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**THE EU ANTI-COERCION
INSTRUMENT PROPOSAL:**

**UPDATE ON THE POSITION OF THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

On 8 December 2021, the European Commission published its [Proposal](#) for a Regulation on the protection of the European Union and its Member States from economic coercion by third countries. The aim of this new instrument is to effectively protect the European Union and its Member States from coercive third-country measures affecting trade and investment (see also our [Client Alert of 9 December 2021](#)). Although the Anti-coercion Instrument is primarily designed to end economic coercive action through dialogue and engagement, it also envisages – as a last resort – that the Commission adopts necessary “response measures”. Those response measures can take the form of a wide range of restrictions related to trade, investment and funding (Annex I to the Proposal).

Both the European Parliament and the Council of the European Union must approve this new instrument (ordinary legislative procedure).

At this stage, there is considerable support for the Proposal but there are calls for widening its scope and increasing the involvement of the Member States.

On 20 September 2022, it was reported that the Parliament’s Trade Committee has agreed on a position introducing [compromise amendments](#) to the proposed instrument aimed at strengthening the procedure for addressing economic coercion. On 10 October 2022, the Trade Committee [voted](#) in favour of that position. The plenary vote in the Parliament is scheduled for next week.

The table below provides an update on the compromise amendments presented by the Parliament’s Trade Committee in relation to some of the key elements of the Anti-coercion Instrument.

The Czech Republic, which currently presides over the Council, and Sweden, the next Member State to hold the presidency, submitted [preliminary comments](#) to the Commission in November 2021. The comments highlighted the extensive foreign policy impact of the Proposal and argued that the Member States should be fully involved. Reaching a Council position on the Anti-coercion Instrument is among the [priorities of the Czech presidency](#).

On 30 August 2022, the Council’s Legal Service submitted to the Council’s Working Party on Trade Questions its [Opinion](#) on the legal basis and the institutional aspects of the Anti-coercion Instrument. That Opinion argues for the Council’s involvement in determining the existence of economic coercion by a third country and concludes that the Anti-coercion Instrument falls within the scope of the common commercial policy, subject to certain exceptions and qualifications.

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Topic	European Commission's Proposal	Trade Committee compromise amendments (additions or changes)
Subject matter	Economic coercion through third-country measures affecting trade or investment.	Economic coercion can take any form of action, failure to act, or threat thereof, including policy choice, legal act, or policy stance.
Objective	To deter or have a third country desist.	Also, to repair injury.
Determining economic coercion	Whether the third country is acting based on legitimate concerns that are internationally recognised.	Whether the third country is acting based on legitimate concerns recognised as such by international law and conventions. Pattern of interfering behaviour.
Investigating the existence of economic coercion	Commission discretion to initiate examination. Information from any source. Third-country observations may be submitted.	Commission obligation to initiate examination after a complaint. Information from any reliable source (e.g., trade unions). Third-country observations may be submitted (time limits). The examination may not exceed 4 months. Parliament and Council must be informed (exchange of views).
Engagement with coercing third country	Commission must engage with the third country. Commission may use, inter alia, direct negotiations, binding, and non-binding dispute settlement. Parliament and Council must be informed.	Commission must engage provided that third country acts in good faith. Engagement may not delay the procedure. Parliament and Council must be fully informed in a regular and timely manner (exchange of views).
International cooperation	Commission may consult or cooperate with any other affected or interested country.	Commission may also consult or cooperate with affected or interested non-country partners. Parliament and Council must be informed (exchange of views).

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Response measures	<p>Commission must adopt an implementing act if:</p> <ul style="list-style-type: none"> • Third-country observations and engagement did not result in ending the economic coercion; • Necessary to protect interests and rights of Union and its Member States; and • Action is in the Union's interest. 	<p>Commission must adopt an implementing act no later than six months from a finding of economic coercion (possibility of extension) if:</p> <ul style="list-style-type: none"> • Third-country observations and engagement did not result in ending the (threat of) economic coercion and, where appropriate, reparation of injury • Necessary to protect interests and rights of Union and Member States; and • Action is in the Union's interest in the particular case of economic coercion under examination. <p>Response measures must be commensurate to the level of the injury. Parliament and Council must be informed (exchange of views).</p>
Application of response measures	<p>Response measures must apply from a specified date (exception for urgent cases). Commission may defer response measures.</p>	<p>Response measures must apply within three months of adopting the implementing act (exception for urgent cases). Commission may not indefinitely defer the application response measures.</p>
Suspension of response measures	<p>Suspension of response measures if the third country agrees to binding third-party adjudication and suspends its measures. Possible suspension response measures if (i) economic coercion is suspended or (ii) it is necessary in the Union's interest.</p>	<p>Suspension of response measures if (i) economic coercion is entirely suspended or (ii) the third country agrees to binding third-party adjudication, discontinues its measures and commits to abide by the adjudication. Possible suspension of response measures if it is necessary in the Union's interest.</p>
Termination of response measure	<p>Response measure must be terminated if:</p> <ul style="list-style-type: none"> • economic coercion has ceased; or • a mutually agreed solution has been reached; or • a binding decision in third-party adjudication required the withdrawal of the measures; or • it is appropriate in light of the Union's interest. 	<p>Response measure must be terminated if:</p> <ul style="list-style-type: none"> • economic coercion has ceased and the injury has been repaired; or • a mutually agreed solution has been reached; or • a binding decision in third-party adjudication requires the withdrawal of the measures and the third country has taken concrete steps to implement the decision; or • it is appropriate in light of the Union's interest.

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