument process



Source: [European Commission](#).