Tackling distortions of foreign subsidies


This briefing provides an initial analysis of the strengths and weaknesses of the European Commission’s impact assessment (IA) accompanying the above-mentioned proposal submitted on 5 May 2021 and referred to the Committee on International Trade (INTA).

Currently, in the internal market, subsidies granted by Member States are subject to stringent EU State aid control, whereas subsidies granted by non EU-governments go (mostly) unchecked. As the IA notes, these foreign subsidies ‘can take various forms such as capital injections, grants, loans, guarantees and forgone public revenue in the form of preferential tax treatments’ (IA, pp. 5-7). Since they appear to have distorted the internal market in recent years, the Commission published a white paper on levelling the playing field as regards foreign subsidies in June 2020. The new proposal, which featured in the Commission’s 2021 work programme, builds on the three ‘modules’ discussed in the white paper and on the commitment made in the new industrial strategy for Europe to strengthen the EU’s anti-subsidies tools (IA, p. 4).

Problem definition

The IA describes the general background of the problem by highlighting, on the one hand, the relevance of international trade and foreign investment for the EU and, on the other, indications of problematic market distortions (IA, pp. 4-7). It stresses that the EU accounts for 16.4 % of global trade and is the destination for one third of the world’s investment stocks, which overall entails benefits in terms of employment, growth and competitiveness. However, in recent years, the distortive effects of foreign subsidies on the internal market have been detected, specifically in the context of third-country acquisitions of EU undertakings or of other subsidised activities, such as greenfield investments, and in the context of bidding in EU public procurement tenders. At the same time, the increase in Chinese direct or indirect subsidies to state-owned enterprises was estimated at 1.3 % to 1.6 % of China’s annual GDP in 2018, reflecting the ‘Made in China 2025’ strategy promoting Chinese industries (IA, p. 5). As the IA points out, a key question is to determine ‘when subsidies...are compatible with the internal market’ and when they are, on the contrary, problematic (IA, p. 7). For subsidies by Member States, this matter is covered by the EU’s State aid rules, which minimise competitive distortions, prevent negative spill-over effects into third-country markets and ensure transparency. For foreign subsidies, the IA observes, there is no such scrutiny mechanism, nor systematic data collection, while subsidy rules at WTO level are only partially applied in practice and, in any case, cover goods only. Furthermore, the IA argues that existing EU merger, anti-dumping or anti-subsidy rules, and public procurement directives or other sectoral rules, address distortive foreign subsidies only partially or indirectly (if at all), while foreign direct investment screening or trade defence instruments refer only to potential security threats (IA, pp. 5, 9, 29-33). Consequently, the IA identifies this regulatory gap and the overall lack of transparency on foreign subsidies as problem drivers, the latter being pointed out consistently throughout the IA (IA, pp. 5, 9, 15, 29-34).
To compensate for the lack of transparency – and data – the IA refers to numerous sources on global trade (among others the WTO, Global Trade Alert (GTA), the World Bank and the Joint Research Centre (JRC)), all reporting a steady increase in subsidies worldwide in recent years. It looks in particular at subsidies potentially affecting the internal market, i.e. from the EU’s five main trading partners in terms of imports (China, the US, the UK, Russia and Switzerland, IA, pp. 25-28). Against this backdrop, the IA defines three problems caused by foreign subsidies:

1) market distortions in acquisitions; 2) distortions in public procurement; and 3) other market distortions (IA, pp. 10-29). It presents the short- and long-term effects of each problem on producers and consumers. For problems 1 and 2, EU companies and buyers in public procurement procedures might benefit in the short term (from purchase prices inflated by subsidised buyers or from decreasing, below-cost tender prices offered by subsidised bidders that do not reflect value for money), but, according to the IA, the disadvantages for non-subsidised competitors and bidders, ‘crowded out’ of acquisitions or procurement procedures despite being more efficient than the subsidised competitor, are much more relevant (IA, pp. 10-12, 17-18). In the long run, non-subsidised companies/bidders are prevented from participating in the respective markets, harming not only their (and the EU’s) growth, development and innovation, but also labour markets – when production facilities are relocated to a third country following an acquisition (IA, p. 12). In addition, the IA sees the risk of potential foreign control of strategic sectors, namely public infrastructures, and ultimately market abuse, concentration and permanently reduced competitiveness affecting EU companies and consumers (IA, pp. 12, 18-19). Similar distortions are identified for other subsidised third country activities, such as greenfield investments (problem 3), because they facilitate the delocalisation of producers and suppliers from a parent company to its subsidiary in a third country, possibly entailing job losses, wage reduction and loss of tax revenues for the EU Member State (IA, pp. 21-22).

In terms of the scale of the problems, the IA indicates that by value and country of origin, the US, the UK, Switzerland and China account for the majority of third country acquisitions in the EU, with the latter notably increasing since 2010 and peaking at around €20 billion in 2016 (IA, p. 15).6 Notably, acquisitions are estimated to account for 95 % of Chinese foreign direct investment in the EU – a comparable indication for the other top foreign investors would have been interesting, but is not provided. The potential magnitude of problem 2 is illustrated by the fact that public procurement accounts for over 14 % of the EU’s GDP (around €2.1 trillion), with an increase in procurement awards to non-EU companies between 2009 and 2015 (IA, pp. 17, 20). The IA highlights this issue as ‘strongly voiced’ by stakeholders, referring to procurement contracts awarded to South Korean or Chinese operators in maritime technologies, railway or the construction sector, illustrated also in the IA’s case studies (IA, pp. 18-20). Overall, the IA argues convincingly that the available information provides ‘strong indications’ of significant effects of foreign subsidies on the internal market. Although it does not provide specific quantified estimates or potential regional or sectoral particularities of the problems, the pertinent case studies and consultation results underpin and illustrate the problems (IA, pp. 16-17). Under this baseline scenario, the IA expects all three problems to grow, particularly in view of the consequences of the Covid-19 crisis: continuous high levels of subsidies worldwide; the key role of public procurement contracts in the context of the EU recovery plan; and the expectations that trade in services will grow faster than that in goods and that merger and acquisition activity in Europe will increase, all suggest that the use – and effect – of foreign subsidies on the internal market will grow (IA, pp. 34-35).

Subsidiarity / proportionality

The IA notes that the initiative is based on Article 207 of the Treaty on the Functioning of the EU (TFEU) on common commercial policy (providing the EU with exclusive competence) and on Article 114 TFEU on the functioning of the internal market (shared competence) (IA, p. 36). It also refers to Article 3(1)(b) and (e) providing for exclusive competence in competition rules and trade defence instruments, and indicates that control of foreign subsidies would be comparable to the EU’s State aid control, with likely effects on more than one Member State. Given the fact that several Member States have expressed the need for action and started national initiatives, the IA sees the added value of common
EU action in achieving 'effective competition and a level playing field in the internal market' in a harmonised way (IA, pp. 36-37). Proportionality is at the core of the IA insofar as the thresholds considered to focus the action on the most relevant distortions and to avoid unnecessary burdens are discussed for all options, opting always for what is found to be the proportionate option. However, the principle as such is not specifically assessed in the IA, which does not contain a separate subsidiarity grid. The subsidiarity deadline for national parliaments is 22 July 2021.

Objectives of the initiative

The general objective of the initiative is to ensure a level playing field in the internal market, without distortions from foreign subsidies (IA, p. 37). Two specific objectives derive from that:

- to identify the most distortive foreign subsidies, and
- to remove the distortions.

The definition of the objectives is clear and directly linked to the problem and their drivers. Contrary to the Better Regulation Guidelines, however, the IA does not develop operational objectives with clear deliverables to be monitored and evaluated later on (this is supposed to be done in relation to the specific objectives, see section on monitoring and evaluation below). As they stand, these specific objectives seem to lack operational specification (even though with the Commission in charge of the implementation and monitoring of the initiative under the preferred option, questions about responsibilities seem limited). There is also no indication of any timeline, so that the S.M.A.R.T criteria of the better regulation guidelines do not appear to be entirely fulfilled (objectives should be specific, measurable, achievable, relevant and time bound).

Range of options considered

The presentation of the policy options by means of which to achieve the above objectives starts with a first level of four options, one of which is then selected and further assessed. This first level determines the general choice of policy action: (1) no action (baseline), (2) develop guidance, (3) change existing EU rules and (4) develop a new legislative instrument (preferred option). In line with the Better Regulation Guidelines, these options range from doing nothing (the baseline), to providing non-legislative guidance or modifying existing rules, to the creation of a new legislative tool. In line with the problem definition, the IA finds option 1 not viable, as none of the current international or EU rules address the problems consistently (IA, pp. 38-40). Options 2 and 3 are also discarded at this stage, because any indirect tackling of foreign subsidies is considered either politically not feasible or ineffective. The IA stresses that few stakeholders (one Member State and four other stakeholders) indicated a preference for a modification of public procurement rules, whereas 'most stakeholders' favoured a new EU legislative tool (IA, p. 43). The IA follows this preference for option 4 and presents sub-options to determine the different 'design parameters' of the new instrument (IA, pp. 43-49).

The description of these 'second level' sub-options is complex and could have been better structured. All 'design parameters' (such as enforcement competences and thresholds) are presented in relation to each problem, which leads to overlaps. Eight option packages are presented in three separate tables only after the assessment of potential impacts, composed of 'the most suitable configuration of design parameters' (meaning not all screened options are featured, IA, pp 67-74). The fact that the combinations are not individually listed in the text and that in Table 9 (for problem 2) the numbering of all sub-options is entirely missing, does not enhance clarity. Additional complexity stems from the inclusion of a comparison with the 'modules' presented in the white paper, although the order of problems and option packages in the IA is different (module 1 of the white paper refers to general market distortions, comparable to the IA’s option packages for problem 3, while problem 1 corresponds to the white paper’s module 2). A simpler, clearer and coherent overview of all elements of each option and package would have helped the reader to capture the option combinations more easily. Table 1 below attempts to provide an integrated overview of the main elements of the sub-options presented in different sections of the IA (the preferred option combinations are in grey):
### Design parameters

<table>
<thead>
<tr>
<th>Distortions in acquisitions (problem 1)</th>
<th>Distortions in public procurement (problem 2)</th>
<th>Other market distortions (problem 3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 policy option packages</td>
<td>3 policy option packages</td>
<td>2 policy option packages</td>
</tr>
<tr>
<td><strong>Governance (enforcement competence)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shared enforcement (Commission (COM) and Member States)</td>
<td>Enforcement only by COM**</td>
<td>Shared</td>
</tr>
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<td></td>
<td>Enforcement only by COM**</td>
<td>COM**</td>
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<tr>
<td><strong>Investigative approach</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ex officio (on own initiative, without notification; including powers to request information, inspect company premises and impose deterrent sanctions)</td>
<td>Compulsory ex ante notification (with no*, moderate* or high thresholds: €500 million turnover, €50 million foreign financial contribution)</td>
<td>Ex officio for all other market distortions AND below the thresholds of the two preferred option packages for the other problems</td>
</tr>
<tr>
<td></td>
<td>Ex ante notification for large acquisitions above €500 million and €50 million foreign financing AND ex officio for smaller ones</td>
<td></td>
</tr>
<tr>
<td><strong>Threshold for subsidies unlikely to be distortive (over 3 years)</strong></td>
<td>€200 000</td>
<td>€200 000</td>
</tr>
<tr>
<td><strong>Assessment criteria to determine distortions</strong>*</td>
<td>Direct facilitation of concentrations, export subsidies, subsidies to ailing undertaking without restructuring plan, unlimited guarantees; size and nature of the subsidy; characteristics of affected market (market shares of recipients of subsidies, level of competition)</td>
<td>Like policy packages for acquisitions</td>
</tr>
<tr>
<td></td>
<td>Like policy packages for acquisitions</td>
<td>Like policy packages for acquisitions</td>
</tr>
<tr>
<td><strong>Balancing test (distortion against positive economic effects of subsidy)</strong>*</td>
<td>(No) balancing test (error in the IA)</td>
<td>Balancing test</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Balancing test</td>
</tr>
<tr>
<td><strong>Redressive measures to remedy distortions</strong>*</td>
<td>Reimbursement of subsidy, behavioural or structural measures</td>
<td>Like policy packages for acquisitions</td>
</tr>
<tr>
<td></td>
<td>Like policy packages for acquisitions</td>
<td>Like policy packages for acquisitions</td>
</tr>
</tbody>
</table>

Source: IA, author. *These options are featured in the screening of the options, but not in the policy packages. **With consultation of an advisory committee of Member States. ***Inspired by/built on EU State aid measures.

Some implementation details of the options are not developed in the IA, for instance how to conduct the balancing test between negative effect on the internal market and positive effect on economic activities or actors (and whether to impose what kind of redressive measures). In this respect, the IA emphasises the need for a ‘case by case’ investigation, as the concept of balancing may be difficult to precisely define in all relevant circumstances (IA, p. 48, 58). Other elements of the options’ screening seem to imply potential impacts already (stating, for instance, that exclusive...
competence of the Commission would 'mirror the system of enforcement for trade policy and State aid rules' and be in line with the view of 'many Member States and most stakeholders', IA, pp. 44, 48). In turn, other details, such as the notification thresholds or the procedures and timeframes of investigations are specified only in the assessment of impacts (IA, pp. 50-52, 59-62, 71).

Assessment of impacts

The IA analyses the economic and, more briefly, social and environmental implications of the above sub-options for public authorities, companies, consumers, trade and third countries. The assessment is logical, though at times scattered, as it is also done separately for each problem. Owing to the general lack of data on foreign subsidies, the IA does not quantify (total) benefits or costs, but provides a thorough qualitative analysis, complemented by some useful and transparent quantified information regarding expected administrative costs for public authorities and companies.

Based on academic research on the effectiveness of competition law enforcement, the IA expects the main economic benefits of the initiative to be the identification and correction of distortions, with positive effects on competition, the functioning of the internal market (including lower prices and better products for consumers) and the efficiency of companies (IA, pp. 54-56). Possible short-term negative implications (such as a price increase in bids in the absence of foreign subsidies) are expected to be outweighed by the restoration of the level playing field. The IA expects an administrative burden for public authorities and companies under all options, so an important aspect is the question of limiting the costs, i.e. the overall number of cases to deal with (IA, pp. 50, 59). The IA seeks to reduce these, first, by setting the threshold below which subsidies are unlikely to distort the internal market at €5 million (over three consecutive years, for all problems) – after assessing that a €200,000 (State aid threshold) would be too low to capture only the largest and most distortive cases in a proportionate way (IA, pp. 46, 57, 61, 65). Possibly, a check of a third, intermediate threshold could have been pertinent in this context. Second, based on the yearly EU merger database for 2015 to 2019, the IA estimates the number of cases that would occur under no, moderate and high ex ante notification thresholds for acquisitions and public procurement contracts (IA, pp. 51-52). The step-by-step analysis concludes that high thresholds would be most efficient and effective to cover the relevant cases under problems 1 and 2 and keep the number of cases limited. To have ‘enough discretion’ to pursue smaller cases too, if appropriate, the IA suggests combining the high thresholds for obligatory notifications with the possibility of ex officio investigation in smaller cases (IA, p. 52). The same reasoning is given for a mixed investigative approach for market distortions under problem 3 and cases below the notification thresholds (IA, pp. 64-65). To substantiate its choices, the IA provides also detailed (non-monetised) estimates of the increased workload for the Commission under all options, based on DG Competition merger cases and public procurement procedures in the past, as well as reflections on burdens for companies (IA, pp. 52-53, 60-61, 70, 72; see section on SMEs below). Following a comparison of the effectiveness, efficiency and coherence of the option packages, the IA concludes that costs and burdens are best offset by a combination of the three preferred policy packages under each problem. Notably, it suggests enforcement solely by the Commission – decentralised control by the Member States is found to be fragmented, inconsistent and slow, risking over-burdening national authorities with complex coordination requirements (IA, p. 55, 66, 74). Social and environmental impacts are, as the IA puts it, ‘not possible to estimate...with certainty’. However, positive implications are expected in terms of employment by avoiding the crowding-out of non-subsidised companies/bidders and the delocalisation of jobs to a third country (IA, pp. 57-58, 63, 67). Under the assumption that undertakings receiving foreign subsidies apply lower environmental standards when located outside the EU, the avoidance of delocalisation is expected to have positive environmental effects. In this context, the IA points to the importance of the balancing test to weight a detected distortion against possible other effects, before deciding on redressive measures (although the implementation of this test is, as noted above, not specified beyond certain principles (IA, p. 58). Considering recent reports of a sharp decline in Chinese investments in the EU in 2020, possibly owing at least partly to ‘tougher scrutiny of Chinese investment in Europe’,
question of potential negative economic and social impacts of the initiative seems relevant. The IA addresses this issue briefly and in general terms, assuming the risk is low, as long as the new instrument is proportionate and clear (IA, p. 56). On the basis of OECD data on the consequences of national foreign investment screening mechanisms, a possible reduction of these investments is only expected in the short term, while public procurement, financed by national or EU funds, does not depend on foreign investment anyway (IA, pp. 56, 63). In the same vein, the IA acknowledges the possibility of trade tensions with third countries suspecting protectionism behind the initiative, but argues that the objective and non-discriminatory application should counter this impression. The IA even notes this could offer an incentive to third countries to ‘(re-)engage’ in international negotiations on subsidy rules (IA, p. 57). Notwithstanding the fact that the lack of data and transparency on foreign subsidies made a quantification of most potential impacts impossible, these risks and expectations could have been assessed more in-depth, for example in terms of possible effects on employment or prices. The IA provides selective information on sectors that are particularly concerned throughout the text and in Annex 4 (among them the steel, aluminium and semiconductor sectors), but no sector- or country-specific impact analysis.

SMEs / competitiveness

According to the IA, 85 % of all exporters are SMEs, and they would profit from a restored level playing field, a better functioning internal market and a competitiveness-boost for non-subsidised companies (IA, pp. 4, 54, 62). The high thresholds of €5 million for distortive subsidies and the high notification thresholds are also justified by their beneficial effect on SMEs, exempting them to a large extent from mandatory notification (IA, pp. 54, 61, 66). The IA estimates costs for filing an acquisition notification to be between €50 000 and €500 000 for a company, depending on the number of high subsidies, which SMEs are considered less likely to receive (IA, pp. 54, 61; no data was available to estimate these costs in procurement procedures).

Simplification and other regulatory implications

The IA expects an additional burden under all options, but argues that it would be 'largely limited' under the preferred option packages, given that businesses are already familiar with notification systems under EU merger control and foreign direct investment screening (IA, p. 54). While the existing instruments 'prohibit the use of information', the IA suggests a direct alignment of the new instrument to them, 'enabling businesses to simply replicate documents and amend or complement them only in a limited way for each specific notification' (IA, pp. 45-46, 75). Such synergies – both with existing EU and WTO rules – could have been illustrated more precisely. The IA does, however, indicate in some detail how investigations could be conducted without complicating or delaying public procurement procedures (IA, p. 46).

Monitoring and evaluation

In the absence of operational objectives, the IA presents four monitoring indicators on the specific objectives (three for the first, one for the second objective, IA, p. 77). All imply the compilation by the Commission of data not collected so far, to avoid any new burden on national administrations or businesses, and were taken up in the proposal. The IA notes specifically that 'design parameters' such as notification thresholds would be subject to continuous monitoring and modified if need be (IA, p. 77). An ex-post evaluation and possible review is planned within five years.

Stakeholder consultation

The IA is underpinned by an open public consultation, launched after the publication of the white paper on foreign subsidies and run from 17 June to 23 September 2020, as well as by bilateral targeted consultations of the 'most relevant' stakeholders (IA, pp. 81-83). The former received 150 responses (100 from businesses, 24 from third country stakeholders and 17 from national public authorities), while the latter consisted of meetings discussing concrete examples of distortions and the policy options. Annexes 2 and 6 of the IA contain information and a summary of all consultations. The IA refers consistently to stakeholders, albeit in a rather general way ('many', 'a few' or 'the
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majority' of stakeholders or Member States), including in the summary, which features breakdowns by country and type of respondents. The IA appears to follow the majority view, especially when selecting the preferred option combinations, while occasionally also mentioning minority opinions (IA, pp. 44, 57, 66). It notes for instance that stakeholder views varied greatly on the thresholds under all three problem areas and on the balancing test, defending the latter’s inclusion in the preferred option combinations to ensure coherence with EU State aid rules and take into account potential positive (short-term) effects of foreign subsidies (IA, pp. 53, 58, 61, 65).

Supporting data and analytical methods used

As noted, the IA openly acknowledges a general lack of data on subsidies in many third countries, compensated by 10 case studies (six, four and four under problems 1, 2 and 3 respectively), the above-mentioned stakeholder consultations and a wealth of recent external research from, inter alia, the JRC, the WTO, the OECD, GTA, Eurostat, the World Bank, the Rhodium Group, the Mercator Institute for Chinese studies and the Bertelsmann Foundation. Combined with the use of information on foreign ownership, merger notifications and the share of contracts won by non-EU companies from the Tenders Electronic Daily (TED) database as proxies, this allows the problems to be pinpointed and the analysis substantiated (IA, pp. 9-10, 12-21, Annex 4, pp. 87-89). The IA is transparent about the methods and underlying assumptions, as well as regarding limitations linked to the scarcity of data. The overall train of thought is logical, despite some inconsistencies and the complexities of the options’ set up and their comparative assessment.

Follow-up to the opinion of the Commission Regulatory Scrutiny Board

The Board issued a positive option with reservations to the draft IA on 5 March 2021, criticising in particular the problem definition, the complexity of the options and some imbalances in the assessment. The problem definition is improved in the final IA, which also makes the limitations of the analysis more transparent. However, as indicated in this briefing, issues with the complexity of the policy options and their assessment, including uncertainties about some risks/negative effects as well as regarding some operational details remain, namely when it comes to the balancing test, redressive measures and synergies with existing legislation.

Coherence between the Commission’s legislative proposal and IA

The proposal follows the preferred option combination of the IA, including a review clause after an ex post evaluation. It develops the operational details of the preferred option combination, missing in the IA, among others the investigation procedures, penalties in cases of non-cooperation and redressive measures. Notably, the proposal estimates the total administrative expenditure, non-monetised in the IA, at €90.340 million for the years 2021 to 2027.

ENDNOTES

1 The IA defines foreign subsidies in line with Annex I to the 2020 white paper as ‘support measures provided by non-EU governments to undertakings active in the EU’ (IA, p. 7).
2 For details see M. Szczepanski, Distortive foreign subsidies regulation, European Parliament, EPRS 2021.
3 Subsidiary created by a parent company in a different country, ‘building its operations from the ground up’ (IA, p. 25).
The General Agreement on Trade in Services (GATS) has a mandate to develop rules on service subsidies, but this is not being actively pursued by WTO Members at this stage (IA, pp. 30, 38-39). According to the IA, WTO sources indicate that less than half of its members complied with the notification obligation in 2019 (IA, p. 27). Reported subsidy amounts (for 2018) included for example €520 012 million for China and €17 008 million for the US.

To a limited extent, foreign subsidies can be taken into account when assessing the compatibility of a Member State’s State aid in the context of research, development and innovation and the regional aid guidelines, allowing more State aid to be given to counter harmful foreign subsidies (IA, pp. 39-40). According to the IA, these provisions have not been used to date.

The recently reported fall in Chinese investments in the EU is not mentioned in the IA.

A fifth option, presented in the inception impact assessment (changing international rules) is included in the IA’s baseline (option 1), arguing that the development of international rules remains in any case a goal of EU policy (IA, pp. 38-39).

The IA considers guidance on EU State aid rules that do mention foreign subsidies (see footnote 4 above), on EU public procurement rules (referring to abnormally low tenders) and on EU antitrust rules, and finds all ineffective (IA, pp. 41-42). Changes to these EU rules (option 3) are considered politically unrealistic, as they would require Treaty changes for State aid rules, which do not currently cover foreign subsidies, while adding new (State) aid (under the research, and regional aid frameworks) to counter foreign subsidies could even create new distortions, according to the IA. For public procurement rules to address foreign subsidies, the IA states a horizontal instrument would have to be adopted, the implementation of which would be left mostly to contracting authorities not equipped for such a task (IA, p. 43).

The IA presents five sub-options for the investigative approach: 1) ex officio, i.e. the supervisory authority would act without having been notified by the undertaking, for instance after receiving information from a competitor or following its own market investigation; 2) notification of all transactions without threshold; 3) notification according to the amounts involved in the undertaking, either moderate or 4) high thresholds. 5) Option 5 would combine ex officio with a notification system (IA, pp. 44-45).

The IA features ‘option e1’ (no balancing test) in Table 7, but this is most probably an error, as all packages seem to include the balance test (IA, pp. 47, 58, 68).

It expects between 26 and 98 cases with notification for third country acquisitions with an EU turnover of over €500 million, which it seeks to further reduce with a second threshold of €50 million of foreign financial contributions (provided during the three years before the notification; due to the lack of data on foreign financial contributions, this reduction could not be quantified, IA, pp. 51-52). For public procurement contracts, the most effective notification threshold is, according to the IA, €250 million, with an expected 36 cases per year, taking into account very significant annual variations and very limited information on foreign owners or bidders in the procedures (IA, p. 60).

The IA stresses that the test would ‘always work in the advantage of the recipient of foreign subsidies’ and ‘not lead to the imposition of redressive measures for subsidies that are not found to be distortive.’ It also states, without further information, that the test would rely on information provided by the undertaking, possibly also by public authorities, and that the Commission would be bound by the principle of proportionality, limiting discretion (IA, p. 48).

The links provided in the IA to the minutes of these meetings do not seem to be working (IA, pp. 82, 115).

This briefing, prepared for the INTA committee, analyses whether the principal criteria laid down in the Commission’s own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal.