European Parliament

Distortive foreign subsidies

Foreign state financing of companies can have distortive effects on the single market. In its first November plenary session, the Parliament will vote on the provisional agreement, reached in trilogue negotiations, on a proposed regulation to tackle such distortive foreign subsidies. Under the regulation, companies would need to notify subsidies granted by non-EU public authorities in areas of mergers and acquisitions and bids in big public procurements, and the Commission would have the right to examine other market situations. It would also have the powers to investigate such subsidies and to apply countervailing measures to mitigate distortions.

Background

Companies subsidised by foreign authorities can gain an unfair financial advantage over their EU competitors and outbid them in public procurement procedures or acquisitions of attractive enterprises. They can also use state-backed financing to drive down costs and prices and outcompete EU companies on the internal market, since the latter do not have access to comparable subsidies under EU State aid rules.

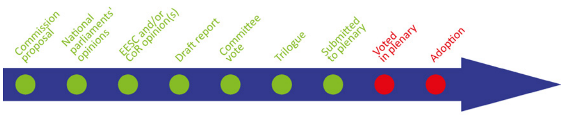
European Commission proposal

In May 2021, the Commission published a proposal for a regulation to tackle distortive foreign subsidies, which would give it the powers to investigate financial contributions by public authorities of a third country benefitting companies operating in the EU and redress their distortive effects. The proposal sets out the thresholds above which companies seeking to acquire another company or bid for public tenders are obliged to notify the Commission on the subsidies they receive from abroad. The Commission may also investigate markets on its own initiative. In the 'balancing act', if subsidies are found to have distortive effects that outweigh their positive effects, the Commission may impose countervailing measures such as the prohibition of the merger or the award of a procurement contract, or repayment of the foreign subsidy.

European Parliament position

The file was assigned to the Committee on International Trade (INTA), with Christophe Hansen (EPP, Luxembourg) as rapporteur. INTA amended the draft report and adopted its final version in April 2022. Negotiators for the Parliament and the Council reached an agreement in June 2022. Notification thresholds will kick in when a merging party has an EU turnover of at least €500 million and there is a foreign financial contribution of at least €50 million. For tenders, the contract value must be at least €250 million, and the foreign financial contribution must be equivalent to at least €4 million per third country. Measures introduced by the EP negotiators include: i) the consideration of (non-monetary) support measures, economically equivalent to a financial contribution, as a financial contribution, and the coverage of state-owned enterprises by the regulation; ii) the use of specific channels for informing the Commission about the potential subsidies; iii) the possibility for companies to verify if they need to disclose the subsidies received; iv) shorter deadlines for investigating subsidies in public procurement and shorter timeframes for any retrospective investigations; v) (to increase legal certainty and transparency) an obligation for the Commission to issue guidelines on how it assesses the distortive nature of foreign subsidies and to provide more details on the balancing act; and vi) the Commission has to seek a multilateral solution on these types of subsidies at the WTO and if equivalent rules are agreed, this EU regulation would become redundant.

First-reading report: 2021/0114(COD); Committee responsible: INTA; Rapporteur: Christophe Hansen (EPP, Luxembourg). For further information see our 'EU Legislation in progress' briefing.



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