

Minister Jozef Síkela
Czech Minister of Industry and Trade
Office of the Government of the Czech Republic
Na Františku 32
11015 Praha 1
Czech Republic

Brussels, 17th November 2022

Subject : ESF Call on Commission's Proposal on Anti-Coercion Instrument

Dear Minister Síkela,

The European Services Forum (ESF) is the European private sector organisation that represents the interests of the European services industries in international trade and investment negotiations. It comprises major European service businesses and European service sector federations covering service sectors including (but not limited to) financial services, telecommunications and IT services, maritime transport, postal and express delivery services, business and professional services, construction, distribution, and audio-visual services.

We take note of that the Council has adopted yesterday, 16 November 2022, its [common position](#) of the Commission's [proposal on Anti-Coercion Instrument \(ACI\)](#). ESF welcomes many of the proposals made by the Council, notably those consisting in entrusting to the Council and Parliament the final decision of triggering the instrument, as impact of such decision might indeed have important political clout. We also take note of the European Parliament [INTA Committee Report](#) of 10 October 2022 and of the fact that Committee decision to enter into interinstitutional negotiations has been confirmed by October 2022 plenary. ESF will now monitor closely the legislative debate in the upcoming triologue.

It is in this context that I am writing you to reiterate some of the ESF priorities in the on-going legislative process aiming at establishing the anti-coercion instrument. Although ESF does see the potential merits of such an instrument in a fast-changing world, such an instrument could generate great risks if abused. We can see the rationale for a reasonable use of an anti-coercion instrument in the area of trade in goods, and we support such a move. In [our Position Paper of last March](#), ESF has highlighted some of the concerns that we have for an implementation in the fields of trade in services, investment and IPR, and asked for further debate.

ESF highlights the importance of FDI for the EU's economy, particularly in services, and calls on the EU institutions to ensure the right balance between maintaining Europe's attractiveness as an investment destination and its legitimate need to defend its interests through anti-coercion instruments.

The progressive and proportionality approach, as well as clear and transparent processes, are crucial before activating anti-coercion measures in these fields. Such measures should be activated only in last resort

There is no precedent of anti-coercion measures on services sectors, and **deep analysis of all possible effects will need to be properly conducted before taking any action in these fields**. ESF is extremely concerned by the creation of precedent of possible anti-coercion measures affecting trade in services, foreign direct investment and IPR, as they might be used by third countries to trigger against EU businesses as **counter-retaliatory measures** and would have possible strong impact on all sectors. A targeted country might for instance, as a reaction, oblige massive disinvestment without any compensation.

Should such measures be discussed as last resort tools, ESF calls upon the European institutions to thoroughly consult the sectors concerned before taking any definitive action, and to keep business organisations aware all along until the coercion trouble is solved. **ESF calls the EU Council of Ministers and the European Parliament to ensure that a proper consultation mechanism will be enacted into the regulation, similarly to the one set in Regulation (EU) 2021/167 of 10 February 2021, amending Regulation (EU) No 654/2014 (“the Enforcement Regulation”)**.

Furthermore, given the possible serious impact of a large part of the EU economy, ESF urges the EU Council of Ministers and the European Parliament, in their current trialogue, to ensure that the final decision of enacting anti-coercion measures affecting trade in services, foreign direct investment and IPR should **be taken at political level, i.e., with proper involvement of the Council and Parliament, and not solely in the framework of a delegated act through the Comitology procedure** run by the European Commission, with insufficient implication of the political institutions.

We are grateful for your attention and for taking these comments into consideration. ESF and its members remain at your disposal for any further information on that matter.

Yours sincerely,



Annette Meijer
ESF Chair

Cc: Minister of European Affairs Mikuláš Bek, Czech Presidency
General Secretariat of the Council
Council's Working Party on Trade Questions
INTA Chairman, MEP Bernd Langue, Rapporteur
INTA Committee members
Executive Vice President of the European Commission, Valdis Dombrovskis
Chief Trade Enforcement Officer, Deputy Director General, DG Trade, Denis Redonnet