



Plenary sitting

A9-0135/2022

28.4.2022

*****I**

REPORT

on the proposal for a regulation of the European Parliament and of the Council
on foreign subsidies distorting the internal market
(COM(2021)0223 – C9-0167/2021 – 2021/0114(COD))

Committee on International Trade

Rapporteur: Christophe Hansen

Rapporteurs for the opinion (*):
Stéphanie Yon-Courtin, Committee on Economic and Monetary Affairs
Christian Doleschal, Committee on the Internal Market and Consumer
Protection

~~ExFdR 1245578+FdR 1249242+FdR 1249244+FdR 1254100+FdR 1252924~~

(*) Associated committees – Rule 57 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ***■*** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market
(COM(2021)0223 – C9-0167/2021 – 2021/0114(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0223),
 - having regard to Article 294(2) and Articles 207 and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0167/2021),
 - having regard to the opinion of the European Economic and Social Committee of 20 October 2021¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the opinions of the Committee on Economic and Monetary Affairs, the Committee on the Internal Market and Consumer Protection and the Committee on Legal Affairs;
 - having regard to the report of the Committee on International Trade (A9-0135/2022),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) At the same time, undertakings might receive subsidies from third countries, ***that provide public funds*** which are then used, for instance, to finance

Amendment

(2) At the same time, undertakings might receive subsidies from third countries which are then used, for instance, to finance economic activities in the

¹ OJ C [...], [...], p. [...].

economic activities in the internal market in any sector of the economy, such as participation in public procurement tenders, or acquisitions of undertakings, including those with strategic assets such as critical infrastructure and innovative technologies. Such subsidies are currently not subject to Union State aid rules.

internal market in any sector of the economy, such as participation in public procurement tenders, or acquisitions of undertakings, including those with strategic assets such as critical infrastructure and innovative technologies. Such subsidies are currently not subject to Union State aid rules. ***Similar concerns apply in relation to state-owned enterprises.***

Amendment 2

Proposal for a regulation Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Although this Regulation should cover all economic sectors, the Commission should pay particular attention to sectors that are of strategic interest to the Union and critical infrastructures, such as those mentioned in Article 4(1), point (a), of Regulation (EU) 2019/452 of the European Parliament and of the Council.

Amendment 3

Proposal for a regulation Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) This Regulation should be coherent and coordinated with existing instruments, such as Council Regulation (EC) No 139/2004^{1a}, Directive 2014/24/EU of the European Parliament and of the Council^{1b}, Regulation (EU) 2019/452 of the European Parliament and of the Council^{1c} or Regulation (EU) 2022/... of the European Parliament and of the Council^{1d}. In its application of the different instruments, the Commission should pay attention to ensure an efficient

sharing of necessary information to safeguard a comprehensive approach.

^{1a} Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p.1).

^{1b} Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p.65).

^{1c} Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 791, 21.3.2019, p.1).

^{1d} Regulation (EU) 2022/... of the European Parliament and of the Council on the access of third-country economic operators, goods and services to the Union's public procurement market and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement markets of third countries (International Procurement Instrument - IPI) (OJ L ...).

Amendment 4

Proposal for a regulation Recital 6

Text proposed by the Commission

(6) Rules and procedures to investigate foreign subsidies that actually or potentially distort the internal market should be laid down and, where relevant, those distortions should be redressed. Foreign subsidies could distort the internal market if the undertaking benefitting from

Amendment

(6) Rules and procedures to investigate foreign subsidies that actually or potentially distort the internal market should be laid down and, where relevant, those distortions should be redressed. Foreign subsidies could distort the internal market if the undertaking benefitting from

the foreign subsidy engages in an economic activity in the Union. This Regulation should therefore establish rules for all undertakings engaging in an economic activity in the Union. Given the significance of the economic activities pursued by SMEs, and their contribution to the fulfilment of the Union's key policy goals, special attention is given to the impact of this Regulation on them.

the foreign subsidy engages in an economic activity in the Union. ***The proper application and enforcement of this Regulation should contribute to the resilience of the internal market against distortions caused by foreign subsidies and thereby strengthen the Union's open strategic autonomy.*** This Regulation should therefore establish rules for all undertakings engaging in an economic activity in the Union. Given the significance of the economic activities pursued by SMEs, and their contribution to the fulfilment of the Union's key policy goals, special attention is given to the impact of this Regulation on them.

Amendment 5

Proposal for a regulation Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Given that the relevant Member State authorities are an integral part of the application of this Regulation, Member States should ensure that their authorities cooperate and coordinate effectively with the Commission in the application of this Regulation. For this purpose, the Commission should be able to set up structured cooperation to share information and coordinate.

Amendment 6

Proposal for a regulation Recital 9

Text proposed by the Commission

Amendment

(9) There should be a financial contribution provided, directly or indirectly, by ***the public authorities of*** a third country. The financial contribution

(9) There should be a financial contribution provided, directly or indirectly, by a third country. The financial contribution may be granted through public

may be granted through public or private entities. Whether a public entity provides a financial contribution should be determined on a case-by-case basis with due regard to elements such as the characteristics of the relevant entity and the legal and economic environment prevailing in the country in which the entity operates including the government's role in the economy. Financial contributions may also be granted through a private entity if its actions can be attributed to the third country.

or private entities. Whether a public entity provides a financial contribution should be determined on a case-by-case basis with due regard to elements such as the characteristics of the relevant entity and the legal and economic environment prevailing in the *third* country in which the entity operates including the government's role in the economy *of that third country*. Financial contributions may also be granted through a private entity if its actions can be attributed to the third country. ***Support measures that are economically equivalent to a financial contribution should also be considered as a financial contribution. Such a financial contribution could include a situation where the beneficiary has privileged access to its domestic market, namely through exclusive or special rights as well as selective de jure or de facto exceptions to applicable rules or equivalent measures, for the provision of goods or services in the third country conferred by national law or the benefit of a domestic captive market due to the prevailing legal and economic conditions. This could lead to an artificial competitive advantage that could be leveraged in the internal market and thereby exacerbate the distortive effect of any subsidy.***

Amendment 7

Proposal for a regulation Recital 10

Text proposed by the Commission

(10) ***Such*** a financial contribution should confer a benefit to an undertaking engaging in an economic activity in the internal market. A financial contribution that benefits an entity engaging in non-economic activities does not constitute a foreign subsidy. The existence of a benefit should be determined on the basis of comparative benchmarks, such as the

Amendment

(10) A financial contribution should confer a benefit to an undertaking engaging in an economic activity in the internal market. A financial contribution that benefits an entity engaging in non-economic activities does not constitute a foreign subsidy. The existence of a benefit should be determined on the basis of comparative benchmarks, such as the

investment practice of private investors, rates for financing obtainable on the market, a comparable tax treatment, or the adequate remuneration for a given good or service.. If no directly comparable benchmarks are available, existing benchmarks could be adjusted or alternative benchmarks could be established based on generally accepted assessment methods.

investment practice of private investors, rates for financing obtainable on the market, a comparable tax treatment, or the adequate remuneration for a given good or service. If no directly comparable benchmarks are available, existing benchmarks could be adjusted or alternative benchmarks could be established based on generally accepted assessment methods. ***Transfer pricing may confer a benefit and be considered as equivalent to a financial contribution if not in line with normal market conditions.***

Amendment 8

Proposal for a regulation Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) A foreign subsidy is considered granted from the moment the beneficiary has an entitlement to receive the subsidy. The actual payment of the subsidy is not a necessary condition for bringing a subsidy within the scope of this Regulation.

Amendment 9

Proposal for a regulation Recital 14

Text proposed by the Commission

Amendment

(14) When applying these indicators, the Commission could take into account different elements such as the size of the subsidy in absolute terms or in relation to the size of the market or to the value of the investment. For instance, a concentration, in the context of which a foreign subsidy covers a substantial part of the purchase price of the target, is likely to be distortive.

(14) When applying these indicators, the Commission could take into account different elements such as the size of the subsidy in absolute terms or in relation to the size of the market or to the value of the investment. For instance, a concentration, in the context of which a foreign subsidy covers a substantial part of the purchase price of the target, is likely to be distortive.

Similarly, foreign subsidies covering a substantial part of the estimated value of a contract to be awarded in a public procurement procedure are likely to cause distortions. If a foreign subsidy is granted for operating costs, it seems more likely to cause distortions than if it is granted for investment costs. Foreign subsidies to small and medium-sized undertakings may be considered less likely to cause distortions than foreign subsidies to large undertakings. Furthermore, the characteristics of the market, and in particular the competitive conditions on the market, such as barriers to entry, should be taken into account. Foreign subsidies leading to overcapacity by sustaining uneconomic assets or by encouraging investment in capacity expansions that would otherwise not have been built are likely to cause distortions. A foreign subsidy to a beneficiary that shows a low degree of activity in the internal market, measured for instance in terms of turnover achieved in the Union, is less likely to cause distortions than a foreign subsidy to a beneficiary that has a more significant level of activity in the internal market. **Finally**, foreign subsidies not exceeding EUR 5 million should be deemed, as a general rule, unlikely to distort the internal market within the meaning of this Regulation.

Similarly, foreign subsidies covering a substantial part of the estimated value of a contract to be awarded in a public procurement procedure are likely to cause distortions. If a foreign subsidy is granted for operating costs, it seems more likely to cause distortions than if it is granted for investment costs. Foreign subsidies to small and medium-sized undertakings may be considered less likely to cause distortions than foreign subsidies to large undertakings. Furthermore, the characteristics of the market, and in particular the competitive conditions on the market, such as barriers to entry, should be taken into account. Foreign subsidies leading to overcapacity by sustaining uneconomic assets or by encouraging investment in capacity expansions that would otherwise not have been built **or bought** are likely to cause distortions. A foreign subsidy to a beneficiary that shows a low degree of activity in the internal market, measured for instance in terms of turnover achieved in the Union, is less likely to cause distortions than a foreign subsidy to a beneficiary that has a more significant level of activity in the internal market. ***The evolution of the economic activity can also be taken into account to enable the Commission to take action when an undertaking's level of activity is small, but is expected to grow strongly. The Commission should be able to consider in its assessment of a distortion whether a third country has an effective system for the control of subsidies in place which is at least equivalent to the system in the Union and which would make subsidies granted by such a third country less likely to distort the internal market within the meaning of this Regulation. The Commission should therefore encourage third countries to develop such systems of subsidy control, including by concluding and enforcing bilateral agreements which include substantive level playing field provisions and by encouraging third countries to comply***

with international subsidy obligations and align with the Union on initiatives with regard to improving international rules on subsidies and competitive neutrality, notably within the WTO. Foreign subsidies not exceeding **EUR 4** million should be deemed, as a general rule, unlikely to distort the internal market within the meaning of this Regulation. *The Commission should draft and publish guidelines with further details for assessing the distortive nature of a subsidy in order to provide legal certainty for all market participants. The guidelines should also provide examples and typical cases of distortive and non-distortive subsidies.*

Amendment 10

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) The Commission should take into account the positive effects of the foreign subsidy on the development of the relevant subsidised economic activity. The Commission should weigh these positive effects against the negative effects of a foreign subsidy in terms of distortion on the internal market in order to determine, if applicable, the appropriate redressive measure or accept commitments. The balancing may also lead to the conclusion that no redressive measures should be imposed. Categories of foreign subsidies that are deemed most likely to distort the internal market are less likely to have more positive than negative effects.

Amendment

(16) The Commission should ***be able to*** take into account the positive effects of the foreign subsidy on the development of the relevant subsidised economic activity ***on the internal market and its contribution to the achievement of public policy objectives, including social and environmental objectives.*** The Commission should weigh these positive effects against the negative effects of a foreign subsidy in terms of distortion on the internal market in order to determine, if applicable, the appropriate redressive measure or accept commitments. The balancing ***should take account of both short- and long-term effects and follow the general objective of tackling distortions created by foreign subsidies. In its analysis, the Commission should take into account the general principles applied when assessing the compatibility of state aid with the single market. The***

balancing may also lead to the conclusion that no redressive measures should be imposed. Categories of foreign subsidies that are deemed most likely to distort the internal market are less likely to have more positive than negative effects. *The Commission should also take into account the positive effects of subsidies granted to remedy serious national or global disturbances of the economy, such as those caused by global health crises. The Commission should develop guidelines on the application of the balancing test, including on the criteria to be used.*

Amendment 11

Proposal for a regulation Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) The undertaking under investigation could offer or the Commission could require the undertakings concerned to notify the Commission of their participation in future public procurement procedures in the Union for an appropriate period of time. The submission of such notification, or the response or absence of a response from the Commission cannot give rise to legitimate expectations on the part of the undertaking that the Commission may not later start an investigation of possible foreign subsidies to the undertaking participating in the public procurement procedure.

Amendment 12

Proposal for a regulation Recital 21

Text proposed by the Commission

(21) The Commission should have the power, on its own initiative, to examine any information on foreign subsidies. To this end, it is necessary to establish a procedure consisting of two steps, namely a preliminary review and an in-depth investigation.

Amendment

(21) The Commission should have the power, on its own initiative, to examine any information on foreign subsidies. To this end, it is necessary to establish a procedure consisting of two steps, namely a preliminary review and an in-depth investigation. ***The Commission should publish guidance on the criteria for opening such a procedure. The Commission should be able to act upon information received from any relevant source, including Member States and undertakings or EU-wide social partners. The Commission should establish a contact point to that end.***

Amendment 13

**Proposal for a regulation
Recital 22**

Text proposed by the Commission

(22) The Commission should be given ***adequate*** investigative powers to gather all necessary information. It should therefore have the power to request information from any undertaking or association of undertakings throughout the whole procedure. In addition, the Commission should have the power to impose fines and periodic penalty payments for failure to timely supply the requested information or for supplying incomplete, incorrect or misleading information. The Commission could also address questions to Member States or to third countries. Furthermore, the Commission should have the power to make fact-finding visits at the Union premises of the undertaking, or, subject to agreement by the ***undertaking and the*** third country concerned, at the premises of the undertaking in the third country. The Commission should also have the power to take decisions on the basis of facts

Amendment

(22) The Commission should be given ***appropriate*** investigative powers ***and resources*** to gather all necessary information. It should therefore have the power to request information from any undertaking or association of undertakings throughout the whole procedure. In addition, the Commission should have the power to impose fines and periodic penalty payments for failure to timely supply the requested information or for supplying incomplete, incorrect or misleading information. ***In order to reinforce the dissuasive character of this Regulation, there should be the possibility to apply redressive measures, commitments, fines and periodic penalty payments simultaneously if necessary.*** The Commission could also address questions to Member States or to third countries. Furthermore, the Commission should have the power to make fact-finding visits at the

available if the undertaking in question does not cooperate.

Union premises of the undertaking, or, subject to agreement by the third country concerned, at the premises of the undertaking in the third country. The Commission should also have the power to take decisions on the basis of facts available if the undertaking in question does not cooperate.

Amendment 14

Proposal for a regulation Recital 26

Text proposed by the Commission

(26) The Commission should have appropriate instruments to ensure the effectiveness of commitments and redressive measures. If the undertaking concerned does not comply with a decision with commitments, a decision imposing redressive measures, or a decision ordering interim measures, the Commission should have the power to impose fines and periodic penalty payments.

Amendment

(26) The Commission should have appropriate instruments to ensure the effectiveness of commitments and redressive measures. If the undertaking concerned does not comply with a decision with commitments, a decision imposing redressive measures, or a decision ordering interim measures, the Commission should have the power to impose fines and periodic penalty payments ***of a sufficiently dissuasive nature. The Commission should take into account cases of repeated non-compliance when imposing such fines and periodic penalty payments. The Commission should review the effectiveness of the measures.***

Amendment 15

Proposal for a regulation Recital 31

Text proposed by the Commission

(31) Below the notification thresholds, the Commission ***could*** require the notification of potentially subsidised concentrations that were not yet implemented or the notification of potentially subsidised bids prior to the

Amendment

(31) Below the notification thresholds, the Commission ***should*** require the notification of potentially subsidised concentrations that were not yet implemented or the notification of potentially subsidised bids prior to the

award of a public contract, if it considers that the concentration or the bid would merit ex-ante review given their impact in the Union. The Commission should also have the possibility to carry out a review on its own initiative of already implemented concentrations or awarded public contracts.

award of a public contract, if it considers that the concentration or the bid would merit ex-ante review given their impact in the Union. The Commission should also have the possibility to carry out a review on its own initiative of already implemented concentrations or awarded public contracts.

Amendment 16

Proposal for a regulation Recital 32 a (new)

Text proposed by the Commission

Amendment

(32a) In the context of the ex ante review mechanism for concentrations, concerned undertakings should be able to request pre-notification consultations with the Commission based on good faith, with the exclusive aim of receiving guidance on whether or not the formal thresholds for notification are met.

Amendment 17

Proposal for a regulation Recital 35

Text proposed by the Commission

Amendment

(35) It should be ensured that the principles governing public procurement, notably proportionality, non-discrimination, equal treatment, and transparency, are respected as regards all undertakings involved in the public procurement procedure, regardless of investigations initiated and pending pursuant to this Regulation.

(35) It should be ensured that the principles governing public procurement, notably proportionality, non-discrimination, equal treatment, and transparency, are respected as regards all undertakings involved in the public procurement procedure, regardless of investigations initiated and pending pursuant to this Regulation. ***This Regulation is without prejudice to Directives 2014/23/EU, 2014/24/EU and 2014/25/EU of the European Parliament and of the Council as regards the applicable obligations in the fields of environmental, social and labour law.***

Amendment 18

Proposal for a regulation Recital 36

Text proposed by the Commission

(36) Foreign subsidies that enable an undertaking to submit a tender which is unduly advantageous in relation to the works, supplies or services concerned should be deemed to actually or potentially create a distortion in a public procurement procedure. Those distortions should therefore be assessed on the basis of the non-exhaustive set of indicators described in recitals 13 and 14 as well as the notion of unduly advantageous tender. The indicators should allow to determine how the foreign subsidy distorts competition by improving the competitive position of an undertaking and enabling it to submit an unduly advantageous tender. The opportunity should be given to undertakings to justify that the tender is not unduly advantageous, including by adducing the elements referred to in Article 69(2) of Directive 2014/24/EU. The prohibition of the award should only apply where the advantageous nature of the tender benefiting from foreign subsidies cannot be justified, the tender would be awarded the contract and the undertaking submitting the tender did not offer commitments considered appropriate and sufficient to fully and effectively remove the distortion.

Amendment

(36) Foreign subsidies that enable an undertaking to submit a tender which is unduly advantageous in relation to the works, supplies or services concerned should be deemed to actually or potentially create a distortion in a public procurement procedure. Those distortions should therefore be assessed on the basis of the non-exhaustive set of indicators described in recitals 13 and 14 as well as the notion of unduly advantageous tender. The indicators should allow to determine how the foreign subsidy distorts competition by improving the competitive position of an undertaking and enabling it to submit an unduly advantageous tender. The opportunity should be given to undertakings to justify that the tender is not unduly advantageous, including by adducing the elements referred to in Article 69(2) of Directive 2014/24/EU. The prohibition of the award should only apply where the advantageous nature of the tender benefiting from foreign subsidies cannot be justified, the tender would be awarded the contract and the undertaking submitting the tender did not offer commitments considered appropriate and sufficient to fully and effectively remove the distortion. ***The adoption of a decision prohibiting the award of the contract results in the exclusion of the undertaking concerned from participation in the public procurement procedure.***

Amendment 19

Proposal for a regulation Recital 37

Text proposed by the Commission

(37) Taking into account the nature of the ex ante review mechanism for concentrations and public procurement awards, and the need for legal certainty regarding these specific transactions, a concentration or public procurement tender notified and assessed under the respective procedures cannot be reviewed again by the Commission on its own initiative. Financial contributions of which the Commission was informed through the notification procedure may however also be relevant outside the concentration or procurement procedure. In order to gather information on foreign subsidies, the Commission should have the possibility to launch investigations regarding specific sectors of the economy, particular types of economic activity or the use of particular foreign subsidy instruments.

Amendment

(37) Taking into account the nature of the ex ante review mechanism for concentrations and public procurement awards, and the need for legal certainty regarding these specific transactions, a concentration or public procurement tender notified and assessed under the respective procedures cannot be reviewed again by the Commission on its own initiative. Financial contributions of which the Commission was informed through the notification procedure may however also be relevant outside the concentration or procurement procedure. In order to gather information on foreign subsidies, the Commission should have the possibility to launch investigations regarding specific sectors of the economy, particular types of economic activity or the use of particular foreign subsidy instruments. ***The Commission should be able to use the information obtained from such market investigations to review certain transactions in the framework of the procedures under this Regulation.***

Amendment 20

**Proposal for a regulation
Recital 43**

Text proposed by the Commission

(43) The implementation of this Regulation by the Union should comply with Union law, the WTO Agreement and be consistent with commitments made under other trade and investment agreements to which the Union or the Member States are parties.

Amendment

(43) The implementation of this Regulation by the Union should comply with Union law, the WTO Agreement and be consistent with commitments made under other trade and investment agreements to which the Union or the Member States are parties. ***This Regulation should be without prejudice to the development of multilateral rules to address distortive subsidies.***

Amendment 21

Proposal for a regulation Recital 43 a (new)

Text proposed by the Commission

Amendment

(43a) In order to encourage the development of multilateral rules to address distortive subsidies and their root causes, it is necessary to set up a third-country dialogue. When the Commission discovers or suspects the existence of systemic distortive foreign subsidies, it should be able to engage in a dialogue with the third country in question to explore options aimed at obtaining the cessation or modification of the distortive subsidies with a view to eliminating their distortive effects in the internal market. Where a bilateral agreement between the Union and a third country provides for a consultation mechanism that covers systemic distortive foreign subsidies falling within the scope of this Regulation, this mechanism should be used to facilitate the third-country dialogue. The Commission should also be able to endeavour to obtain the cessation or modification of the distortive foreign subsidies by raising the matter in any relevant international forum or through cooperation with any other third country affected by the same systemic distortive subsidies, or with any interested third country. This dialogue should not preclude the Commission from opening or continuing investigations under this Regulation, nor should it constitute an alternative to redressive measures. The Commission should, without undue delay, inform the European Parliament and the Council of relevant developments.

Amendment 22

Proposal for a regulation Recital 47

Text proposed by the Commission

(47) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission ***in accordance with Article 291 of the Treaty***. Those powers should be exercised to set out the form and content of notifications of concentrations as well as of financial contributions in the context of public procurement procedures, details of disclosure, form and content of transparency requirements, calculation of time-limits, conditions and time-limits for commitments and detailed rules on the procedural steps concerning investigations regarding public procurement procedures. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

Amendment

(47) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised to set out the form and content of notifications of concentrations as well as of financial contributions in the context of public procurement procedures, details of disclosure, form and content of transparency requirements, calculation of time-limits, conditions and time-limits for commitments and detailed rules on the procedural steps concerning investigations regarding public procurement procedures. Those powers should be exercised in accordance with Regulation (EU) No 182/2011. ***The Commission should exercise those implementing powers for the first time no later than one year after the entry into force of this Regulation.***

Amendment 23

Proposal for a regulation Recital 47 a (new)

Text proposed by the Commission

Amendment

(47a) The Commission should have the possibility to establish a simplified procedure under which it treats certain concentrations or public procurement procedures on the basis that they appear less likely to give rise to distortions of competition on the internal market due to foreign subsidies.

Amendment 24

Proposal for a regulation
Recital 48

Text proposed by the Commission

(48) In order to ensure a level playing field on the internal market also in the long term, with a view to ensuring adequate coverage of cases investigated both through notifications as well as ex officio, the **power to adopt acts in accordance with Article 290 of the Treaty** should be **delegated to the Commission** in respect of amending the notification thresholds for concentrations and for public procurement procedures, exempting certain categories of undertakings from the notification obligations under this Regulation, as well as amending the time limits for the preliminary review and the in-depth investigations of notified concentrations or notified financial contributions in the context of a public procurement procedure. In relation to financial contributions in the context of a public procurement procedure, the **power to adopt such acts** should be **exercised** in a way that takes into account the interests of SMEs. **It is of particular importance that the Commission carries out appropriate consultations during the preparations of those acts, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁴⁷. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts.**

Amendment

(48) In order to ensure a level playing field on the internal market also in the long term, with a view to ensuring adequate coverage of cases investigated both through notifications as well as ex officio, the **Commission should evaluate the functioning and effectiveness of this Regulation, including of the notification thresholds set out in Articles 18 and 27, at the latest two years after its entry into force, and every three years thereafter, and present that evaluation by means of a report to the European Parliament and the Council. That report should include an assessment of whether this Regulation should be amended. Where the report proposes amending the Regulation, it may be accompanied by a legislative proposal, in particular** in respect of amending the notification thresholds for concentrations and for public procurement procedures, exempting certain categories of undertakings from the notification obligations under this Regulation, **introducing lower notification thresholds specific to certain economic sectors or differentiated thresholds for different types of public procurement contracts**, as well as amending the time limits for the preliminary review and the in-depth investigations of notified concentrations or notified financial contributions in the context of a public procurement procedure. In relation to financial contributions in the context of a public procurement procedure, the **evaluation** should be **conducted** in a way that takes into account the interests of SMEs. **The Commission should also make use of quantified cost-benefit analysis and ex-ante analysis on the impact on investments and consumer welfare. During its evaluation, the Commission should consider to abrogate the present**

Regulation, if it considers that the development of multilateral rules to address distortive subsidies has rendered this Regulation fully redundant.

Amendment 25

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

(1) This Regulation lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions. Such distortions may arise with respect to any economic activity, and in particular in concentrations and public procurement procedures.

Amendment

(1) This Regulation lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions, ***with a view to ensuring a level-playing field.*** Such distortions may arise with respect to any economic activity, and in particular in concentrations and public procurement procedures.

Amendment 26

Proposal for a regulation Article 2 – paragraph 2 – point a – introductory part

Text proposed by the Commission

(a) a financial contribution shall include:

Amendment

(a) a financial contribution shall include, ***inter alia:***

Amendment 27

Proposal for a regulation Article 2 – paragraph 2 – point a – point i

Text proposed by the Commission

(i) the transfer of funds or liabilities, such as capital injections, grants, loans, loan guarantees, fiscal incentives, setting off of operating losses, compensation for financial burdens imposed by public authorities, debt forgiveness, debt to equity

Amendment

(i) the transfer of ***funds or*** liabilities, such as capital injections, grants, loans, loan guarantees, fiscal incentives, ***tax exemptions,*** setting off of operating losses, compensation for financial burdens imposed by public authorities, debt

swaps or rescheduling;

forgiveness, debt to equity swaps or
rescheduling;

Amendment 28

Proposal for a regulation

Article 2 – paragraph 2 – point a – point ii

Text proposed by the Commission

(ii) the foregoing of revenue that is
otherwise due; **or**

Amendment

(ii) the foregoing of revenue that is
otherwise due;

Amendment 29

Proposal for a regulation

Article 2 – paragraph 2 – point a – point ii a (new)

Text proposed by the Commission

Amendment

**(iia) inadequately remunerated special
or exclusive rights; or**

Amendment 30

Proposal for a regulation

Article 2 – paragraph 2 – point a – point iii

Text proposed by the Commission

Amendment

(iii) the provision of goods or services
or the purchase of goods **and** services;

(iii) the provision of goods or services
or the purchase of goods **or** services,
**unless such provision or purchase is
carried out following a competitive,
transparent, non-discriminatory and
unconditional tender procedure;**

Amendment 31

Proposal for a regulation

Article 3 – paragraph 1 – introductory part

Text proposed by the Commission

(1) A distortion on the internal market shall be deemed to exist where a foreign subsidy is liable to improve the competitive position of the undertaking concerned in the internal market and where, in doing so, it actually or potentially negatively affects competition on the internal market. Whether there is a distortion on the internal market shall be determined on the basis of indicators, which **may** include the following:

Amendment

(1) A distortion on the internal market shall be deemed to exist where a foreign subsidy is liable to improve the competitive position of the undertaking concerned in the internal market and where, in doing so, it actually or potentially negatively affects competition on the internal market. Whether there is a distortion on the internal market shall be determined on the basis of indicators, which **shall** include, ***inter alia***, the following:

Amendment 32

Proposal for a regulation

Article 3 – paragraph 1 – point c

Text proposed by the Commission

(c) the situation of the undertaking and the markets concerned;

Amendment

(c) the situation of the undertaking, ***including its size***, and the markets concerned ***and in particular an assessment whether the undertaking concerned operates under the ownership, control or policy supervision or guidance of the authorities of the third country***;

Amendment 33

Proposal for a regulation

Article 3 – paragraph 1 – point d

Text proposed by the Commission

(d) the level of economic activity of the undertaking concerned on the internal market;

Amendment

(d) the level ***and evolution*** of economic activity of the undertaking concerned on the internal market ***and on its domestic market***;

Amendment 34

Proposal for a regulation
Article 3 – paragraph 2

Text proposed by the Commission

(2) A foreign subsidy is unlikely to distort the internal market if its total amount is below EUR 5 million over any consecutive period of three fiscal years.

Amendment

(2) A foreign subsidy is unlikely to distort the internal market if its total amount is below EUR 4 million over any consecutive period of three fiscal years.

Amendment 35

Proposal for a regulation
Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) The Commission may consider whether the third country has a system for the review of subsidies in place, which the Commission has found to provide guarantees, in law and in practice, that the level of protection against undue state intervention into market forces and unfair competition is at least equivalent to the level of protection within the Union, whether the subsidy has been cleared under that system and whether that clearance appears relevant also for the effects on the internal market.

Amendment 36

Proposal for a regulation
Article 3 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

(2b) In order to ensure efficiency and transparency, the Commission shall publish guidelines on the application of this Article at the latest 24 months after the entry into force of this Regulation, including explanations and examples of how each indicator shall be applied. The

Commission shall, in close cooperation with Member States, regularly update those guidelines and keep the European Parliament and the Council informed.

Amendment 37

Proposal for a regulation

Article 4 – paragraph 1 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) an export financing subsidy granted by a third country which is not a signatory to the OECD Arrangement on officially supported export credits;

Amendment 38

Proposal for a regulation

Article 4 – paragraph 1 – point 2 b (new)

Text proposed by the Commission

Amendment

(2b) a foreign subsidy to an undertaking active in a sector characterised by structural excess capacity;

Amendment 39

Proposal for a regulation

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

(1) The Commission **shall**, where warranted, balance the negative effects of a foreign subsidy in terms of distortion on the internal market with positive effects on the development of the relevant economic activity.

(1) The Commission **may**, where warranted, balance the negative effects of a foreign subsidy in terms of distortion on the internal market with positive effects on the development of the relevant economic activity **on the internal market.**

Amendment 40

Proposal for a regulation Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) At the latest 24 months after the entry into force of this Regulation, the Commission shall publish guidelines on the application of this Article, including on the criteria that are used in the balancing. The Commission shall, in close cooperation with Member States, regularly update those guidelines and keep the European Parliament and the Council informed.

Amendment 41

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

Amendment

(1) To remedy the distortion on the internal market actually or potentially caused by a foreign subsidy, **the Commission may impose redressive measures.** The undertaking concerned **may also offer commitments.**

(1) **Without prejudice to Article 5, the Commission shall impose redressive measures in order** to remedy the distortion on the internal market actually or potentially caused by a foreign subsidy, **unless it has accepted commitments offered by** the undertaking concerned **pursuant to paragraph 1a.**

Amendment 42

Proposal for a regulation Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) The Commission may accept commitments offered by the undertaking concerned, where such commitments fully and effectively remedy the distortion on the internal market. By accepting such

commitments, the Commission shall make them binding on the undertaking in a decision with commitments in accordance with Article 9(3). The Commission shall monitor the undertaking's compliance with the commitments agreed upon.

Amendment 43

Proposal for a regulation Article 6 – paragraph 2

Text proposed by the Commission

(2) Commitments or redressive measures shall fully and effectively remedy the distortion caused by the foreign subsidy in the internal market.

Amendment

(2) Commitments or redressive measures shall fully and effectively remedy the distortion ***actually or potentially*** caused by the foreign subsidy in the internal market.

Amendment 44

Proposal for a regulation Article 6 – paragraph 3 – introductory part

Text proposed by the Commission

(3) Commitments or redressive measures may consist of the following:

Amendment

(3) Commitments or redressive measures may consist, ***inter alia***, of the following:

Amendment 45

Proposal for a regulation Article 6 – paragraph 3 – point a

Text proposed by the Commission

(a) offering access under fair and non-discriminatory conditions to an infrastructure that was acquired or supported by the distortive foreign subsidies unless such fair and non-discriminatory access is already provided for by legislation in force in the Union;

Amendment

(a) offering access under fair and non-discriminatory conditions to an infrastructure ***or facility*** that was acquired or supported by the distortive foreign subsidies unless such fair and non-discriminatory access is already provided for by legislation in force in the Union;

Amendment 46

Proposal for a regulation

Article 6 – paragraph 3 – point b

Text proposed by the Commission

(b) reducing capacity or market presence;

Amendment

(b) reducing capacity or market presence, ***including by means of a temporary commercial activity restriction on the internal market;***

Amendment 47

Proposal for a regulation

Article 6 – paragraph 3 – point h a (new)

Text proposed by the Commission

Amendment

(ha) requiring the undertakings concerned to notify the Commission of any participation in future public procurement procedures in the Union for an appropriate period of time where the estimated value of the public contract is below the thresholds set out in Article 27.

Amendment 48

Proposal for a regulation

Article 6 – paragraph 3 – point h b (new)

Text proposed by the Commission

Amendment

(hb) requiring the undertakings concerned to adapt their governance structure.

Amendment 49

Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

(4) The Commission **may** impose reporting and transparency requirements.

Amendment

(4) The Commission **shall** impose reporting and transparency requirements.

Amendment 50

**Proposal for a regulation
Article 6 – paragraph 5**

Text proposed by the Commission

(5) ***If an undertaking offers commitments which fully and effectively remedy the distortion on the internal market, the Commission may accept them and make them binding on the undertaking in a decision with commitments according to Article 9(3).***

Amendment

deleted

Amendment 51

**Proposal for a regulation
Article 6 – paragraph 6**

Text proposed by the Commission

(6) Where the undertaking concerned proposes to repay the foreign subsidy including an appropriate interest rate, the Commission shall accept such repayment as commitment ***if*** it can ascertain that the repayment is transparent and ***effective***, while taking into account the risk of circumvention.

Amendment

(6) Where the undertaking concerned proposes to repay the foreign subsidy including an appropriate interest rate, the Commission shall accept such repayment as commitment ***only where*** it can ascertain that the repayment is transparent and ***effectively and adequately remedies the distortive effects***, while taking into account the risk of circumvention.

Amendment 52

**Proposal for a regulation
Article 7 – paragraph 1**

Text proposed by the Commission

The Commission may on its own initiative examine information from any source regarding alleged distortive foreign subsidies.

Amendment

The Commission may on its own initiative examine information from any source, ***including from Member States and undertakings or from Union-wide social partners***, regarding alleged distortive foreign subsidies.

The Commission shall establish a contact point through which this information can be confidentially reported.

The Commission shall inform the public authority of any follow-up taken.

Competent public authorities shall collect and exchange data with the Commission.

The Commission shall publish guidelines on the criteria for opening an ex officio review by 24 months after the entry into force of this Regulation.

Amendment 53

Proposal for a regulation

Article 8 – paragraph 2 – point b

Text proposed by the Commission

(b) inform the undertaking concerned;
and

Amendment

(b) inform the undertaking concerned
and where appropriate also Member States; and

Amendment 54

Proposal for a regulation

Article 8 – paragraph 3

Text proposed by the Commission

(3) Where the Commission, after a preliminary assessment, concludes that there are no sufficient grounds to initiate the in-depth investigation, either because there is no foreign subsidy or because there are no indications of an actual or potential

Amendment

(3) Where the Commission, after a preliminary assessment, concludes that there are no sufficient grounds to initiate the in-depth investigation, either because there is no foreign subsidy or because there are no indications of an actual or potential

distortion on the internal market, it shall close the preliminary review and inform the undertaking concerned.

distortion on the internal market, it shall close the preliminary review and inform the undertaking **and Member States** concerned, **and the European Parliament**.

Amendment 55

Proposal for a regulation Article 9 – paragraph 2

Text proposed by the Commission

(2) Where the Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 **to 5, it may** impose redressive measures (‘decision with redressive measures’).

Amendment

(2) Where the Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 **and 4 and without prejudice to Article 5, it shall** impose redressive measures (‘decision with redressive measures’), **unless it accepts commitments pursuant to paragraph 3.**

Amendment 56

Proposal for a regulation Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

The Commission may take interim measures, where:

Amendment

The Commission may take interim measures, **including during the preliminary review period**, where:

Amendment 57

Proposal for a regulation Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Interim measures shall be limited in time and may be prolonged where an indication of distortive effects or a serious risk of substantial and irreparable damage to competition on the internal market continues to exist.

Amendment 58

Proposal for a regulation Article 12 – paragraph 1

Text proposed by the Commission

(1) The Commission **may conduct the** necessary inspections of undertakings.

Amendment

(1) ***In order to carry out the duties assigned to it by this Regulation,*** the Commission ***shall, where*** necessary, ***conduct*** inspections of undertakings.

Amendment 59

Proposal for a regulation Article 12 – paragraph 2 – point a

Text proposed by the Commission

(a) to enter any premises **and** land of the undertaking concerned;

Amendment

(a) to enter any premises, land **and means of transport** of the undertaking concerned;

Amendment 60

Proposal for a regulation Article 13 – paragraph 1

Text proposed by the Commission

In order to carry out the duties assigned to it by this Regulation, the Commission may conduct inspections in the territory of a third country, provided that the ***undertaking concerned has given its consent and the*** government of the third country has been officially notified and has agreed to the inspection. Article 12(1), (2), and (3) points (a) and (b) shall apply by analogy.

Amendment

In order to carry out the duties assigned to it by this Regulation, the Commission may conduct inspections in the territory of a third country, provided that the government of the third country has been officially notified and has agreed to the inspection. Article 12(1), (2), and (3) points (a) and (b) shall apply by analogy.

Amendment 61

Proposal for a regulation

Article 15 – paragraph 1 – introductory part

Text proposed by the Commission

(1) The Commission may impose by decision fines and periodic penalty payments where an undertaking **concerned** or an association of undertakings, intentionally or negligently:

Amendment

1. The Commission **shall** impose by decision fines and periodic penalty payments where an undertaking or an association of undertakings **concerned**, intentionally or negligently:

Amendment 62

Proposal for a regulation

Article 15 – paragraph 5 – introductory part

Text proposed by the Commission

(5) Where an undertaking concerned does not comply with a decision with commitments pursuant to Article 9(3), a decision ordering interim measures pursuant to Article 10 or a decision imposing redressive measures pursuant to Article 9(2), the Commission may impose by decision:

Amendment

5. Where an undertaking **or association of undertakings** concerned does not comply with a decision with commitments pursuant to Article 9(3), a decision ordering interim measures pursuant to Article 10 or a decision imposing redressive measures pursuant to Article 9(2), the Commission may impose by decision:

Amendment 63

Proposal for a regulation

Article 18 – paragraph 3 – point a

Text proposed by the Commission

(a) the acquired undertaking or at least one of the merging undertakings is established in the Union and generates an aggregate turnover in the Union of at least EUR **500** million; and

Amendment

(a) the acquired undertaking or at least one of the merging undertakings is established in the Union and generates an aggregate turnover in the Union of at least EUR **400** million; and

Amendment 64

Proposal for a regulation
Article 18 – paragraph 3 – point b

Text proposed by the Commission

(b) the undertakings concerned ***received from*** third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR 50 million.

Amendment

(b) ***all*** the undertakings concerned ***have been granted by*** third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR 50 million.

Amendment 65

Proposal for a regulation
Article 18 – paragraph 4 – point a

Text proposed by the Commission

(a) the joint venture itself ***or one of its parent undertakings*** is established in the Union and generates an aggregate turnover in the Union of at least EUR ***500*** million; and

Amendment

(a) the joint venture itself is established in the Union and generates an aggregate turnover in the Union of at least EUR ***400*** million; and

Amendment 66

Proposal for a regulation
Article 18 – paragraph 4 – point b

Text proposed by the Commission

(b) the joint venture itself and its parent undertakings ***received from*** third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR 50 million.

Amendment

(b) the joint venture itself and its parent undertakings ***have been granted by*** third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR 50 million.

Amendment 67

Proposal for a regulation
Article 19 – paragraph 4

Text proposed by the Commission

(4) If the undertakings concerned fail to meet their obligation to notify, the Commission **may** review a notifiable concentration in accordance with this Regulation by requesting the notification of that concentration. In that case the Commission shall not be bound by the time limits referred to in Article 23(1) and (4).

Amendment

(4) If the undertakings concerned fail to meet their obligation to notify, the Commission **shall** review a notifiable concentration in accordance with this Regulation by requesting the notification of that concentration. In that case the Commission shall not be bound by the time limits referred to in Article 23(1) and (4).

Amendment 68

**Proposal for a regulation
Article 19 – paragraph 5**

Text proposed by the Commission

(5) The Commission may request the prior notification of any concentration which is not a notifiable concentration within the meaning of Article 18 at any time prior to its implementation where the Commission suspects that the undertakings concerned may have **benefitted from** foreign subsidies in the three years prior to the concentration. That concentration shall be deemed to be a notifiable concentration for the purposes of this Regulation.

Amendment

(5) The Commission may request the prior notification of any concentration which is not a notifiable concentration within the meaning of Article 18 at any time prior to its implementation where the Commission suspects that the undertakings concerned may have **been granted** foreign subsidies in the three years prior to the concentration. That concentration shall be deemed to be a notifiable concentration for the purposes of this Regulation.

Amendment 69

**Proposal for a regulation
Article 27 – paragraph 2**

Text proposed by the Commission

(2) For the purpose of Article 28, a notifiable foreign financial contribution in an EU public procurement procedure shall be deemed to arise where the estimated value of that public procurement is equal or greater than EUR **250** million.

Amendment

(2) For the purpose of Article 28 **of this Regulation**, a notifiable foreign financial contribution in an EU public procurement procedure shall be deemed to arise where the estimated **total** value of that public procurement, **calculated in accordance with the provisions laid down in Article 5 of Directive 2014/24/EU and Article 16 of**

Directive 2014/25/EU, is equal **to** or greater than EUR **200** million.

Amendment 70

Proposal for a regulation Article 28 – paragraph 2

Text proposed by the Commission

(2) The obligation to notify foreign financial contributions under this paragraph shall extend to economic operators, groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU, Article 19(2) of Directive 2014/24/EU and Article 37(2) of Directive 2014/25/EU, main subcontractors and main suppliers. A subcontractor or supplier shall be deemed to be main where ***their participation ensures key elements of the contract performance and in any case where*** the economic share of their contribution exceeds **30%** of the estimated value of the contract.

Amendment

(2) The obligation to notify foreign financial contributions under this paragraph shall extend to economic operators, groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU, Article 19(2) of Directive 2014/24/EU and Article 37(2) of Directive 2014/25/EU, main subcontractors and main suppliers. A subcontractor or supplier shall be deemed to be main where the economic share of their contribution exceeds **20 %** of the estimated value of the contract.

Amendment 71

Proposal for a regulation Article 28 – paragraph 3

Text proposed by the Commission

(3) For groups of economic operators, main subcontractors and main suppliers, the lead economic operator shall ensure notification.

Amendment

(3) For groups of economic operators, main subcontractors and main suppliers, the lead economic operator shall ensure notification. ***The lead economic operator shall not be liable for information provided by their main subcontractors or main suppliers.***

Amendment 72

Proposal for a regulation Article 28 – paragraph 6

Text proposed by the Commission

(6) Where the Commission suspects that an undertaking may have **benefitted from** foreign subsidies in the three years prior to the submission of the tender or request to participate in the public procurement procedure, it may request the notification of the foreign financial contributions received by that undertaking in any public procurement procedure which are not notifiable under Article 27(2) or fall within the scope of paragraph 5 of this Article, at any time before the award of the contract. Once the Commission has requested the notification of such a financial contribution, it is deemed to be a notifiable foreign financial contribution in a public procurement procedure.

Amendment

(6) Where the Commission suspects that an undertaking may have **been granted** foreign subsidies in the three years prior to the submission of the tender or request to participate in the public procurement procedure, it may request the notification of the foreign financial contributions received by that undertaking in any public procurement procedure which are not notifiable under Article 27(2) or fall within the scope of paragraph 5 of this Article, at any time before the award of the contract. Once the Commission has requested the notification of such a financial contribution, it is deemed to be a notifiable foreign financial contribution in a public procurement procedure.

Amendment 73

**Proposal for a regulation
Article 29 – paragraph 2**

Text proposed by the Commission

(2) The Commission shall **carry out** a preliminary review no later than **60** days after it received the notification.

Amendment

(2) The Commission shall **complete** a preliminary review no later than **40** days after it received the notification.

Amendment 74

**Proposal for a regulation
Article 29 – paragraph 4**

Text proposed by the Commission

(4) The Commission may adopt a decision closing the in-depth investigation no later than **200** days after it received the notification. In exceptional circumstances, this time limit may be extended after consultation with the concerned contracting authority or contracting entity.

Amendment

(4) The Commission may adopt a decision closing the in-depth investigation no later than **120** days after it received the notification. In exceptional circumstances, this time limit may be extended **by 20 days** after consultation with the concerned contracting authority or contracting entity.

Amendment 75

Proposal for a regulation Article 31 – paragraph 3

Text proposed by the Commission

(3) The contract may be awarded to an undertaking submitting a declaration under Article 28 before the Commission takes any of the decisions referred to in Article 30 or before the time limit laid down in Article 29(4) elapses only if the tender evaluation has established that the undertaking in question has in any case submitted the most economically advantageous tender.

Amendment

(3) The contract may be awarded to an undertaking submitting a declaration under Article 28 before the Commission takes any of the decisions referred to in Article 30 or before the time limit laid down in Article 29(4) ***of this Regulation*** elapses only if the tender evaluation has established that the undertaking in question has in any case submitted the most economically advantageous tender, ***as defined in Article 67(2) of Directive 2014/24/EU and Article 82(2) of Directive 2014/25/EU. Information relating to distortive foreign subsidies, including any suspicion that a false declaration has been made, may be reported to the Commission.***

Amendment 76

Proposal for a regulation Article 31 – paragraph 6

Text proposed by the Commission

(6) In all cases, the contracting authority or the contracting entity shall inform the Commission of any decision relating to the outcome of the public procurement procedure.

Amendment

(6) In all cases, the contracting authority or the contracting entity shall inform the Commission ***without undue delay*** of any decision relating to the outcome of the public procurement procedure.

Amendment 77

Proposal for a regulation Article 31 – paragraph 7

Text proposed by the Commission

(7) The principles governing public procurement, including proportionality, non-discrimination, equal treatment, and transparency, shall be observed as regards all undertakings involved in the public procurement procedure. The investigation of foreign subsidies pursuant to this Regulation shall not result in the contracting authority or the contracting entity treating the undertaking concerned in a way that is contrary to those principles.

Amendment

(7) The principles governing public procurement ***procedures***, including proportionality, non-discrimination, equal treatment and transparency ***as well as compliance with obligations relating to applicable environmental, social and labour law and standards in the performance of the contract***, shall be observed as regards all undertakings involved in the public procurement procedure. The investigation of foreign subsidies pursuant to this Regulation shall not result in the contracting authority or the contracting entity treating the undertaking concerned in a way that is contrary to those principles.

Amendment 78

**Proposal for a regulation
Article 32 – paragraph 2**

Text proposed by the Commission

(2) In addition, the Commission may impose by decision on the undertakings concerned fines not exceeding 1 % of their aggregate turnover in the preceding business year, where they intentionally or negligently supply incorrect or misleading information in a notification pursuant to Article 28 or supplement thereto;

Amendment

2. In addition, the Commission may impose by decision on the undertakings concerned fines not exceeding 1 % of their aggregate turnover in the preceding business year, where they intentionally or negligently supply incorrect or misleading information in a notification ***and declarations*** pursuant to Article 28 or supplement thereto;

Amendment 79

**Proposal for a regulation
Article 33 – paragraph 1**

Text proposed by the Commission

(1) A financial contribution notified in the context of a concentration under Article 19 may be relevant and assessed again in

Amendment

1. A financial contribution notified in the context of a concentration under Article 19 may be relevant and assessed again

relation to another economic activity.

under this Regulation in relation to another economic activity.

Amendment 80

Proposal for a regulation Article 33 – paragraph 2

Text proposed by the Commission

(2) A financial contribution notified in the context of a public procurement procedure under Article 28 may be relevant and assessed again in relation to another economic activity.

Amendment

2. A financial contribution notified in the context of a public procurement procedure under Article 28 may be relevant and assessed again ***under this Regulation*** in relation to another economic activity.

Amendment 81

Proposal for a regulation Article 34 – paragraph 1

Text proposed by the Commission

(1) Where the information available substantiates a reasonable suspicion that foreign subsidies in a particular sector, for a particular type of economic activity or based on a particular subsidy instrument may distort the internal market, the Commission ***may*** conduct a market investigation into the particular sector, the particular type of economic activity or into the use of the subsidy instrument concerned. In the course of that market investigation, the Commission ***may*** request the undertakings or associations of undertakings concerned to supply the necessary information and may carry out the necessary inspections. The Commission may also request the Member State or third country concerned to supply information.

Amendment

(1) Where the information available substantiates a reasonable suspicion that foreign subsidies in a particular sector, for a particular type of economic activity or based on a particular subsidy instrument may distort the internal market, the Commission ***shall*** conduct a market investigation into the particular sector, the particular type of economic activity or into the use of the subsidy instrument concerned. In the course of that market investigation, the Commission ***shall*** request the undertakings or associations of undertakings concerned to supply the necessary information and may carry out the necessary inspections. The Commission may also request the Member State or third country concerned to supply information.

Amendment 82

Proposal for a regulation
Article 34 – paragraph 2

Text proposed by the Commission

(2) The Commission **may** publish a report on the results of its market investigation into particular sectors, particular types of economic activity or particular subsidy instruments and invite comments from interested parties.

Amendment

(2) The Commission **shall, where relevant,** publish a report on the results of its market investigation into particular sectors, particular types of economic activity or particular subsidy instruments and invite comments from interested parties.

Amendment 83

Proposal for a regulation
Article 34 a (new)

Text proposed by the Commission

Amendment

Article 34a

Third-country dialogue

1. Where, following a market investigation pursuant to Article 34, the Commission discovers the existence of systemic distortive foreign subsidies, or where other information available substantiates a reasonable suspicion as to the existence of such subsidies, the Commission, on behalf of the Union, may engage in a dialogue with the third country in question to explore options aimed at obtaining the cessation or modification of the subsidies with a view to eliminating their distortive effects on the internal market.

2. That dialogue shall not prevent the Commission from taking further action under this Regulation, including the opening or continuation of investigations or the application of interim or redressive measures.

3. The Commission may seek to obtain the cessation or modification of the systemic distortive subsidies also by raising the matter in any relevant

international forum.

4. The Commission may enter into consultations or cooperation, on behalf of the Union, with any other third country affected by the same systemic distortive subsidies or with any interested third country, with a view to obtaining the cessation or modification of the subsidies. This may involve, where appropriate, coordination in relevant international fora and coordination in response to the systemic distortive subsidies.

5. The Commission shall, without undue delay, inform the European Parliament and the Council of relevant developments.

Amendment 84

Proposal for a regulation Article 35 – paragraph 1

Text proposed by the Commission

(1) The powers of the Commission under Article 9 shall be subject to a limitation period of ten years, starting on the day on which a foreign subsidy is granted to the undertaking concerned. Any action taken by the Commission under Articles 8, 11, 12 **or 13** with respect to a foreign subsidy shall interrupt the limitation period. After each interruption, the limitation period shall start to run afresh.

Amendment

(1) The powers of the Commission under Article 9 shall be subject to a limitation period of ten years, starting on the day on which a foreign subsidy is granted to the undertaking concerned. Any action taken by the Commission under Articles 8, 11, 12, **13 or 34** with respect to a foreign subsidy shall interrupt the limitation period. After each interruption, the limitation period shall start to run afresh.

Amendment 85

Proposal for a regulation Article 40 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3a) This Regulation is without prejudice to the application of Regulation

(EU) 2022/... of the European Parliament and of the Council^{1a}.

^{1a} Regulation (EU) 2022/... of the European Parliament and of the Council on the access of third-country economic operators, goods and services to the Union's public procurement market and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement markets of third countries (International Procurement Instrument - IPI) (OJ L ...).

Amendment 86

Proposal for a regulation Article 40 – paragraph 7

Text proposed by the Commission

(7) An investigation pursuant to this Regulation shall not be carried out and measures shall not be imposed or maintained where such investigation or measures would be contrary to the Union's obligations emanating from any relevant international agreement it has entered into. In particular, no action shall be taken under this Regulation which would amount to a specific action against a subsidy within the meaning of Article 32.1 of the Agreement on Subsidies and Countervailing Measures. This Regulation shall not prevent the Union from exercising its rights or fulfilling its obligations under international agreements.

Amendment

(7) An investigation pursuant to this Regulation shall not be carried out and measures shall not be imposed or maintained where such investigation or measures would be contrary to the Union's obligations emanating from any relevant international agreement it has entered into. In particular, no action shall be taken under this Regulation which would amount to a specific action against a subsidy within the meaning of Article 32.1 of the Agreement on Subsidies and Countervailing Measures **and granted by a third country which is a member of the World Trade Organisation.** This Regulation shall not prevent the Union from exercising its rights or fulfilling its obligations under international agreements.

Amendment 87

Proposal for a regulation
Article 42 – paragraph 1 – point a

Text proposed by the Commission

(a) the form, content and procedural details of notifications of concentrations pursuant to Article 19;

Amendment

(a) the form, content and procedural details of notifications of concentrations pursuant to Article 19, ***including a possible simplified procedure;***

Amendment 88

Proposal for a regulation
Article 42 – paragraph 1 – point b

Text proposed by the Commission

(b) the form, content and procedural details of notifications of foreign financial contributions in public procurement procedures pursuant to Article 28;

Amendment

(b) the form, content and procedural details of notifications of foreign financial contributions in public procurement procedures pursuant to Article 28, ***including a possible simplified procedure;***

Amendment 89

Proposal for a regulation
Article 42 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) The first implementing act or acts, covering all of the elements mentioned in paragraph 1, shall be adopted no later than one year after the entry into force of this Regulation.

Amendment 90

Proposal for a regulation
Article 44

Text proposed by the Commission

Amendment

Article 44

deleted

Delegated acts

(1) The Commission is empowered to adopt delegated acts for the purposes of:

(a) amending the thresholds for notifications as set out in Articles 18 and 27, in the light of the practice of the Commission during the first five years of application of this Regulation, and taking into account the effectiveness of application;

(b) exempting certain categories of undertakings concerned from the obligation to notify pursuant to Articles 19 and 28, in light of the practice of the Commission in the first five years of application of this Regulation, in case this practice allows to identify economic activities where foreign subsidies are unlikely to distort the internal market;

(c) amending the timelines for review and in-depth investigations as set out in Articles 24 and 29.

(2) Delegated acts referred to in paragraph 1 shall be adopted in accordance with Article 45.

Amendment 91

Proposal for a regulation

Article 45

Text proposed by the Commission

Amendment

Article 45

deleted

Exercise of the delegation

(1) The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

(2) The power to adopt delegated acts referred to in Article 44 shall be conferred

on the Commission for an indeterminate period of time starting two years after the date of entry into force of this Regulation.

(3) The delegation of power referred to in Article 44 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

(4) Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

(5) As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

(6) A delegated act adopted pursuant to Article 44 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Amendment 92

Proposal for a regulation Article 46 – paragraph 1

Text proposed by the Commission

Within **five** years after the entry into force of this Regulation at the latest, the Commission shall present a report to the European Parliament and the Council on **the application of this Regulation, accompanied, where the Commission considers it appropriate, by relevant legislative proposals.**

Amendment

1. Within **two** years after the entry into force of this Regulation at the latest, **and every three years thereafter**, the Commission shall **review and evaluate the functioning and effectiveness of this Regulation and** present a report to the European Parliament and the Council on its application. **This review shall include an assessment of the notification thresholds set out in Articles 18 and 27 and their effects on the Commission's capacity to implement this Regulation in an effective manner.**

Amendment 93

Proposal for a regulation

Article 46 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. **Where the report recommends amendments to this Regulation and where the Commission considers it appropriate in light of its practice during the application of this Regulation and taking into account the effectiveness of application, the report may be accompanied by relevant legislative proposals, including:**

- a) to amend the thresholds for notifications as set out in Articles 18 and 27;**
- b) to exempt certain categories of undertakings concerned, such as good-faith sovereign wealth or pension funds, from the obligation to notify pursuant to Articles 19 and 28, especially where the practice of the Commission enables the identification of economic activities where foreign subsidies are unlikely to distort the internal market;**
- c) to establish specific thresholds for**

notifications for certain economic sectors or differentiated thresholds for different types of public procurement contracts, especially where the practice of the Commission enables the identification of economic activities where foreign subsidies are more likely to distort the internal market, including as regards strategic sectors and critical infrastructure;

d) to amend the timelines for review and in-depth investigations as set out in Articles 24 and 29;

e) to abrogate the present Regulation, if the Commission considers that multilateral rules to address distortive subsidies have rendered this Regulation fully redundant.

Amendment 94

Proposal for a regulation Article 47 – paragraph 1

Text proposed by the Commission

(1) This Regulation shall apply to foreign subsidies granted in the **ten** years prior to the date of application of this Regulation where such foreign subsidies distort the internal market after the start of application of this Regulation.

Amendment

(1) This Regulation shall apply to foreign subsidies granted in the **seven** years prior to the date of application of this Regulation where such foreign subsidies distort the internal market after the start of application of this Regulation.

EXPLANATORY STATEMENT

General Appreciation

The Rapporteur supports the overall aim and design of the proposal for a Regulation on foreign subsidies distorting the single market.

The proposal addresses a longstanding **regulatory gap** that puts European companies at a competitive disadvantage vis-à-vis certain foreign competitors that have benefited from foreign subsidies. Whereas subsidies given by EU Member States are subject to rigorous scrutiny under EU State aid rules, subsidies given by third countries often escape such scrutiny. This leads to a distortion of the level playing field in the internal market, and can lead to European companies being crowded out, stifling innovation and job creation within the Union.

The Rapporteur fully shares the sense of urgency when it comes to closing this legal loophole. **It enhances the EU's open strategic autonomy** to level the playing field between European and foreign competitors in the internal market. Moreover, the necessity to enforce the rules of the internal market is a necessary precondition **to shore up the continued support for open and fair trade policies**, which remain the main source of prosperity inside the EU. The Rapporteur sees this proposal as playing a crucial role in the wider endeavour to **strengthen the EU's open strategic autonomy to undergird its outward looking posture** and to address growing trade scepticism.

The Rapporteur also welcomes the instrument's potential to **give impetus to the plurilateral and multilateral development of rules to address distortive foreign subsidies**, which is a dimension of the proposal that he has actively sought to strengthen.

Proposed changes

The **inclusive process** leading up to this proposal, including the publication of a White Paper, an extensive public consultation and an Impact Assessment, has allowed the Commission to table a proposal with, in the Rapporteur's view, a high degree of maturity, commensurate with the high sense of urgency shared by many stakeholders.

Nevertheless, the Rapporteur has sought to introduce a number of changes and novel elements that add value to the proposal, without prejudicing the overall design and efficacy of the instrument.

The **overall efficacy of the instrument** has been the guiding compass for the Rapporteur. In this respect, he welcomes the fact that the European Commission is the sole enforcer of the Regulation, to allow for homogeneous application in the EU Single Market. This however also means that without adequate resources for implementation, this instrument could rapidly lead to excessive administrative burden for the Commission, augment red tape for foreign and European companies, and ultimately hamper investment in the internal market, without actually moving the needle on counteracting distortive foreign subsidies.

Therefore, in the spirit of compromise the Rapporteur opted for a moderate reduction of the

thresholds for the notification based instruments in order to maintain the administrative burden for the Commission and companies at a manageable level on the one hand, but also to target more potential cases on the other hand. Lowering the thresholds further would lead to a significant increase of the administrative burden for the Commission and therefore risk crippling the *ex officio* instrument and the capacity of the Commission to focus on the most distortive cases. The Rapporteur considers it important to strike a balance between the ambition to cover a significant number of cases, while allowing the Commission to prioritise its work and initiate *ex officio* investigations where there are grounds to suspect unwarranted subsidies.

The Rapporteur nevertheless considers that the relatively high thresholds need to be paired with greater clarity on the activation of the *ex officio* instrument. He has therefore sought to **facilitate the access of stakeholders and Member States** to approach the Commission with information potentially leading to the start of an investigation. Moreover, the Rapporteur has introduced the possibility for the Commission to propose **revising certain thresholds** in light of the experience derived from the application of the Regulation. Special attention should be paid to introducing lower sector-specific thresholds in emerging industries of strategic value, if the data collected by virtue of this instrument shows that foreign subsidies more often distort acquisitions in these sectors.

To further strengthen the Regulation, the Rapporteur has ensured that the **abuse of a dominant position** in a foreign company's home-market, for example where such company benefits from a monopoly position that allows it to generate excess profits which in turn unduly strengthen the company's competitive position in other markets, can also be considered a financial contribution. Moreover, the Rapporteur has clarified that **known future subsidies** notifiable under this instrument in order to close a potential loophole where subsidies that are committed and decided by a third country government, but not yet disbursed or otherwise become effective, would enable a foreign competitor to submit abnormally low tenders or make abnormally high bids for acquisitions, all the while evading scrutiny under this Regulation.

In order to **improve legal certainty** for stakeholders, the Rapporteur mandates the Commission to publish guidelines on the application of the balancing test foreseen under Art. 5. In addition, he has sought to clarify that the balancing test should also take into account compatibility with public policy objectives, as well as any positive externalities engendered by a foreign subsidy both inside and outside the internal market.

The Rapporteur has also clarified that the Commission may consider in its assessment of potentially distortive foreign subsidies whether the third country concerned has in place a **subsidy control mechanism that is equivalent to the Union's**, both in law and in practice. Additionally, to prevent over-compliance and the associated red tape, the Rapporteur has introduced the possibility for companies to approach the Commission for **pre-notification consultations** in order to establish whether the formal requirements for notification in the case of concentrations have been met. Furthermore, the Rapporteur inserts a new article on third country dialogue, with a view to addressing the root causes of the distortive foreign subsidies.

Another major point of focus for the Rapporteur has been to **reinforce the international dimension**. This Regulation is conceived as an autonomous instrument in the absence of

progress within the multilateral fora such as the WTO, where the problem of distortive subsidies for services and investment would ideally be solved. For the Rapporteur this instrument is therefore the occasion for the EU to double down on its commitment to advance multilateral and plurilateral solutions to distortive subsidies.

In this light, the Rapporteur has introduced the possibility for the European Commission to engage on behalf of the Union in **third country dialogue** where persistent and systemic distortive subsidy schemes, run by a third country, are discovered. These schemes should also be addressed at the appropriate multilateral fora in the hope that this will give impetus to the development of multilateral solutions.

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on International Trade

on the proposal for a regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market
(COM(2021)0223 – C9-0167/2021– 2021/0114(COD))

Rapporteur for opinion(*): Stéphanie Yon-Courtin

(*) Associated committee – Rule 57 of the Rules of Procedure

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on International Trade, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) A strong, open and competitive internal market enables both European and foreign undertakings to compete on merits. The Union benefits from a sophisticated and effective system of State aid control, aiming at ensuring fair conditions for all undertakings engaging in an economic activity in the internal market. This State aid control system prevents Member States from granting State aid that unduly distorts competition in the internal market.

Amendment

(1) A strong, open and competitive internal market enables both European and foreign undertakings to compete on merits. ***When assessing a foreign subsidy, the Commission may take into account to what extent a regulatory or supervisory regime of a third country is similar to Union State aid control and effectively reduces distortions caused by a third country subsidy. If the Commission has ascertained that the third country granting the foreign subsidy has in place a system for the review of subsidies that guarantees in law and in practice a level of protection against undue state intervention into market forces and unfair***

competition which is at least equivalent to the level within the Union and which effectively protects not only the market of the third country but also the internal market of the Union, the foreign subsidy is unlikely to distort the internal market.

The Union benefits from a sophisticated and effective system of State aid control, aiming at ensuring fair conditions for all undertakings engaging in an economic activity in the internal market. This State aid control system prevents Member States from granting State aid that unduly distorts competition in the internal market.

Amendment 2

Proposal for a regulation Recital 2

Text proposed by the Commission

(2) At the same time, undertakings might receive subsidies from third countries, that provide public funds which are then used, for instance, to finance economic activities in the internal market in any sector of the economy, such as participation in public procurement tenders, or acquisitions of undertakings, including those with strategic assets such as critical infrastructure and innovative technologies. Such subsidies are currently not subject to Union State aid rules.

Amendment

(2) At the same time, undertakings might receive subsidies from third countries, that provide public funds which are then used, for instance, to finance economic activities in the internal market in any sector of the economy, such as participation in public procurement tenders, or acquisitions of undertakings, including those with strategic assets such as critical infrastructure and innovative technologies. Such subsidies are currently not subject to Union State aid rules.

Similar concerns apply in relation to state-owned enterprises.

Amendment 3

Proposal for a regulation Recital 5

Text proposed by the Commission

(5) It is therefore necessary to complement existing Union instruments

Amendment

(5) It is therefore necessary to ***have in place an international structure that deals***

with a new tool to effectively deal with distortions in the internal market caused by foreign subsidies and ensure a level playing field. In particular, the new tool complements Union State aid rules which deal with distortions in the internal market caused by Member State subsidies.

with the area of subsidies from different jurisdictions. In its absence, however, it is necessary to complement existing Union instruments with a new tool to effectively deal with distortions in the internal market caused by foreign subsidies and ensure a level playing field. In particular, the new tool complements Union State aid rules which deal with distortions in the internal market caused by Member State subsidies.

Amendment 4

Proposal for a regulation Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) The new instrument should be coherent with existing instruments, such as Council Regulation (EC) No 139/2004^{1a}, Directive 2014/24/EU of the European Parliament and of the Council^{1b} or Regulation (EU) 2019/452 of the European Parliament and of the Council^{1c}. In its application of the different instruments, the Commission should pay attention to ensure an efficient sharing of necessary information to safeguard a comprehensive approach.

^{1a} Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p.1).

^{1b} Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p.65).

^{1c} Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L

Amendment 5

Proposal for a regulation

Recital 5 b (new)

Text proposed by the Commission

Amendment

(5b) Without prejudice to the budgetary procedure and through existing financial instruments, adequate human, financial and technical resources should be allocated to the Commission to ensure that it can effectively perform its duties and exercise its powers in respect of the enforcement of this Regulation.

Amendment 6

Proposal for a regulation

Recital 6

Text proposed by the Commission

Amendment

(6) Rules and procedures to investigate foreign subsidies that actually or potentially distort the internal market should be laid down and, where relevant, those distortions should be redressed. Foreign subsidies could distort the internal market if the undertaking benefitting from the foreign subsidy engages in an economic activity in the Union. This Regulation should therefore establish rules for all undertakings engaging in an economic activity in the Union. Given the significance of the economic activities pursued by SMEs, and their contribution to the fulfilment of the Union's key policy goals, special attention is given to the impact of this Regulation on them.

(6) Rules and procedures to investigate foreign subsidies that actually or potentially distort the internal market should be laid down and, where relevant, those distortions should be redressed. Foreign subsidies could distort the internal market if the undertaking benefitting from the foreign subsidy engages in an economic activity in the Union. ***An efficient enforcement of the principles laid down in this Regulation will contribute to achieve the necessary resilience of the internal market towards external economic influence and resilience of Europe.*** This Regulation should therefore establish rules for all undertakings engaging in an economic activity in the Union. Given the significance of the economic activities pursued by SMEs, and their contribution to the fulfilment of the Union's key policy

goals, special attention is given to the impact of this Regulation on them.

Amendment 7

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) To ensure a level playing field throughout the internal market and consistency in the application of this Regulation, the Commission should be the sole authority competent to apply this Regulation. The Commission should ***have the power to*** examine any foreign subsidy to the extent it is in the scope of this Regulation in any sector of the economy on its own initiative relying on information from all available sources. To ensure effective control, in the specific case of large concentrations (mergers and acquisitions) and public procurement procedures above certain thresholds, the Commission should ***have the power to*** review foreign subsidies based on a prior notification by the undertaking to the Commission.

Amendment

(7) To ensure a level playing field throughout the internal market and consistency in the application of this Regulation, the Commission should be the sole authority competent to apply this Regulation. The Commission should examine any foreign subsidy to the extent it is in the scope of this Regulation in any sector of the economy on its own initiative relying on information from all available sources. To ensure effective control, in the specific case of large concentrations (mergers and acquisitions) and public procurement procedures above certain thresholds, the Commission should review foreign subsidies based on a prior notification by the undertaking to the Commission.

Amendment 8

Proposal for a regulation

Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Given that relevant Member States' authorities are an integral part of the application of this Regulation, the Commission should set up a structured cooperation and communication network to share information, to coordinate and strengthen the European Union approach to foreign subsidies distorting the internal market.

Amendment 9

Proposal for a regulation Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) Such a financial contribution should also include a situation where the beneficiary has privileged access to its domestic market, namely through exclusive or special rights or equivalent measures, for the provision of goods or services in the third country conferred by national law or the benefit of a domestic captive market due to the prevailing legal and economic conditions. This could lead to an artificial competitive advantage that could be leveraged in the internal market and thereby exacerbate the distortive effect of any subsidy.

Amendment 10

Proposal for a regulation Recital 11

Text proposed by the Commission

Amendment

(11) The benefit should be conferred to an individual undertaking or industry or several undertakings or industries. The benefit could be established by law or in fact.

(11) The benefit should be conferred to an individual undertaking or industry or several undertakings or industries. The benefit could be established by law or in fact. ***Future benefits that have been agreed upon in a legally binding manner also fall into the scope of this Regulation. Such future benefits could also be contained in a legally binding announcement.***

Amendment 11

Proposal for a regulation Recital 14

(14) When applying these indicators, the Commission could take into account different elements such as the size of the subsidy in absolute terms or in relation to the size of the market or to the value of the investment. For instance, a concentration, in the context of which a foreign subsidy covers a substantial part of the purchase price of the target, is likely to be distortive. Similarly, foreign subsidies covering a substantial part of the estimated value of a contract to be awarded in a public procurement procedure are likely to cause distortions. If a foreign subsidy is granted for operating costs, it seems more likely to cause distortions than if it is granted for investment costs. Foreign subsidies to small and medium-sized undertakings may be considered less likely to cause distortions than foreign subsidies to large undertakings. Furthermore, the characteristics of the market, and in particular the competitive conditions on the market, such as barriers to entry, should be taken into account. Foreign subsidies leading to overcapacity by sustaining uneconomic assets or by encouraging investment in capacity expansions that would otherwise not have been built are likely to cause distortions. A foreign subsidy to a beneficiary that shows a low degree of activity in the internal market, measured for instance in terms of turnover achieved in the Union, is less likely to cause distortions than a foreign subsidy to a beneficiary that has a more significant level of activity in the internal market. **Finally**, foreign subsidies not exceeding EUR 5 million should be deemed, **as a general rule**, unlikely to distort the internal market within the meaning of this Regulation.

(14) When applying these indicators, the Commission could take into account different elements such as the size of the subsidy in absolute terms or in relation to the size of the market or to the value of the investment. For instance, a concentration, in the context of which a foreign subsidy covers a substantial part of the purchase price of the target, is likely to be distortive. Similarly, foreign subsidies covering a substantial part of the estimated value of a contract to be awarded in a public procurement procedure are likely to cause distortions. If a foreign subsidy is granted for operating costs, it seems more likely to cause distortions than if it is granted for investment costs. Foreign subsidies to small and medium-sized undertakings may be considered less likely to cause distortions than foreign subsidies to large undertakings. Furthermore, the characteristics of the market, and in particular the competitive conditions on the market, such as barriers to entry, should be taken into account. Foreign subsidies leading to overcapacity by sustaining uneconomic assets or by encouraging investment in capacity expansions that would otherwise not have been built are likely to cause distortions. A foreign subsidy to a beneficiary that shows a low degree of activity in the internal market, measured for instance in terms of turnover achieved in the Union, is less likely to cause distortions than a foreign subsidy to a beneficiary that has a more significant level of activity in the internal market. Foreign subsidies not exceeding EUR 5 million should be deemed unlikely to distort the internal market within the meaning of this Regulation. ***The Commission should draft and publish, in close cooperation with the Member States, guidelines with further details for assessing the distortive nature of a subsidy in order to provide legal certainty***

for all market participants. The guidelines should also provide examples and typical cases of distortive and non-distortive subsidies.

Amendment 12

Proposal for a regulation Recital 16

Text proposed by the Commission

(16) The Commission should take into account the positive effects of the foreign subsidy on the development of the relevant subsidised economic activity. The Commission should weigh these positive effects against the negative effects of a foreign subsidy in terms of distortion on the internal market in order to determine, if applicable, the appropriate redressive measure or accept commitments. The balancing may also lead to the conclusion that no redressive measures should be imposed. Categories of foreign subsidies that are deemed most likely to distort the internal market *are less likely* to have *more* positive *than negative* effects.

Amendment

(16) The Commission should take into account the positive effects of the foreign subsidy on the development of the relevant subsidised economic activity *taking into account policy objectives based on international agreements*. The Commission should weigh these positive effects against the negative effects of a foreign subsidy in terms of distortion on the internal market in order to determine, if applicable, the appropriate redressive measure or accept commitments. The balancing may also lead to the conclusion that no redressive measures should be imposed. Categories of foreign subsidies that are deemed most likely to distort the internal market *can be predicated* to have *overwhelmingly negative rather than* positive effects. *To this effect, the Commission should be empowered to adopt delegated acts on the application of the balancing test.*

Amendment 13

Proposal for a regulation Recital 21

Text proposed by the Commission

(21) The Commission should have the power, on its own initiative, to examine any information on foreign subsidies. To this end, it is necessary to establish a

Amendment

(21) The Commission should have the power, on its own initiative, to examine any information on foreign subsidies. To this end, it is necessary to establish a

procedure consisting of two steps, namely a preliminary review and an in-depth investigation.

procedure consisting of two steps, namely a preliminary review and an in-depth investigation. ***The Commission should publish guidance on the criteria to open such a procedure.***

Amendment 14

Proposal for a regulation Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) Member States should have a predefined information system and a contact point at their disposal by which the Commission can receive alerts and information concerning evidence of the existence of a potentially distortive subsidy.

Amendment 15

Proposal for a regulation Recital 22

Text proposed by the Commission

Amendment

(22) The Commission should be given adequate investigative powers to gather all necessary information. It should therefore have the power to request information from any undertaking or association of undertakings throughout the whole procedure. In addition, the Commission should have the power to impose fines and periodic penalty payments for failure to timely supply the requested information or for supplying incomplete, incorrect or misleading information. The Commission could also address questions to Member States or to third countries. Furthermore, the Commission should have the power to make fact-finding visits at the Union premises of the undertaking, or, subject to agreement ***by the undertaking and*** the

(22) The Commission should be given adequate investigative powers to gather all necessary information. It should therefore have the power to request information from any undertaking or association of undertakings throughout the whole procedure. In addition, the Commission should have the power to impose fines and periodic penalty payments for failure to timely supply the requested information or for supplying incomplete, incorrect or misleading information. ***To reinforce the dissuasive character of this Regulation, there should be the possibility to apply the different sanctions like redressive measures, fines and periodic penalty payments simultaneously if necessary.*** The Commission could also address

third country concerned, at the premises of the undertaking in the third country. The Commission should also have the power to take decisions on the basis of facts available if the undertaking in question does not cooperate.

questions to Member States or to third countries. Furthermore, the Commission should have the power to make fact-finding visits at the Union premises of the undertaking, or, subject to agreement **with** the third country concerned, at the premises of the undertaking in the third country. The Commission should also have the power to take decisions on the basis of facts available if the undertaking in question does not cooperate.

Amendment 16

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) In all cases where, as a result of the preliminary review, the Commission has sufficient indications of the existence of a foreign subsidy distorting the internal market, the Commission should have the power to launch an in-depth investigation to gather additional relevant information to assess the foreign subsidy, and to allow the interested parties to exercise their rights of defence.

Amendment

(24) In all cases where, as a result of the preliminary review, the Commission has sufficient indications of the existence of a foreign subsidy distorting the internal market, the Commission should have the power to launch an in-depth investigation to gather additional relevant information to assess the foreign subsidy, and to allow the interested parties to exercise their rights of defence. ***Such in-depth investigations should be concluded swiftly, in line with established deadlines, in order not to put on hold the underlying economic activities for too long.***

Amendment 17

Proposal for a regulation Recital 30

Text proposed by the Commission

(30) It is necessary to strike a balance between effective protection of the internal market and the need to limit the administrative burden on undertakings subject to this Regulation. Therefore, only

Amendment

(30) It is necessary to strike a balance between effective protection of the internal market and the need to limit the administrative burden on undertakings subject to this Regulation. Therefore, only

concentrations meeting combined thresholds as defined in this Regulation based on the size of the turnover in the Union and the size of the subsidy should be subject to mandatory prior notification.

concentrations meeting combined thresholds as defined in this Regulation based on the size of the turnover in the Union and the size of the subsidy should be subject to mandatory prior notification.

The effectiveness of those thresholds should be subject to a separate report after one year of application.

Amendment 18

Proposal for a regulation Recital 31

Text proposed by the Commission

(31) Below the notification thresholds, the Commission ***could*** require the notification of potentially subsidised concentrations that were not yet implemented or the notification of potentially subsidised bids prior to the award of a public contract, if it considers that the concentration or the bid would merit ex-ante review given their impact in the Union. The Commission should also have the possibility to carry out a review on its own initiative of already implemented concentrations or awarded public contracts.

Amendment

(31) ***When applying the ex officio review and dealing with notifications, the Commission should also ensure coherence and good coordination between this Regulation and screening mechanisms for investment, including for strategic sectors.*** Below the notification thresholds, the Commission ***shall*** require the notification of potentially subsidised concentrations that were not yet implemented or the notification of potentially subsidised bids prior to the award of a public contract, if it considers that the concentration or the bid would merit ex-ante review given their impact in the Union. The Commission should also have the possibility to carry out a review on its own initiative of already implemented concentrations or awarded public contracts. ***The Commission should publish a guidance on the criteria to require such a notification.***

Amendment 19

Proposal for a regulation Recital 32 a (new)

(32a) Notwithstanding any potential pre-notification contacts, for notifiable concentrations, and where there are no special circumstances, the Commission should have the possibility to carry out a simplified procedure under which the Commission treats certain concentrations on the basis that they do not raise competition concerns and adopts and publishes a short-form decision declaring that a distortion on the internal market is significantly outweighed by positive effects.

Amendment 20

Proposal for a regulation Recital 39

Text proposed by the Commission

(39) In the interest of transparency and legal certainty, it is appropriate ***to publish*** either in full or in a summary form all decisions adopted by the Commission.

Amendment

(39) In the interest of transparency and legal certainty, it is appropriate ***that the Commission publishes*** all decisions adopted by the Commission, either in full or in a summary form

Amendment 21

Proposal for a regulation Recital 42

Text proposed by the Commission

(42) The undertakings or associations of undertakings concerned by an investigation under this Regulation should have the opportunity of submitting their observations. While ensuring preservation of the rights of defence of the undertakings concerned, it is essential that business secrets be protected.

Amendment

(42) The undertakings or associations of undertakings concerned by an investigation under this Regulation should have the opportunity of submitting their observations; ***this comprises observations on the intended reasoning for interim measures or a revocation decision.*** While ensuring preservation of the rights of defence of the undertakings concerned, it is

essential that business secrets be protected.

Amendment 22

Proposal for a regulation

Recital 43

Text proposed by the Commission

(43) The implementation of this Regulation by the Union should comply with Union law, the WTO Agreement and be consistent with commitments made under other trade and investment agreements to which the Union or the Member States are parties.

Amendment

(43) The implementation of this Regulation by the Union should comply with Union law, the WTO Agreement and be consistent with commitments made under other trade and investment agreements to which the Union or the Member States are parties. ***This Regulation should be without prejudice to the development of multilateral rules to address distortive subsidies.***

Amendment 23

Proposal for a regulation

Recital 48

Text proposed by the Commission

(48) In order to ensure a level playing field on the internal market also in the long term, with a view to ensuring adequate coverage of cases investigated both through notifications as well as ex officio, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of ***amending the notification thresholds for concentrations and for public procurement procedures***, exempting certain categories of undertakings from the notification obligations under this Regulation, as well as amending the time limits for the preliminary review and the in-depth investigations of notified concentrations or notified financial contributions in the context of a public procurement procedure. In relation to

Amendment

(48) In order to ensure a level playing field on the internal market also in the long term, with a view to ensuring adequate coverage of cases investigated both through notifications as well as ex officio, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of ***specifying the methodology underlying the balancing assessment***, exempting certain categories of undertakings from the notification obligations under this Regulation, as well as amending the time limits for the preliminary review and the in-depth investigations of notified concentrations or notified financial contributions in the context of a public procurement procedure. In relation to financial contributions in the context of a

financial contributions in the context of a public procurement procedure, the power to adopt such acts should be exercised in a way that takes into account the interests of SMEs. It is of particular importance that the Commission carries out appropriate consultations during the preparations of those acts, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁴⁷. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

⁴⁷ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

public procurement procedure, the power to adopt such acts should be exercised in a way that takes into account the interests of SMEs. It is of particular importance that the Commission carries out appropriate consultations during the preparations of those acts, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁴⁷. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

⁴⁷ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

Amendment 24

Proposal for a regulation Recital 48 a (new)

Text proposed by the Commission

Amendment

(48a) This Regulation is closing the legal gap by addressing the distortions caused by foreign subsidies. Therefore, the Commission should review the application and effectiveness of this Regulation within three years and every two years thereafter. The Commission should publish an assessment report on the operation of the thresholds to notify cases of concentrations and public procurement procedures to the European Parliament and the Council by ... [12

months after the entry into force of this Regulation] to ensure the proper functioning of this Regulation. The Commission may decide on a legislative review if needed.

Amendment 25

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

(1) This Regulation lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions. Such distortions may arise with respect to any economic activity, and in particular in concentrations and public procurement procedures.

Amendment

(1) This Regulation lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions, *with a view to ensuring a fair level-playing field*. Such distortions may arise with respect to any economic activity, and in particular in concentrations and public procurement procedures.

Amendment 26

Proposal for a regulation Article 1 – paragraph 2

Text proposed by the Commission

(2) This Regulation addresses foreign subsidies granted to an undertaking engaging in *an* economic activity in the internal market. An undertaking acquiring control or merging with an undertaking established in the Union or an undertaking participating in a public procurement procedure is considered to be engaging in an economic activity in the internal market.

Amendment

(2) This Regulation addresses foreign subsidies *conferring an advantage* granted to an undertaking engaging in *any* economic activity in the internal market. An undertaking acquiring control or merging with an undertaking established in the Union or an undertaking participating in a public procurement procedure is considered to be engaging in an economic activity in the internal market.

Amendment 27

Proposal for a regulation Article 2 – paragraph 2 – point a – introductory part

Text proposed by the Commission

Amendment

(a) a financial contribution shall include:

(a) a financial contribution shall include ***inter alia***:

Amendment 28

Proposal for a regulation

Article 2 – paragraph 2 – point b – point iii a (new)

Text proposed by the Commission

Amendment

(iiia) special or exclusive rights.

Amendment 29

Proposal for a regulation

Article 3 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

(1) A distortion on the internal market shall be deemed to exist where a foreign subsidy is liable to improve the competitive position of the undertaking concerned in the internal market and where, in doing so, it actually or potentially negatively affects competition on the internal market. Whether there is a distortion on the internal market shall be determined on the basis of indicators, which may include the following:

(1) A distortion on the internal market shall be deemed to exist where a foreign subsidy is liable to improve the competitive position of the undertaking concerned in the internal market and where, in doing so, it actually or potentially negatively affects competition on the internal market. Whether there is a distortion on the internal market shall be determined on the basis of indicators, which may include, ***inter alia***, the following:

Amendment 30

Proposal for a regulation

Article 3 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) the level of economic activity of the undertaking concerned on the internal market;

(d) the level ***and evolution*** of economic activity of the undertaking concerned on the internal market;

Amendment 31

Proposal for a regulation

Article 3 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) the level of economic activity of the undertaking concerned on the domestic market;

Amendment 32

Proposal for a regulation

Article 4 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

(1) a foreign subsidy granted to an ailing undertaking, ***that is to say which will*** likely go out of business in the short or medium term in the absence of any subsidy, unless there is a restructuring plan that is capable of leading to the long-term viability of that undertaking and includes a significant own contribution by the undertaking;

(1) a foreign subsidy granted to an ailing undertaking, likely ***to*** go out of business in the short or medium term in the absence of any subsidy, unless there is a restructuring plan that is capable of leading to the long-term viability of that undertaking and includes a significant own contribution by the undertaking;

Amendment 33

Proposal for a regulation

Article 4 – paragraph 1 – point 4

Text proposed by the Commission

Amendment

(4) a foreign subsidy enabling an undertaking to submit an unduly advantageous tender, on the basis of which the undertaking would be awarded the public contract.

(4) a foreign subsidy enabling an undertaking to submit an unduly advantageous tender ***such as an abnormally low tender referred to in Article 69 of Directive 2014/24/EU of the European Parliament and of the Council^{1a}***, on the basis of which the undertaking would be awarded the public contract;

^{1a} Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

Amendment 34

Proposal for a regulation

Article 4 – paragraph 1 – point 4 a (new)

Text proposed by the Commission

Amendment

(4a) *export credits that are not in line with the OECD Arrangement on officially supported export credits.*

Amendment 35

Proposal for a regulation

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

(1) The Commission shall, where warranted, balance the negative effects of a foreign subsidy in terms of distortion on the internal market **with** positive effects **on the development of the relevant economic activity**.

(1) The Commission shall, where warranted, balance the negative effects of a foreign subsidy in terms of distortion, on the internal market, **including broader** positive effects **relating to policy objectives such as objectives based on international agreements**.

Amendment 36

Proposal for a regulation

Article 5 – paragraph 2

Text proposed by the Commission

Amendment

(2) The Commission shall take into account the balancing between the negative and positive effects when deciding whether to impose redressive measures or to accept commitments, and the nature and level of

(2) The Commission shall take into account the balancing between the negative and positive effects when deciding whether to impose redressive measures or to accept commitments, and the nature and level of

those redressive measures or commitments.

those redressive measures or commitments *while respecting the international regime on trade, such as WTO law and free trade agreements. In its analysis, the Commission shall take into account the general principles applied when assessing the compatibility of State aid with the internal market.*

Amendment 37

Proposal for a regulation

Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) The assessment referred to in paragraph 1 shall be disclosed on a dedicated webpage of the Commission. The Commission shall also provide for a justification on the same webpage whenever a balancing test is not carried out pursuant to paragraph 1.

Amendment 38

Proposal for a regulation

Article 6 – paragraph 1

Text proposed by the Commission

Amendment

(1) To remedy the distortion on the internal market actually or potentially caused by a foreign subsidy, the Commission *may* impose redressive measures. The undertaking concerned may also offer commitments.

(1) To remedy the distortion on the internal market actually or potentially caused by a foreign subsidy, the Commission *shall* impose redressive measures *unless the balancing assessment referred to in Article 5 determines that positive effects significantly outweigh negative ones*. The undertaking concerned may also offer commitments. *Commitments and redressive measures may be imposed simultaneously.*

Amendment 39

Proposal for a regulation

Article 6 – paragraph 3 – introductory part

Text proposed by the Commission

(3) Commitments or redressive measures may consist of the following:

Amendment

(3) Commitments or redressive measures may consist, ***inter alia***, of the following:

Amendment 40

Proposal for a regulation

Article 6 – paragraph 3 – point b

Text proposed by the Commission

(b) reducing capacity or market presence;

Amendment

(b) reducing capacity or market presence, ***including by means of a temporary commercial activity restriction on the internal market***;

Amendment 41

Proposal for a regulation

Article 6 – paragraph 3 – point h a (new)

Text proposed by the Commission

Amendment

(ha) restricting to participate, directly or indirectly, in new public procurement, in particular concession contract procedures in the internal market and the prohibition of the award of a public contract;

Amendment 42

Proposal for a regulation

Article 6 – paragraph 3 – point h b (new)

Text proposed by the Commission

Amendment

(hb) requiring the undertakings concerned to adapt their governance structure.

Amendment 43

Proposal for a regulation Article 6 – paragraph 5

Text proposed by the Commission

(5) If an undertaking offers commitments which fully and effectively remedy the distortion on the internal market, the Commission may accept them and make them binding on the undertaking in a decision with commitments according to Article 9(3).

Amendment

(5) If an undertaking offers commitments which fully and effectively remedy the distortion on the internal market, the Commission may accept them and make them binding on the undertaking in a decision with commitments according to Article 9(3). ***The Commission shall monitor the compliance of the undertaking with the commitments offered.***

Amendment 44

Proposal for a regulation Article 7 – paragraph 1

Text proposed by the Commission

The Commission may on its own initiative examine information from any source regarding alleged distortive foreign subsidies.

Amendment

The Commission may on its own initiative examine information from any source regarding alleged distortive foreign subsidies. ***The Commission shall examine information submitted by Member States. A Member State that is in possession of evidence of the existence of a potentially distortive subsidy, may provide such evidence to the Commission.***

Amendment 45

Proposal for a regulation Article 8 – paragraph 2 – point b

Text proposed by the Commission

(b) inform the undertaking concerned;
and

Amendment

(b) inform the undertaking concerned
and where appropriate also Member

States; and

Amendment 46

Proposal for a regulation

Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3a) By ... [the date of application of this Regulation], the Commission shall publish guidance on the criteria to open the procedure set out in this Article.

Amendment 47

Proposal for a regulation

Article 10 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

(2) there is a serious risk of substantial ***and irreparable*** damage to competition on the internal market.

(2) there is a serious risk of substantial damage to competition on the internal market.

Amendment 48

Proposal for a regulation

Article 10 – paragraph 1 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) Interim measures may be prolonged where the indication of distortive effects or the serious risk of substantial damage to competition on the internal market continue to exist.

Amendment 49

Proposal for a regulation

Article 11 – title

Text proposed by the Commission

Amendment

Information requests

Information requests ***and provision***

Amendment 50

Proposal for a regulation Article 11 – paragraph 1

Text proposed by the Commission

Amendment

(1) The Commission may require an undertaking concerned to provide all necessary information.

(1) The Commission may require an undertaking concerned to provide all necessary information ***to carry out the duties assigned to it in this Regulation.***

Amendment 51

Proposal for a regulation Article 11 – paragraph 3 – point c a (new)

Text proposed by the Commission

Amendment

(ca) respect the principle of proportionality;

Amendment 52

Proposal for a regulation Article 11 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3a) An undertaking, which is in possession of evidence of the existence of a potentially distortive subsidy, may provide such evidence to the Commission, by replying to standard questionnaires, published by the Commission in all official languages of the Union.

Amendment 53

Proposal for a regulation
Article 12 – paragraph 1

Text proposed by the Commission

(1) The Commission may conduct the necessary inspections of undertakings.

Amendment

(1) ***For the purposes of this Regulation,*** the Commission may conduct the necessary inspections of undertakings.

Amendment 54

Proposal for a regulation
Article 13 – paragraph 1

Text proposed by the Commission

In order to carry out the duties assigned to it by this Regulation, the Commission may conduct inspections in the territory of a third country, provided that ***the undertaking concerned has given its consent and*** the government of the third country has been officially notified and has agreed to the inspection. Article 12(1), (2), and (3) points (a) and (b) shall apply by analogy.

Amendment

In order to carry out the duties assigned to it by this Regulation, the Commission may conduct inspections in the territory of a third country, provided that the government of the third country has been officially notified and has agreed to the inspection. Article 12(1), (2), and (3) points (a) and (b) shall apply by analogy.

Amendment 55

Proposal for a regulation
Article 17 – paragraph 1

Text proposed by the Commission

In a concentration, the assessment whether there is a distortion on the internal market within the meaning of Articles 3 or 4 shall be limited to the concentration at stake. Only foreign subsidies granted in the ***three*** calendar years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest shall be considered in the assessment.

Amendment

In a concentration, the assessment whether there is a distortion on the internal market within the meaning of Articles 3 or 4 shall be limited to the concentration at stake. Only foreign subsidies granted in the ***five*** calendar years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest shall be considered in the assessment.

Amendment 56

Proposal for a regulation Article 19 – paragraph 1

Text proposed by the Commission

(1) Notifiable concentrations shall be notified to the Commission prior to their implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

Amendment

(1) Notifiable concentrations ***in line with the thresholds outlined in Article 18*** shall be notified to the Commission prior to their implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

Amendment 57

Proposal for a regulation Article 19 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) Undertakings may request pre-notification consultations with the Commission based on good faith, the exclusive aim of which shall be to establish whether or not the formal thresholds for notification have been met.

Amendment 58

Proposal for a regulation Article 19 – paragraph 4

Text proposed by the Commission

(4) If the undertakings concerned fail to meet their obligation to notify, the Commission ***may*** review a notifiable concentration in accordance with this Regulation by requesting the notification of that concentration. In that case the Commission shall not be bound by the time limits referred to in Article 23(1) and (4).

Amendment

(4) If the undertakings concerned fail to meet their obligation to notify, the Commission ***shall*** review a notifiable concentration in accordance with this Regulation by requesting the notification of that concentration. In that case the Commission shall not be bound by the time limits referred to in Article 23(1) and (4).

Amendment 59

Proposal for a regulation Article 23 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

(8a) Each preliminary review or in-depth investigation shall be notified to the Member States, which may be concerned by the concentration.

Amendment 60

Proposal for a regulation Article 25 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3a) The fines and periodic penalty payments set out in this Article may be imposed simultaneously.

Amendment 61

Proposal for a regulation Article 33-a (new)

Text proposed by the Commission

Amendment

Article 33-a

Information and dialogue

(1) The Commission shall establish a structured cooperation and communication network with the relevant Member States authorities to share information and coordinate the application of this Regulation.

(2) A Member State that is in possession of evidence of the existence of a potentially distortive subsidy, may provide such evidence to the Commission. To that end, each Member State and the Commission shall establish a contact point. A secure system shall be provided

by the Commission to support direct cooperation and exchange of information between the contact points and the Commission.

(3) Undertakings may request pre-notification consultations with the Commission based on good faith, the exclusive aim of which shall be to establish whether or not the formal thresholds for notification have been met.

Amendment 62

Proposal for a regulation Article 34 – paragraph 1

Text proposed by the Commission

(1) Where the information available substantiates a reasonable suspicion that foreign subsidies in a particular sector, for a particular type of economic activity or based on a particular subsidy instrument may distort the internal market, the Commission may conduct a market investigation into the particular sector, the particular type of economic activity or into the use of the subsidy instrument concerned. In the course of that market investigation, the Commission may request the undertakings or associations of undertakings concerned to supply the necessary information and may carry out the necessary inspections. The Commission may also request the Member State or third country concerned to supply information.

Amendment

(1) Where the information available substantiates a reasonable suspicion that foreign subsidies in a particular sector, for a particular type of economic activity or based on a particular subsidy instrument may distort the internal market, the Commission may conduct a market investigation into the particular sector, the particular type of economic activity or into the use of the subsidy instrument concerned. In the course of that market investigation, the Commission may request the undertakings or associations of undertakings concerned, ***as well as the relevant national market authorities***, to supply the necessary information and may carry out the necessary inspections. The Commission may also request the Member State or third country concerned to supply information.

Amendment 63

Proposal for a regulation Article 35 – paragraph 2

Text proposed by the Commission

(2) The powers of the Commission to impose fines and periodic penalty payments under Articles 15, 25 and 32 shall be subject to a limitation period of **three** years, starting on the day on which the infringement referred to in Articles 15, 25 or 32 took place. In the case of continuing or repeated infringements, the limitation period shall start on the day on which the infringement ceases. Any action taken by the Commission with respect to an infringement referred to in Articles 15, 25 or 32 shall interrupt the limitation period for the imposition of fines or periodic penalty payments. After each interruption, the limitation period shall start to run afresh.

Amendment

(2) The powers of the Commission to impose fines and periodic penalty payments under Articles 15, 25 and 32 shall be subject to a limitation period of **five** years, starting on the day on which the infringement referred to in Articles 15, 25 or 32 took place. In the case of continuing or repeated infringements, the limitation period shall start on the day on which the infringement ceases. Any action taken by the Commission with respect to an infringement referred to in Articles 15, 25 or 32 shall interrupt the limitation period for the imposition of fines or periodic penalty payments. After each interruption, the limitation period shall start to run afresh.

Amendment 64

Proposal for a regulation
Article 38 – paragraph 1

Text proposed by the Commission

(1) The Commission shall, before adopting a decision pursuant to Articles 9, 15, 24(3) point (c), 25, 30(2) or 32 give the undertaking concerned the opportunity to submit observations on the grounds on which the Commission intends to adopt its decision.

Amendment

(1) The Commission shall, before adopting a decision pursuant to Articles 9, **10**, 15, **16**, 24(3) point (c), 25, 30(2) or 32 give the undertaking concerned the opportunity to submit observations on the grounds on which the Commission intends to adopt its decision.

Amendment 65

Proposal for a regulation
Article 44 – paragraph 1 – point a

Text proposed by the Commission

(a) amending the thresholds for notifications as set out in Articles 18 and 27, in the light of the practice of the

Amendment

deleted

Commission during the first five years of application of this Regulation, and taking into account the effectiveness of application;

Amendment 66

Proposal for a regulation

Article 44 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) specifying the methodology underlying the balancing assessment and in particular for the determination of positive effects on the internal market, including broader positive effects relating to policy objectives such as objectives based on international agreements referred to in Article 5(1) as well as criteria for outweighing effects;

Amendment 67

Proposal for a regulation

Article 45 – paragraph 6

Text proposed by the Commission

Amendment

(6) A delegated act adopted pursuant to Article 44 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of **two** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **two** months at the initiative of the European Parliament or of the Council.

(6) A delegated act adopted pursuant to Article 44 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of **three** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **three** months at the initiative of the European Parliament or of the Council.

Amendment 68

Proposal for a regulation
Article 46 – paragraph 1

Text proposed by the Commission

Within **five** years after the entry into force of this Regulation ***at the latest***, the Commission shall present a report to the European Parliament and the Council on ***the application of this Regulation, accompanied, where the Commission considers it appropriate, by relevant legislative proposals.***

Amendment

Within **three** years after the entry into force of this Regulation ***and every two years***, the Commission shall ***review the functioning and effectiveness of this Regulation and*** present a report to the European Parliament and the Council on ***its*** application. ***In its report, the Commission shall in particular analyse the appropriateness of the thresholds for concentrations laid down in Article 18.***

Amendment 69

Proposal for a regulation
Article 46 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Where the report referred to in paragraph 1 recommends amendments to this Regulation and where the Commission considers it appropriate in light of its practice during the application of this Regulation and taking into account the effectiveness of application, the report may be accompanied by relevant legislative proposals.

Amendment 70

Proposal for a regulation
Article 46 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

The Commission shall publish a separate report on the operation of the notification thresholds as set out in Article 18 to the European Parliament and the Council by...[twelve months after the entry into force of this Regulation] and shall where

appropriate propose amendments to change those thresholds taking into account the effectiveness of their application.

Amendment 71

Proposal for a regulation

Article 46 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

The Commission may also propose to repeal this Regulation if it considers that multilateral rules to address distortive subsidies have rendered this Regulation fully redundant.

Amendment 72

Proposal for a regulation

Article 47 – paragraph 3

Text proposed by the Commission

Amendment

(3) This Regulation shall not apply to concentrations for which the agreement was concluded, the public bid was announced, or a controlling interest was acquired before the date of application of the Regulation.

(3) *Notwithstanding paragraph 1*, this Regulation shall not apply to concentrations for which the agreement was concluded, the public bid was announced, or a controlling interest was acquired before the date of application of the Regulation.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Foreign subsidies distorting the internal market
References	COM(2021)0223 – C9-0167/2021 – 2021/0114(COD)
Committee responsible Date announced in plenary	INTA 7.6.2021
Opinion by Date announced in plenary	ECON 7.6.2021
Associated committees - date announced in plenary	25.11.2021
Rapporteur for the opinion Date appointed	Stéphanie Yon-Courtin 1.9.2021
Discussed in committee	24.1.2022 28.2.2022
Date adopted	31.3.2022
Result of final vote	+: 41 -: 1 0: 13
Members present for the final vote	Gunnar Beck, Isabel Benjumea Benjumea, Stefan Berger, Gilles Boyer, Carlo Calenda, Engin Eroglu, Markus Ferber, Jonás Fernández, Frances Fitzgerald, José Manuel García-Margallo y Marfíl, Luis Garicano, Valentino Grant, Claude Gruffat, Enikő Győri, Eero Heinäluoma, Michiel Hoogeveen, Danuta Maria Hübner, Stasys Jakeliūnas, France Jamet, Othmar Karas, Billy Kelleher, Ondřej Kovařík, Ioannis Lagos, Aurore Lalucq, Philippe Lamberts, Aušra Maldeikienė, Pedro Marques, Costas Mavrides, Csaba Molnár, Siegfried Mureşan, Luděk Niedermayer, Lefteris Nikolaou-Alavanos, Piernicola Pedicini, Lídia Pereira, Kira Marie Peter-Hansen, Sirpa Pietikäinen, Dragoş Pişlaru, Evelyn Regner, Antonio Maria Rinaldi, Dorien Rookmaker, Alfred Sant, Joachim Schuster, Ralf Seekatz, Pedro Silva Pereira, Paul Tang, Irene Tinagli, Ernest Urtasun, Inese Vaidere, Johan Van Overtveldt, Stéphanie Yon-Courtin, Marco Zanni, Roberts Zīle
Substitutes present for the final vote	Manon Aubry, Damien Carême, Roman Haider, Chris MacManus, Jessica Stegrud

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

41	+
ECR	Michiel Hoogeveen, Dorien Rookmaker, Jessica Stegrud, Johan Van Overtveldt, Roberts Zile
NI	Enikő Győri, Ioannis Lagos
PPE	Isabel Benjumea Benjumea, Stefan Berger, Markus Ferber, Frances Fitzgerald, José Manuel García-Margallo y Marfil, Danuta Maria Hübner, Othmar Karas, Aušra Maldeikienė, Siegfried Mureşan, Luděk Niedermayer, Lídia Pereira, Sirpa Pietikäinen, Ralf Seekatz, Inese Vaidere
Renew	Gilles Boyer, Carlo Calenda, Engin Eroglu, Luis Garicano, Billy Kelleher, Ondřej Kovařík, Dragoş Pîslaru, Stéphanie Yon-Courtin
S&D	Jonás Fernández, Aurore Lalucq, Pedro Marques, Costas Mavrides, Csaba Molnár, Evelyn Regner, Alfred Sant, Joachim Schuster, Pedro Silva Pereira, Paul Tang, Irene Tinagli
Verts/ALE	Philippe Lamberts

1	-
NI	Lefteris Nikolaou-Alavanos

13	0
ID	Gunnar Beck, Valentino Grant, Roman Haider, France Jamet, Antonio Maria Rinaldi, Marco Zanni
The Left	Chris MacManus
Verts/ALE	Damien Carême, Claude Gruffat, Stasys Jakeliūnas, Piernicola Pedicini, Kira Marie Peter-Hansen, Ernest Urtasun

Key to symbols:

+ : in favour

- : against

0 : abstention

29.3.2022

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on International Trade

on the proposal for a regulation of the European Parliament and of the Council
on foreign subsidies distorting the internal market
(COM(2021)0223 – C9-0167/2021 – 2021/0114(COD))

Rapporteur for opinion (*) : Christian Doleschal

(*) Associated committee – Rule 57 of the Rules of Procedure

PA_Legam

SHORT JUSTIFICATION

The European Union is closely interconnected with the global economy. With trade in goods and services worth EUR 5984 billion in 2019¹, it accounts for 16.4% of overall global trade. Goods, services and capital flows to and from the EU contribute to its growth by enhancing competitiveness, creating jobs, stimulating innovation and opening up new markets.² In 2017 the EU28 was the destination for a third of the world's investment stocks³. Foreign direct investment is a welcome source of employment, growth and competitiveness. The openness of our EU single market is our greatest asset. However, openness requires fairness.

In recent years, foreign subsidies appear in some cases to have had a distorting effect on the EU internal market and to have created an uneven playing field. While there is only limited reliable data on subsidies granted by third countries, there is an increasing number of cases where foreign subsidies appear to have facilitated the acquisition of EU companies, influenced investment decisions, given unfair advantages in the award of public contracts or otherwise influenced the behaviour of their recipients in the EU market to the detriment of fair competition.

At present, there are no specific EU rules to address the distortive effects that foreign subsidies may have on the internal market. While the EU has a system of State aid control enshrined in Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU), it applies only where an EU Member State grants financial support to an undertaking, giving rise to an advantage that distorts competition and affects trade between Member States.

On 5 May 2021, the European Commission proposed a legislative proposal for a new instrument to address distortive effects of foreign subsidies in the internal market. It aims to close the regulatory gap in the Single Market. The new instrument aims to effectively address foreign subsidies that create distortions and affect the level playing field in the internal market in any market situation. The proposed regulation is also key element for the implementation of the updated EU industrial strategy (adopted on 5 May 2021) by promoting a fair and competitive internal market and thus creating the right conditions for a successful European industry.

The Rapporteur supports the overall aim and design of the proposal for a Regulation on foreign subsidies distorting the single market and fully shares the sense of urgency when it comes to closing this legal loophole.

With this in mind, the Rapporteur would like to focus especially on:

- ensuring a level playing field in the single market while keeping administrative burden for undertakings, bidders and contracting authorities as low as possible, including by clarifying that where a third country has a subsidy control mechanism that is

¹ DG Trade Statistical Guide, August 2020, excluding intra-EU trade;
https://trade.ec.europa.eu/doclib/docs/2013/may/tradoc_151348.pdf

² Report from the Commission on the implementation of the trade policy strategy – Trade for all: delivering a progressive trade policy to harness globalisation (COM(2017) 491 final).

³ Eurostat, Foreign Affiliates Statistics (FATS), Foreign control of enterprises by economic activity and a selection of controlling countries (from 2008 onwards) [fats_g1a_08].

equivalent to the Union's, foreign subsidies provided by such countries may be considered as unlikely to be distortive;

- strengthening commitments and redressive measures to remedy the distortion on the internal market caused by a foreign subsidy;
- clarifying that advantageous tenders also include abnormally low tenders.
- reducing the deadlines for the in-depth investigation in order to strike a balance between the time needed to award public contracts at the expense of contracting authorities and other economic operators involved.
- introducing a review clause of the estimated value of public procurement and the thresholds proposed in the Regulation;
- improving the procedural rules applicable to the preliminary review and the in-depth investigation of notified financial contributions in public procurement procedures;
- improving transparency and predictability for undertakings taking part in public procurement;

Furthermore, the Rapporteur would like to clarify the cooperation with national public procurement authorities and foster the exchange of information and good practices. Member States shall ensure that its competent public procurement authorities cooperate effectively with the Commission for the purpose of the preliminary review and in-depth investigation in notified public procurement. Competent national authorities may also alert the Commission regarding foreign subsidies in public procurement below the threshold, if they consider that there is a risk of internal market distortion.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on International Trade, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) No existing Union instruments address distortions caused by foreign subsidies. Trade defence instruments enable the Commission to act when subsidised goods are imported into the Union, but not when foreign subsidies take the form of subsidised investments, or when services and financial flows are

Amendment

(4) No existing Union instruments address distortions caused by foreign subsidies. Trade defence instruments enable the Commission to act when subsidised goods are imported into the Union, but not when foreign subsidies take the form of subsidised investments, or when services and financial flows are

concerned. Under the WTO Agreement on Subsidies and Countervailing Measures, the Union has the possibility to initiate State-to-State dispute settlement against certain foreign subsidies granted by WTO members and limited to goods.

concerned. Under the WTO Agreement on Subsidies and Countervailing Measures, the Union has the possibility to initiate State-to-State dispute settlement against certain foreign subsidies granted by WTO members and limited to goods. ***This proposal complements the International Procurement Instrument which aims at improving the access of Union economic operators to the public procurement markets outside the Union.***

Amendment 2

Proposal for a regulation Recital 5

Text proposed by the Commission

(5) It is therefore necessary to complement existing Union instruments with a new tool to effectively deal with distortions in the internal market caused by foreign subsidies and ensure a level playing field. In particular, the new tool complements Union State aid rules which deal with distortions in the internal market caused by Member State subsidies.

Amendment

(5) It is therefore necessary to complement existing Union instruments with a new tool to effectively deal with distortions in the internal market caused by foreign subsidies and ensure a level playing field. In particular, the new tool complements Union State aid rules which deal with distortions in the internal market caused by Member State subsidies. ***In doing so, the new tool contributes to the Union's open strategic autonomy by promoting a fair and competitive internal market.***

Amendment 3

Proposal for a regulation Recital 9

Text proposed by the Commission

(9) There should be a financial contribution provided, directly or indirectly, by the public authorities of a third country. The financial contribution may be granted through public or private entities. Whether a public entity provides a financial contribution should be

Amendment

(9) There should be a financial contribution provided, directly or indirectly, by the public authorities of a third country. The financial contribution may be granted through public or private entities. Whether a public entity provides a financial contribution should be

determined on a case-by-case basis with due regard to elements such as the characteristics of the relevant entity and the legal and economic environment prevailing in the country in which the entity operates including the government's role in the economy. Financial contributions may also be granted through a private entity if its actions can be attributed to the third country.

determined on a case-by-case basis with due regard to elements such as the characteristics of the relevant entity and the legal and economic environment prevailing in the country in which the entity operates including the government's role in the economy. Financial contributions may also be granted through a private entity if its actions can be attributed to the third country. ***With a view to ensuring a level-playing field in the internal market, a foreign subsidy under this Regulation is considered granted from the moment the beneficiary has an entitlement to receive the subsidy. The actual payment of the subsidy is not a necessary condition for it to be considered a subsidy within the meaning of Regulation.***

Amendment 4

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) Once the existence of a foreign subsidy is established, the Commission should assess whether the foreign subsidy distorts the internal market. Unlike State aid granted by a Member State, foreign subsidies are not generally prohibited. Subsidies in the form of export financing may be a cause of particular concern because of their distortive effects. This is not the case if such financing is provided in line with the OECD Arrangement on officially supported export credits. The Commission should assess on a case-by-case basis whether a foreign subsidy distorts the internal market.

Amendment

(12) Once the existence of a foreign subsidy is established, the Commission should assess whether the foreign subsidy distorts the internal market. ***This assessment should balance the short and long- term negative effects of a foreign subsidy in terms of distortion on the internal market with the positive effects on the development of the relevant economic activity including any positive externalities. The Commission should be able to take into account the effects of the foreign subsidy on the development of the relevant subsidised economic activity and its contribution to the achievement of public policy objectives, including social and environmental ones.*** Unlike State aid granted by a Member State, foreign subsidies are not generally prohibited. Subsidies in the form of export financing may be a cause of particular concern because of their distortive effects. This is

not the case if such financing is provided in line with the OECD Arrangement on officially supported export credits. The Commission should assess on a case-by-case basis whether a foreign subsidy distorts the internal market. ***The Commission should publish the measurable indicators to be considered for that assessment. This Regulation should be without prejudice to Directives 2014/23/EU, 2014/24/EU and 2014/25/EU of the European Parliament and of the Council as regards the applicable obligations in the fields of environmental, social and labour law.***

Amendment 5

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) The lack of transparency concerning many foreign subsidies and the complexity of the commercial reality may make it difficult to unequivocally identify or quantify the impact of a given foreign subsidy on the internal market. To determine the distortion, it therefore appears necessary to use a non-exhaustive set of indicators. When assessing the extent to which a foreign subsidy can improve the competitive position of the undertaking concerned and, in doing so, actually or potentially negatively affects competition in the internal market, the Commission could have regard to certain indicators, including but not limited to the amount and nature of the subsidy, the purpose and conditions attached to the foreign subsidy as well as its use in the internal market.

Amendment

(13) The lack of transparency concerning many foreign subsidies and the complexity of the commercial reality may make it difficult to unequivocally identify or quantify the impact of a given foreign subsidy on the internal market. To determine the distortion, it therefore appears necessary to use a non-exhaustive set of indicators. When assessing the extent to which a foreign subsidy can improve the competitive position of the undertaking concerned and, in doing so, actually or potentially negatively affects competition in the internal market, the Commission could have regard to certain indicators. ***Those indicators should be quantifiable so that they provide reasonable evidence of distortion by foreign subsidies***, including but not limited to the amount and nature of the subsidy, the purpose and conditions attached to the foreign subsidy as well as its use in the internal market.

Amendment 6

Proposal for a regulation Recital 14

Text proposed by the Commission

(14) When applying these indicators, the Commission could take into account different elements such as the size of the subsidy in absolute terms or in relation to the size of the market or to the value of the investment. For instance, a concentration, in the context of which a foreign subsidy covers a substantial part of the purchase price of the target, is likely to be distortive. Similarly, foreign subsidies covering a substantial part of the estimated value of a contract to be awarded in a public procurement procedure are likely to cause distortions. If a foreign subsidy is granted for operating costs, it seems more likely to cause distortions than if it is granted for investment costs. Foreign subsidies to small and medium-sized undertakings may be considered less likely to cause distortions than foreign subsidies to large undertakings. Furthermore, the characteristics of the market, and in particular the competitive conditions on the market, such as barriers to entry, should be taken into account. Foreign subsidies leading to overcapacity by sustaining uneconomic assets or by encouraging investment in capacity expansions that would otherwise not have been built are likely to cause distortions. A foreign subsidy to a beneficiary that shows a low degree of activity in the internal market, measured for instance in terms of turnover achieved in the Union, is less likely to cause distortions than a foreign subsidy to a beneficiary that has a more significant level of activity in the internal market. **Finally**, foreign subsidies **not exceeding EUR 5 million** should be deemed, as a general rule, unlikely to distort the internal market within the meaning of this Regulation.

Amendment

(14) When applying these indicators, the Commission could take into account different elements such as the size of the subsidy in absolute terms or in relation to the size of the market or to the value of the investment. For instance, a concentration, in the context of which a foreign subsidy covers a substantial part of the purchase price of the target, is likely to be distortive. Similarly, foreign subsidies covering a substantial part of the estimated value of a contract to be awarded in a public procurement procedure are likely to cause distortions. If a foreign subsidy is granted for operating costs, it seems more likely to cause distortions than if it is granted for investment costs. Foreign subsidies to small and medium-sized undertakings may be considered less likely to cause distortions than foreign subsidies to large undertakings. Furthermore, the characteristics of the market, and in particular the competitive conditions on the market, such as barriers to entry, should be taken into account. Foreign subsidies leading to overcapacity by sustaining uneconomic assets or by encouraging investment in capacity expansions that would otherwise not have been built **or acquired** are likely to cause distortions. A foreign subsidy to a beneficiary that shows a low degree of activity in the internal market, measured for instance in terms of turnover achieved in the Union, is less likely to cause distortions than a foreign subsidy to a beneficiary that has a more significant level of activity in the internal market. **Nevertheless, the evolution of the economic activity should also be taken into account to enable the Commission to take action when an undertaking's level of activity is small at the time of**

assessment, but is expected to grow strongly. Where the Commission has found that a third country has a system in place for the provision of subsidies which ensures by virtue of law and in practice a level of protection against undue state intervention into market forces and unfair competition which is at least equivalent to the level within the Union and which effectively protects not only the market of the third country but also the internal market of the Union, foreign subsidies by this third country should also be deemed, as a general rule, to be unlikely to distort the internal market within the meaning of this Regulation. When assessing whether there is an equivalent level of subsidy control in a third country, the Commission should take into account the relevant legal provisions as well as their effective implementation in practice, including equivalent transparency level for state aid or subsidies. These findings by the Commission should be valid for a limited period of time and be subject to a periodic review. The Commission should also consider whether the third country concerned has concluded a bilateral agreement with the Union which includes substantive level playing field provisions, whether the third country complies with international subsidy obligations and is aligned with the Union on initiatives with regard to improving international rules on subsidies and competitive neutrality, in particular within the WTO. The Commission should draft and publish, in close cooperation with the Member States, detailed guidelines for the assessment of the distortive nature of a subsidy in order to provide legal certainty for all market participants. Those guidelines should also provide examples and typical cases of distortive and non-distortive subsidies.

Amendment 7

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) Like certain types of State aid, also certain categories of foreign subsidies, such as unlimited guarantees, are likely to create distortions in the internal market because of their nature. ***Those categories should not require a detailed assessment based on indicators.*** An undertaking could in any event show that the foreign subsidy in question would not distort the internal market in the specific circumstances of the case.

Amendment

(15) Like certain types of State aid, also certain categories of foreign subsidies, such as unlimited guarantees, are likely to create distortions in the internal market because of their nature. An undertaking could in any event show that the foreign subsidy in question would not distort the internal market in the specific circumstances of the case.

Amendment 8

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) Where the Commission examines a foreign subsidy on its own initiative, it should have the power to impose redressive measures on an undertaking to remedy any distortion caused by a foreign subsidy in the internal market. Redressive measures should be proportionate and suitable to remedy the distortion at stake. They should include behavioural or structural remedies or the repayment of the foreign subsidy.

Amendment

(17) Where the Commission examines a foreign subsidy on its own initiative, it should have the power to impose redressive measures on an undertaking to remedy any distortion caused by a foreign subsidy in the internal market. Redressive measures should be proportionate and suitable to remedy the distortion at stake. They should include behavioural or structural remedies or the repayment of the foreign subsidy ***or the temporary exclusion from public procurement procedures in the Union if it finds that an undertaking has repeatedly received foreign subsidies that distort competition. While respecting business secret and confidential information, the process leading to such an exclusion should be transparent for the public.***

Amendment 9

Proposal for a regulation Recital 21

Text proposed by the Commission

(21) The Commission should have the power, on its own initiative, to examine any information on foreign subsidies. To this end, it is necessary to establish a procedure consisting of two steps, namely a preliminary review and an in-depth investigation.

Amendment

(21) The Commission should have the power, on its own initiative, to examine any information on foreign subsidies. To this end, it is necessary to establish a procedure consisting of two steps, namely a preliminary review and an in-depth investigation. ***The Commission should publish guidance on how to open such a procedure.***

Justification

The Regulation does not provide information on the criteria to open an “ex-officio review”. This instrument should be less discretionary to avoid unjustified obstacles to foreign investment in the EU internal market.

Amendment 10

**Proposal for a regulation
Recital 22**

Text proposed by the Commission

(22) The Commission should be given ***adequate*** investigative powers to gather all necessary information. It should therefore have the power to request information from any undertaking or association of undertakings throughout the whole procedure. In addition, the Commission should have the power to impose fines and periodic penalty payments for failure to timely supply the requested information or for supplying incomplete, incorrect or misleading information. The Commission could also address questions to Member States or to third countries. Furthermore, the Commission should have the power to make fact-finding visits at the Union premises of the undertaking, or, subject to agreement by the undertaking and the third country concerned, at the premises of the undertaking in the third country. The Commission should also have the power to

Amendment

(22) The Commission should be given ***appropriate*** investigative powers to gather all necessary information. It should therefore have the power to request information from any undertaking or association of undertakings throughout the whole procedure. In addition, the Commission should have the power to impose fines and periodic penalty payments for failure to timely supply the requested information or for supplying incomplete, incorrect or misleading information. The Commission could also address questions to Member States or to third countries. Furthermore, the Commission should have the power to make fact-finding visits at the Union premises of the undertaking, or, subject to agreement by the undertaking and the third country concerned, at the premises of the undertaking in the third country. The

take decisions on the basis of facts available if the undertaking in question does not cooperate.

Commission should also have the power to take decisions on the basis of facts available if the undertaking in question does not cooperate.

Amendment 11

Proposal for a regulation Recital 26

Text proposed by the Commission

(26) The Commission should have appropriate instruments to ensure the effectiveness of commitments and redressive measures. If the undertaking concerned does not comply with a decision with commitments, a decision imposing redressive measures, or a decision ordering interim measures, the Commission should have the power to impose fines and periodic penalty payments.

Amendment

(26) The Commission should have appropriate instruments to ensure the effectiveness of commitments and redressive measures. If the undertaking concerned does not comply with a decision with commitments, a decision imposing redressive measures, or a decision ordering interim measures, the Commission should have the power to impose fines and periodic penalty payments. ***The Commission should review the effectiveness of those decisions.***

Amendment 12

Proposal for a regulation Recital 31

Text proposed by the Commission

(31) Below the notification thresholds, the Commission could require the notification of potentially subsidised concentrations that were not yet implemented or the notification of potentially subsidised bids prior to the award of a public contract, if it considers that the concentration or the bid would merit ex-ante review given their impact in the Union. The Commission should also have the possibility to carry out a review on its own initiative of already implemented concentrations or awarded public contracts.

Amendment

(31) Below the notification thresholds, the Commission could require the notification of potentially subsidised concentrations that were not yet implemented or the notification of potentially subsidised bids prior to the award of a public contract, if it considers that the concentration or the bid would merit ex-ante review given their impact in the Union. The Commission should also have the possibility to carry out a review on its own initiative of already implemented concentrations or awarded public contracts. ***The Commission should publish guidance on the criteria for such***

Amendment 13

Proposal for a regulation

Recital 33

Text proposed by the Commission

(33) The need to address distortive foreign subsidies is especially salient in public procurement, given its economic significance in the internal market and the fact that it is financed by taxpayer funds. The Commission should have the power, upon notification prior to the award of a public contract or concession, to examine information on foreign financial contributions to the participating undertakings in the context of a public procurement procedure. Prior notifications should be mandatory above *a* threshold set in this Regulation to capture economically significant cases while minimising the administrative burden and not hindering the participation of SMEs in public procurement. That obligation of prior notification above a threshold should also apply to groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU of the European Parliament and of the Council⁴⁰, Article 19(2) of Directive 2014/24/EU of the European Parliament and of the Council⁴¹ and Article 37(2) of Directive 2014/25/EU of the European Parliament and of the Council⁴². It should also apply to the main subcontractors and the main suppliers of undertaking.

Amendment

(33) The need to address distortive foreign subsidies is especially salient in public procurement, given its economic significance in the internal market and the fact that it is financed by taxpayer funds, ***Moreover, it is necessary to ensure a level playing field in public procurement as it plays a major role in the implementation of the EU Recovery Plan. Hence, any distortions in the level playing field would counter the desired effects of the Recovery Plan.*** The Commission should have the power, upon notification prior to the award of a public contract or concession, to examine information on foreign financial contributions to the participating undertakings in the context of a public procurement procedure. Prior notifications should be mandatory above ***the*** threshold set in this Regulation to capture economically significant cases while minimising the administrative burden and not hindering the participation of SMEs in public procurement. ***The Commission should regularly review the thresholds set in this Regulation.*** That obligation of prior notification above a threshold should also apply to groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU of the European Parliament and of the Council⁴⁰, Article 19(2) of Directive 2014/24/EU of the European Parliament and of the Council⁴¹ and Article 37(2) of Directive 2014/25/EU of the European Parliament and of the Council⁴². It should also apply to the main subcontractors and the main suppliers of undertaking. ***The Commission may assess laying down specific control conditions in***

case of subcontracting.

⁴⁰ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

⁴¹ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

⁴² Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

⁴⁰ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

⁴¹ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

⁴² Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

Amendment 14

Proposal for a regulation

Recital 36

Text proposed by the Commission

(36) Foreign subsidies that enable an undertaking to submit a tender which is unduly advantageous in relation to the works, supplies or services concerned should be deemed to actually or potentially create a distortion in a public procurement procedure. Those distortions should therefore be assessed on the basis of the non-exhaustive set of indicators described in recitals 13 and 14 as well as the notion of unduly advantageous tender. The indicators should allow to determine how the foreign subsidy distorts competition by improving the competitive position of an undertaking and enabling it to submit an unduly advantageous tender. The opportunity should be given to undertakings to justify that the tender is not unduly advantageous, including by adducing the elements referred to in Article

Amendment

(36) Foreign subsidies that enable an undertaking to submit a tender which is unduly advantageous, ***including abnormally low tenders under Directives 2014/24/EU and 2014/25/EU***, in relation to the works, supplies or services concerned should be deemed to actually or potentially create a distortion in a public procurement procedure. Those distortions should therefore be assessed on the basis of the non-exhaustive set of indicators described in recitals 13 and 14 as well as the notion of unduly advantageous tender. The indicators should allow to determine how the foreign subsidy distorts competition by improving the competitive position of an undertaking and enabling it to submit an unduly advantageous tender. ***Those indicators should be published.*** The opportunity should be given to

69(2) of Directive 2014/24/EU. The prohibition of the award should only apply where the advantageous nature of the tender benefiting from foreign subsidies cannot be justified, the tender would be awarded the contract and the undertaking submitting the tender did not offer commitments considered appropriate and sufficient to fully and effectively remove the distortion.

undertakings to justify that the tender is not unduly advantageous, including by adducing the elements referred to in Article 69(2) of Directive 2014/24/EU. The prohibition of the award should only apply where the advantageous nature of the tender benefiting from foreign subsidies cannot be justified, the tender would be awarded the contract and the undertaking submitting the tender did not offer commitments considered appropriate and sufficient to fully and effectively remove the distortion.

Amendment 15

Proposal for a regulation Recital 36 a (new)

Text proposed by the Commission

Amendment

(36a) Foreign subsidies should also be controlled as regards abnormally low tenders. Tenders that appear abnormally low or unduly advantageous in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices. Where the tenderer cannot provide a sufficient explanation for the price offered, the contracting authority should be entitled to reject the tender. Rejection should be mandatory in cases where the contracting authority has established that the abnormally low price or costs proposed results from non-compliance with Union law or national law compatible with it.

Amendment 16

Proposal for a regulation Recital 48

Text proposed by the Commission

Amendment

(48) In order to ensure a level playing

(48) In order to ensure a level playing

field on the internal market also in the long term, with a view to ensuring adequate coverage of cases investigated both through notifications as well as ex officio, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of amending the notification thresholds for concentrations and for public procurement procedures, exempting certain categories of undertakings from the notification obligations under this Regulation, as well as amending the time limits for the preliminary review and the in-depth investigations of notified concentrations or notified financial contributions in the context of a public procurement procedure. In relation to financial contributions in the context of a public procurement procedure, the power to adopt such acts should be exercised in a way that takes into account the interests of SMEs. It is of particular importance that the Commission carries out appropriate consultations during the preparations of those acts, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁴⁷. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

⁴⁷ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better

field on the internal market also in the long term, with a view to ensuring adequate coverage of cases investigated both through notifications as well as ex officio, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of amending the notification thresholds for concentrations and for public procurement procedures, exempting certain categories of undertakings from the notification obligations under this Regulation, as well as amending the time limits for the preliminary review and the in-depth investigations of notified concentrations or notified financial contributions in the context of a public procurement procedure. In relation to financial contributions in the context of a public procurement procedure, the power to adopt such acts should be exercised in a way that takes into account the interests of SMEs, ***without unnecessary administrative burden***. It is of particular importance that the Commission carries out ***analysis including quantified cost-benefit analysis and ex-ante impact analysis as well as*** appropriate consultations during the preparations of those acts, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁴⁷. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

⁴⁷ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better

Amendment 17

Proposal for a regulation

Article 1 – paragraph 1

Text proposed by the Commission

(1) This Regulation lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions. Such distortions may arise with respect to any economic activity, and in particular in concentrations and public procurement procedures.

Amendment

(1) This Regulation lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions. Such distortions may arise with respect to any economic activity, and in particular in concentrations and public procurement procedures.

This Regulation aims to ensure a fair level playing field in the internal market and, in particular, in the public procurement market.

Amendment 18

Proposal for a regulation

Article 1 – paragraph 2

Text proposed by the Commission

(2) This Regulation addresses foreign subsidies granted to an undertaking engaging in an economic activity in the internal market. An undertaking acquiring control or merging with an undertaking established in the Union or an undertaking participating in a public procurement procedure is considered to be engaging in an economic activity in the internal market.

Amendment

(2) This Regulation addresses ***distortive*** foreign subsidies granted to an undertaking engaging in an economic activity in the internal market. An undertaking acquiring control or merging with an undertaking established in the Union or an undertaking participating in a public procurement procedure is considered to be engaging in an economic activity in the internal market. ***This Regulation shall be without prejudice to the international obligations of the Union as well as to measures that Member States and contracting entities may take in accordance with Directives 2014/23/EU, 2014/24/EU and 2014/25/EU.***

Amendment 19

Proposal for a regulation

Article 3 – paragraph 1 – introductory part

Text proposed by the Commission

(1) A distortion on the internal market shall be deemed to exist where a foreign subsidy is liable to improve the competitive position of the undertaking concerned in the internal market and where, in doing so, it actually or potentially negatively affects competition **on** the internal market. Whether there is a distortion on the internal market shall be determined on the basis of indicators, which may include the following:

Amendment

(1) A distortion on the internal market shall be deemed to exist where a foreign subsidy is liable to improve the competitive position of the undertaking concerned in the internal market and where, in doing so, ***the investigation provides evidence that*** it actually or potentially negatively affects competition ***and the level playing field in*** the internal market. Whether there is a distortion on the internal market shall be determined on the basis of indicators, which may include the following:

Amendment 20

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

(2) A foreign subsidy is unlikely to distort the internal market if its total amount is below EUR 5 million over any consecutive period of three fiscal years.

Amendment

(2) A foreign subsidy is unlikely to distort the internal market if:

(a) its total amount is below EUR 4 million over any consecutive period of three fiscal years; ***or***

(b) the Commission has ascertained that the third country granting the foreign subsidy has a system in place for the review of subsidies that guarantees by virtue of law and in practice a level of protection against undue state intervention into market forces and unfair competition which is at least equivalent to the level of protection within the Union and which effectively protects not only the market of the third country but also the internal market of the Union. A

Commission decision ascertaining such an equivalent level of protection shall be valid for three years and may be prolonged, if appropriate.

Amendment 21

Proposal for a regulation Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) The Commission shall publish guidelines for the application of the indicators referred to in paragraphs (1) and (2). Those guidelines shall be updated regularly, in close cooperation with the Member States. The European Parliament and the Council shall be informed of those updates.

Amendment 22

Proposal for a regulation Article 3 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

(2b) The Commission is empowered to adopt delegated acts to update the indicators referred to in paragraph 1.

Amendment 23

Proposal for a regulation Article 3 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

(2c) By 30 June 2025, the Commission shall publish a report on the possibility of the introduction of an online tool for indicative assessment of foreign subsidies, stating the risk level which is expected based on the provided data for quantitative indicators.

Amendment 24

Proposal for a regulation

Article 4 – paragraph 1 – point 4

Text proposed by the Commission

(4) a foreign subsidy enabling an undertaking to submit an unduly advantageous tender, on the basis of which the undertaking would be awarded the public contract.

Amendment

(4) a foreign subsidy enabling an undertaking to submit an unduly advantageous tender ***or an abnormally low tender pursuant to Directive 2014/24/EC***, on the basis of which the undertaking would be awarded the public contract.

Amendment 25

Proposal for a regulation

Article 6 – paragraph 1

Text proposed by the Commission

(1) To remedy the distortion on the internal market actually or potentially caused by a foreign subsidy, the Commission ***may*** impose redressive measures. The undertaking concerned may also offer commitments.

Amendment

(1) To remedy the distortion on the internal market actually or potentially caused by a foreign subsidy, the Commission ***shall*** impose redressive measures ***unless the balancing test carried out in accordance with Article 5 has demonstrated that the positive effects outweigh the negative ones***. The undertaking concerned may also offer commitments.

Amendment 26

Proposal for a regulation

Article 6 – paragraph 2

Text proposed by the Commission

(2) Commitments or redressive measures shall fully and effectively remedy the distortion caused by the foreign subsidy in the internal market.

Amendment

(2) Commitments or redressive measures shall fully, ***exclusively*** and effectively remedy the distortion ***actually or potentially*** caused by the foreign subsidy in the internal market.

Amendment 27

Proposal for a regulation

Article 6 – paragraph 3 – introductory part

Text proposed by the Commission

(3) Commitments or redressive measures may consist of the following:

Amendment

(3) Commitments or redressive measures may consist, ***inter alia***, of the following:

Amendment 28

Proposal for a regulation

Article 6 – paragraph 3 – point b

Text proposed by the Commission

(b) reducing capacity or market presence;

Amendment

(b) reducing capacity or market presence, ***in particular by means of temporary market access restrictions or temporary restrictions on the supply of goods or services in the internal market, where the related economic activity is distorted as a result of foreign subsidies, taking account of sectorial specificities;***

Amendment 29

Proposal for a regulation

Article 6 – paragraph 3 – point c a (new)

Text proposed by the Commission

Amendment

(ca) excluding the award of the contract to an undertaking for a limited period of time if the Commission finds that that undertaking has repeatedly received foreign subsidies of a distortive nature.

Amendment 30

Proposal for a regulation

Article 6 – paragraph 3 – point e

Text proposed by the Commission

- (e) publication of results of research and development;

Amendment

- (e) publication of results of research and development ***taking due account of the business and trade secrets pursuant to Directive (EU) 2016/943;***

Amendment 31

Proposal for a regulation

Article 6 – paragraph 3 – point h a (new)

Text proposed by the Commission

Amendment

- (ha) restraining participation, directly or indirectly, in new public procurement or concession contract procedures in the internal market.***

Amendment 32

Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

Amendment

- (4) The Commission ***may*** impose reporting and transparency requirements.

- (4) The Commission ***shall*** impose reporting and transparency requirements.

Amendment 33

Proposal for a regulation

Article 6 – paragraph 5

Text proposed by the Commission

Amendment

- (5) ***If*** an undertaking ***offers commitments*** which fully and effectively remedy the distortion on the internal market, ***the Commission may accept them and make them*** binding on the undertaking in a decision with commitments according to Article 9(3).

- (5) ***The Commission may consider commitments offered by the undertaking. Where the Commission accepts commitments offered by*** an undertaking which fully and effectively remedy the distortion on the internal market, ***it shall make those commitments*** binding on the undertaking in a decision with commitments according to Article 9(3). ***By 30 June 2023, the Commission shall adopt***

a delegated act to set out the procedures, methodology and criteria to determine the specific commitments and redressive measures according to this Regulation.

Amendment 34

Proposal for a regulation Article 6 – paragraph 6

Text proposed by the Commission

(6) Where the undertaking concerned proposes to repay the foreign subsidy including an appropriate interest rate, the Commission shall accept such repayment as commitment if it can ascertain that the repayment is transparent and *effective*, while taking into account the risk of circumvention.

Amendment

(6) Where the undertaking concerned proposes to repay the foreign subsidy including an appropriate interest rate, the Commission shall accept such repayment as commitment if it can ascertain that the repayment is transparent and *effectively and adequately remedies the distortion caused to the internal market*, while taking into account the risk of circumvention..

The Commission shall consult all relevant stakeholders on the choice of redressive measures, taking account of sectoral specificities, to assess the equivalence of the remedies.

Amendment 35

Proposal for a regulation Article 12 – paragraph 1

Text proposed by the Commission

(1) The Commission may conduct the necessary inspections of undertakings.

Amendment

(1) *In order to carry out its duties under this Regulation*, the Commission may conduct the necessary inspections of undertakings.

Amendment 36

Proposal for a regulation Article 12 – paragraph 2 – point a

Text proposed by the Commission

- (a) to enter any premises **and land** of the undertaking concerned;

Amendment

- (a) to enter any **relevant** premises, **land and means of transport** of the undertaking concerned;

Amendment 37

Proposal for a regulation

Article 12 – paragraph 3 – introductory part

Text proposed by the Commission

- (3) The undertaking concerned shall submit to inspections ordered by decision of the Commission. The officials and other accompanying persons authorised by the Commission to conduct an inspection shall exercise their powers upon production of a Commission decision:

Amendment

- (3) The undertaking concerned shall submit to inspections ordered by decision of the Commission. The officials and other accompanying persons authorised by the Commission to conduct an inspection shall exercise their powers upon production of a Commission decision **to the undertaking concerned**:

Amendment 38

Proposal for a regulation

Article 12 – paragraph 3 – point a

Text proposed by the Commission

- (a) specifying the subject matter **and** purpose of the inspection;

Amendment

- (a) specifying the subject matter, purpose **and scope** of the inspection;

Amendment 39

Proposal for a regulation

Article 12 – paragraph 7

Text proposed by the Commission

- (7) Upon request of the Commission, **a** Member State shall in its own territory carry out any inspection or other fact-finding measure under its national law in order to establish whether there is a foreign subsidy distorting the internal market.

Amendment

- (7) Upon request of the Commission, **the** Member State shall in its own territory carry out any inspection or other fact-finding measure under its national law in order to establish whether there is a foreign subsidy distorting the internal market.

Amendment 40

Proposal for a regulation Article 26 – paragraph 1

Text proposed by the Commission

Foreign subsidies that cause or risk causing a distortion in a public procurement procedure shall be understood as foreign subsidies that enable an undertaking to submit a tender that is unduly advantageous in relation to the works, supplies or services concerned. The assessment of whether there is a distortion on the internal market pursuant to Article 3 and whether a tender is unduly advantageous in relation to the works, supplies or services concerned shall be limited to the public procurement procedure at stake. Only foreign subsidies granted during the **three** years prior to the notification shall be taken into account in the assessment.

Amendment

Foreign subsidies that cause or **very likely** risk causing a distortion in a public procurement procedure shall be understood as foreign subsidies that enable an undertaking to submit a tender that is unduly advantageous **or abnormally low**, in relation to the works, supplies or services concerned. The assessment of whether there is a distortion on the internal market pursuant to Article 3 and whether a tender is unduly advantageous in relation to the works, supplies or services concerned shall be limited to the public procurement procedure at stake. Only foreign subsidies granted during the **five** years prior to the notification, shall be taken into account in the assessment.

Amendment 41

Proposal for a regulation Article 27 – paragraph 2

Text proposed by the Commission

(2) For the purpose of Article 28, a notifiable foreign financial contribution in an EU public procurement procedure shall be deemed to arise where the estimated value of that public procurement is equal or greater than EUR **250** million.

Amendment

(2) For the purpose of Article 28, a notifiable foreign financial contribution in an EU public procurement procedure shall be deemed to arise where the estimated value of that public procurement is equal or greater than EUR **200 million and the total value of provided foreign financial contribution to an undertaking is equal to or above EUR 1** million.

Amendment 42

Proposal for a regulation Article 27 – paragraph 2 a (new)

(2a) The Commission shall review the estimated value of public procurement referred to in paragraph 2 every three years. The Commission shall take into account the following criteria:

(a) the number of public procurement procedures notified;

(b) the amount of public procurement procedures where distorting foreign subsidies were identified;

(c) the average and median value of all public procurement procedures notified in order to identify the size of those procedures;

(d) changes to the threshold amounts laid down in Directives 2014/24/EU, 2014/23/EU and 2014/25/EU; and

(e) the market share attained by winning tenders by the appointment of those public procurement contracts.

The decision amending the thresholds referred to Article 27(2) should be adopted via delegated acts in accordance with Article 44.

Amendment 43

Proposal for a regulation Article 28 – paragraph 1

(1) When submitting a tender or a request to participate in a public procurement procedure, undertakings shall **either notify** to the contracting authority or the contracting entity all foreign financial contributions received in the three years preceding that notification or **confirm in a declaration** that they did not receive **any** foreign financial contributions in the last **three** years. Undertakings which do not submit such information or declaration

(1) When submitting a tender or a request to participate in a public procurement procedure, undertakings shall **submit a notification** to the contracting authority or the contracting entity **either by notifying** all foreign financial contributions received in the three years preceding that notification or **by indicating** that they did not receive foreign financial contributions **above the threshold set out in Article 27(2)** in the last **five** years. Undertakings

shall not be awarded the contract.

which do not submit such information or declaration shall not be awarded the contract.

Amendment 44

Proposal for a regulation Article 28 – paragraph 2

Text proposed by the Commission

(2) The obligation to notify foreign financial contributions under this paragraph shall extend to economic operators, groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU, Article 19(2) of Directive 2014/24/EU and Article 37(2) of Directive 2014/25/EU, main subcontractors and main suppliers. A subcontractor or supplier shall be deemed to be main where their participation ensures key elements of the contract performance and in any case where the economic share of their contribution exceeds **30%** of the estimated value of the contract.

Amendment

(2) The obligation to notify foreign financial contributions under this paragraph shall extend to economic operators, groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU, Article 19(2) of Directive 2014/24/EU and Article 37(2) of Directive 2014/25/EU, main subcontractors and main suppliers. A subcontractor or supplier shall be deemed to be main where their participation ensures key elements of the contract performance and in any case where the economic share of their contribution exceeds **15 %** of the estimated value of the contract.

Amendment 45

Proposal for a regulation Article 28 – paragraph 3

Text proposed by the Commission

(3) For groups of economic operators, main subcontractors and main suppliers, the lead economic operator shall ***ensure notification***.

Amendment

(3) For groups of economic operators, main subcontractors and main suppliers ***shall inform the lead economic operator about the foreign financial contributions, who shall ensure notification***. The lead economic operator shall ***not be liable for information about and provided by its main subcontractors or main suppliers***.

Amendment 46

Proposal for a regulation
Article 28 – paragraph 6

Text proposed by the Commission

(6) Where the Commission suspects that an undertaking may have ***benefitted from*** foreign subsidies in the ***three*** years prior to the submission of the tender or request to participate in the public procurement procedure, it may request the notification of the foreign financial contributions received by that undertaking in any public procurement procedure which are not notifiable under Article 27(2) or fall within the scope of paragraph 5 of this Article, at any time before the award of the contract. Once the Commission has requested the notification of such a financial contribution, it is deemed to be a notifiable foreign financial contribution in a public procurement procedure.

Amendment

(6) Where the Commission suspects that an undertaking may have ***been granted*** foreign subsidies in the ***five*** years prior to the submission of the tender or request to participate in the public procurement procedure, it may request the notification of the foreign financial contributions received ***or foreign financial contributions to be received within one year following the submission of the tender or request to participate in the public procurement procedure*** by that undertaking in any public procurement procedure which are not notifiable under Article 27(2) or fall within the scope of paragraph 5 of this Article, at any time before the award of the contract. Once the Commission has requested the notification of such a financial contribution, it is deemed to be a notifiable foreign financial contribution in a public procurement procedure.

Amendment 47

Proposal for a regulation
Article 28 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

(6a) For contracts above the thresholds laid down in Directive 2014/24/EU and below the threshold set out in Article 27(2), where a contracting authority or contracting entity establishes that a tender is abnormally low, it shall request the undertaking to notify the Commission without delay on all foreign financial contributions received in the last three years.

Amendment 48

Proposal for a regulation
Article 28 – paragraph 6 b (new)

Text proposed by the Commission

Amendment

(6b) For the purposes of this Regulation, the Commission shall establish a communication channel presenting strict confidentiality guarantees to receive comments from interested parties and Member States which suspect that an undertaking may have benefitted from foreign subsidies in the three years prior to the submission of the tender or request to participate in the public procurement procedure. The Commission shall duly take into account the information reported and may request information and the notification of the foreign financial contributions received by that undertaking in any public procurement procedure.

Amendment 49

Proposal for a regulation
Article 29 – paragraph 2

Text proposed by the Commission

Amendment

(2) The Commission shall carry out a preliminary review no later than **60** days after it received the notification.

(2) The Commission shall carry out a preliminary review no later than **30** days after it received the notification.

Amendment 50

Proposal for a regulation
Article 29 – paragraph 4

Text proposed by the Commission

Amendment

(4) The Commission may adopt a decision closing the in-depth investigation no later than **200** days after it received the notification. In exceptional circumstances, this time limit may be extended after consultation with the concerned

(4) The Commission may adopt a decision closing the in-depth investigation no later than **120** days after it received the notification. In exceptional circumstances, this time limit may be extended **by 20 days** after consultation with the concerned

contracting authority or contracting entity.

contracting authority or contracting entity.

Amendment 51

Proposal for a regulation

Article 30 – paragraph 2

Text proposed by the Commission

(2) Where the undertaking concerned does not offer commitments or where the Commission considers that the commitments referred to in paragraph 1 are neither appropriate nor sufficient to fully and effectively remove the distortion it shall adopt a decision prohibiting the award of the contract to the undertaking concerned (“decision prohibiting the award of the contract”).

Amendment

(2) Where the undertaking concerned does not offer commitments or where the Commission considers that the commitments referred to in paragraph 1 are neither appropriate nor sufficient to fully and effectively remove the distortion it shall adopt a decision prohibiting the award of the contract to the undertaking concerned (“decision prohibiting the award of the contract”). ***The adoption of a decision prohibiting the award of the contract shall result in the exclusion of the undertaking concerned from participation in the public procurement procedure.***

Amendment 52

Proposal for a regulation

Article 30 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3a) The Commission shall publish the decisions adopted in accordance with paragraphs (1), (2) and (3), which shall include a detailed justification of the decision, the indicators on which the decision is based and the description of the procedure for appeal.

Amendment 53

Proposal for a regulation

Article 31 – paragraph 3

Text proposed by the Commission

Amendment

(3) The contract may be awarded to an undertaking submitting a declaration under Article 28 before the Commission takes any of the decisions referred to in Article 30 or before the time limit laid down in Article 29(4) elapses only if the tender evaluation has established that the undertaking in question has in any case submitted the most economically advantageous tender.

deleted

Amendment 54

Proposal for a regulation Article 32 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) In the case of repetitive non-compliance with the notification requirement for foreign subsidies, the Commission may exclude the undertaking from future procurement procedures for a limited period of time across the Union.

Amendment 55

Proposal for a regulation Article 32 – paragraph 3

Text proposed by the Commission

Amendment

(3) The Commission may impose by decision on the undertakings concerned fines not exceeding 10 % of their aggregate turnover in the preceding business year where they, *intentionally or negligently*, fail to notify a subsidy in accordance with Article 28 during the public procurement procedure.

(3) The Commission may impose by decision on the undertakings concerned fines not exceeding 10 % of their aggregate turnover in the preceding business year where they fail to notify a subsidy in accordance with Article 28 during the public procurement procedure.

Amendment 56

Proposal for a regulation

Article 32 a (new)

Text proposed by the Commission

Amendment

Article 32a

Cooperation with national public procurement authorities

- 1. The competent public procurement authorities, and, where applicable, the designated bodies shall cooperate effectively with the Commission for the purpose of the preliminary review and the in-depth investigation in notified public procurement, as set out in Articles 19 and 28.***
- 2. Competent public procurement authorities may also inform the Commission regarding the foreign subsidy in public procurement below the thresholds referred to Article 27(2), if they consider that there is a risk of internal market distortion and request for market investigation. The Commission shall inform the public procurement authority of the follow-up taken and provide justification if it decides not to open an investigation.***
- 3. Where a contracting authority or contracting entity suspects that an undertaking has submitted an abnormally low tender, it may require the undertaking to provide explanations with regard to price and costs proposed in relation to works, supplies or services in accordance with Article 69 of Directive 2014/24/EU. Where the contracting authority or contracting entity has established that the abnormally low tender is caused by a foreign subsidy, it shall notify this to the Commission.***
- 4. Competent public procurement authorities shall collect and exchange data with the Commission on the third country bidders and contracts won by non-Union undertakings, foreign participation in the supply chain and as***

subcontractors.

Amendment 57

Proposal for a regulation

Article 34 – paragraph 2

Text proposed by the Commission

(2) The Commission **may** publish a report on the results of its market investigation into particular sectors, particular types of economic activity or particular subsidy instruments and invite comments from interested parties.

Amendment

(2) The Commission **shall** publish a report on the results of its market investigation into particular sectors, particular types of economic activity or particular subsidy instruments and invite comments from interested parties.

Amendment 58

Proposal for a regulation

Article 44 – paragraph 1 – point a

Text proposed by the Commission

(a) amending the thresholds for notifications as set out in Articles 18 and 27, in the light of the practice of the Commission during the first **five** years of application of this Regulation, and taking into account the effectiveness of application;

Amendment

(a) amending the thresholds for notifications as set out in Articles 18 and 27, in the light of the practice of the Commission during the first **three** years of application of this Regulation, and taking into account the effectiveness of application;

Amendment 59

Proposal for a regulation

Article 44 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) criteria to determine the specific commitments and redressive measures in Article 6;

Amendment 60

Proposal for a regulation

Article 44 – paragraph 1 – point c b (new)

Text proposed by the Commission

Amendment

(cb) defining specific indicators for balancing set out in the Article 5.

Amendment 61

Proposal for a regulation

Article 44 – paragraph 1 – point c c (new)

Text proposed by the Commission

Amendment

(cc) supplementing the indicators to determine the distortion on the internal market as set out in Article 3.

Amendment 62

Proposal for a regulation

Article 46 – paragraph 1

Text proposed by the Commission

Amendment

Within **five** years after the entry into force of this Regulation at the latest, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation, accompanied, **where the Commission considers it appropriate**, by relevant legislative proposals.

Within **three** years after the entry into force of this Regulation at the latest **and every 3 years thereafter**, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation **and evaluate the economic effects of this Regulation on the internal market including on the autonomy of the Union. The report shall be** accompanied by relevant legislative proposals. **The Commission shall also review the number of received and treated notification cases per year resulting from the thresholds set out in this Regulation. The Commission shall, where possible and appropriate, consider suggesting an increase or decrease of the threshold amounts applicable set out in this Regulation.**

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Foreign subsidies distorting the internal market		
References	COM(2021)0223 – C9-0167/2021 – 2021/0114(COD)		
Committee responsible Date announced in plenary	INTA 7.6.2021		
Opinion by Date announced in plenary	IMCO 7.6.2021		
Associated committees - date announced in plenary	25.11.2021		
Rapporteur for the opinion Date appointed	Christian Doleschal 15.6.2021		
Discussed in committee	1.12.2021	25.1.2022	28.2.2022
Date adopted	28.3.2022		
Result of final vote	+: 38 -: 1 0: 2		
Members present for the final vote	Andrus Ansip, Pablo Arias Echeverría, Alessandra Basso, Biljana Borzan, Markus Buchheit, Andrea Caroppo, Anna Cavazzini, Deirdre Clune, Alexandra Geese, Sandro Gozi, Maria Grapini, Svenja Hahn, Krzysztof Hetman, Virginie Joron, Eugen Jurzyca, Arba Kokalari, Marcel Kolaja, Kateřina Konečná, Jean-Lin Lacapelle, Maria-Manuel Leitão-Marques, Morten Løkkegaard, Adriana Maldonado López, Antonius Manders, Leszek Miller, Anne-Sophie Pelletier, Miroslav Radačovský, René Repasi, Christel Schaldemose, Andreas Schwab, Tomislav Sokol, Ivan Štefanec, Róza Thun und Hohenstein, Tom Vandenkendelaere, Kim Van Sparrentak, Marion Walsmann, Marco Zullo		
Substitutes present for the final vote	Clara Aguilera, Marc Angel, Vlad-Marius Botoș, Geert Bourgeois, Christian Doleschal, Dominik Tarczyński		

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

38	+
The Left	Kateřina Konečná, Anne-Sophie Pelletier
ID	Alessandra Basso, Markus Buchheit, Virginie Joron, Jean-Lin Lacapelle
PPE	Pablo Arias Echeverría, Andrea Caroppo, Deirdre Clune, Christian Doleschal, Krzysztof Hetman, Arba Kokalari, Antonius Manders, Andreas Schwab, Tomislav Sokol, Ivan Štefánek, Tom Vandenkendelaere, Marion Walsmann
Renew	Andrus Ansip, Vlad-Marius Botoș, Sandro Gozi, Svenja Hahn, Morten Løkkegaard, Róza Thun und Hohenstein, Marco Zullo
S&D	Clara Aguilera, Marc Angel, Biljana Borzan, Maria Grapini, Maria-Manuel Leitão-Marques, Adriana Maldonado López, Leszek Miller, René Repasi, Christel Schaldemose
Verts/ALE	Anna Cavazzini, Alexandra Geese, Marcel Kolaja, Kim Van Sparrentak

1	-
ECR	Eugen Jurzyca

2	0
ECR	Geert Bourgeois
NI	Miroslav Radačovský

Key to symbols:

+ : in favour

- : against

0 : abstention

22.4.2022

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on International Trade

on the proposal for a regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market
(COM(2021)0223 – C9-0167/2021 – 2021/0114(COD))

Rapporteur for opinion: Gilles Lebreton

PA_Legam

SHORT JUSTIFICATION

By seeking to prevent foreign subsidies from distorting the internal market, an objective which the Committee on Legal Affairs fully supports, the Commission is heading in the right direction with this proposal.

However, the measures in it appear disproportionate, as they grant the Commission excessive powers, especially in terms of sanctions.

The purpose of these amendments is therefore to rebalance the role of the Commission, including by involving competent national bodies in its interventions, amending the scope of its delegated acts, providing a tighter framework for inspections of undertakings and reducing the time limits for action.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on International Trade, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) A strong, open and competitive internal market enables both European and foreign **undertakings** to compete on **merits**. The Union benefits from a sophisticated and effective system of State aid control, aiming at ensuring fair conditions for all undertakings engaging in an economic activity in the internal market. This State aid control system prevents Member States from granting State aid that unduly distorts competition in the internal market.

Amendment

(1) A strong, open, **dynamic, durable** and competitive internal market enables both European and foreign **companies** to compete on **merit, while ensuring a level playing field**. The Union benefits from a sophisticated and effective system of State aid control, aiming at ensuring fair conditions for all undertakings engaging in an economic activity in the internal market. This State aid control system prevents Member States from granting State aid that unduly distorts competition in the internal market **and affects trade between Member States**.

Amendment 2

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) *At the same time*, undertakings might receive subsidies from third countries, that provide public funds which are then used, for instance, to finance economic activities in the internal market in any sector of the economy, such as participation in public procurement tenders, or acquisitions of undertakings, including those with strategic assets such as critical infrastructure and innovative technologies. Such subsidies are currently not subject to Union State aid rules.

Amendment

(2) ***However, no mechanism yet exists to address internal market distortions caused by foreign subsidies. Specifically, undertakings operating in the territory of the Union*** might receive subsidies from third countries, that provide public funds which are then used, for instance, to finance economic activities in the internal market in any sector of the economy, such as participation in public procurement tenders, or acquisitions of ***undertakings***, including those with strategic assets such as critical infrastructure and innovative technologies ***or to otherwise provide unjust advantages that might distort the functioning of internal market.*** Such subsidies, are currently not subject to Union State aid rules.

Amendment 3

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) Foreign subsidies can distort the internal market and undermine the level playing field for various economic activities in the Union. This could in particular occur in the context of concentrations entailing a change of control over Union undertakings, where such concentrations are fully or partially financed through foreign subsidies, or if undertakings benefiting from foreign subsidies are awarded public contracts in the Union.

Amendment

(3) Foreign subsidies can distort the internal market, ***upset the functional balance thereof*** and undermine the level playing field for various economic activities in the Union. This could in particular occur in the context of concentrations entailing a change of control over Union undertakings, where such concentrations are fully or partially financed through foreign subsidies, or if undertakings benefiting from foreign subsidies are awarded public contracts in the Union.

Amendment 4

Proposal for a regulation
Recital 5

Text proposed by the Commission

(5) It is therefore necessary to complement existing Union instruments with a new tool to effectively deal with distortions in the internal market caused by foreign subsidies and ensure a level playing field. In particular, the new tool complements Union State aid rules which deal with distortions in the internal market caused by Member State subsidies.

Amendment

(5) ***The Member States have not adopted national legislation regarding foreign subsidies, although countries such as France, Germany, Poland, Italy or the Netherlands have highlighted the need for harmonised Union rules to address the issue.*** It is therefore necessary to complement existing Union instruments with a new tool to effectively deal with distortions in the internal market caused by foreign subsidies and ensure a level playing field ***together with an internal market climate that remains attractive to foreign investors.*** In particular, the new tool complements Union State aid rules which deal with distortions in the internal market caused by Member State subsidies.

Amendment 5

Proposal for a regulation
Recital 7

Text proposed by the Commission

(7) To ensure a level playing field throughout the internal market and consistency in the application of this Regulation, the Commission should be the sole authority competent to apply this Regulation. The Commission should have the power to examine any foreign subsidy to the extent it is in the scope of this Regulation in any sector of the economy on its own initiative relying on information from all available sources. To ensure effective control, in the specific case of large concentrations (mergers and acquisitions) and public procurement procedures above certain thresholds, the Commission should have the power to review foreign subsidies based on a prior notification by the undertaking to the

Amendment

(7) To ensure a level playing field throughout the internal market and consistency in the application of this Regulation, the Commission should be the sole authority competent to apply this Regulation. The Commission should have the power to examine any foreign subsidy to the extent it is in the scope of this Regulation in any sector of the economy on its own initiative relying on information from all available sources, ***including Member States, Member States' trade association and Union-wide social partners.*** To ensure effective control, in the specific case of large concentrations (mergers and acquisitions) and public procurement procedures above certain thresholds, the Commission should have

Commission.

the power to review foreign subsidies based on a prior notification by the undertaking to the Commission. ***The Commission should pay particular attention to money flows coming from tax havens, where the opacity of banks, companies and other subjects makes it impossible to establish the origin of funds flowing into Member States.***

Amendment 6

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) There should be a financial contribution provided, directly or indirectly, by the public authorities of a third country. The financial contribution may be granted through public or private entities. Whether a public entity provides a financial contribution should be determined on a case-by-case basis with due regard to elements such as the characteristics of the relevant entity and the legal and economic environment prevailing in the country in which the entity operates including the government's role in the economy. Financial contributions may also be granted through a private entity if its actions can be attributed to the third country.

Amendment

(9) There should be a financial contribution ***or an economically equivalent support measure*** provided, directly or indirectly, by the public authorities of a third country. The financial contribution ***or an economically equivalent support measure*** may be granted through public or private entities. Whether a public entity provides a financial contribution ***or an economically equivalent support measure*** should be determined on a case-by-case basis with due regard to elements such as the characteristics of the relevant entity and the legal and economic environment prevailing in the country in which the entity operates including the government's role in the economy. Financial contributions ***or economically equivalent support measures*** may also be granted through a private entity if its actions can be attributed to the third country.

Amendment 7

Proposal for a regulation

Recital 10

Text proposed by the Commission

Amendment

(10) Such a financial contribution should confer a benefit to an undertaking engaging in an economic activity in the internal market. A financial contribution that benefits an entity engaging in non-economic activities does not constitute a foreign subsidy. The existence of a benefit should be determined on the basis of comparative benchmarks, such as the investment practice of private investors, rates for financing obtainable on the market, a comparable tax treatment, or the adequate remuneration for a given good or service.. If no directly comparable benchmarks are available, existing benchmarks could be adjusted or alternative benchmarks could be established based on generally accepted assessment methods.

(10) Such a financial contribution ***or an economically equivalent support measure*** should confer a benefit to an undertaking engaging in an economic activity in the internal market. A financial contribution ***or an economically equivalent support measure*** that benefits an entity engaging in non-economic activities does not constitute a foreign subsidy. The existence of a benefit should be determined on the basis of comparative benchmarks, such as the investment practice of private investors, rates for financing obtainable on the market, a comparable tax treatment, or the adequate remuneration for a given good or service. If no directly comparable benchmarks are available, existing benchmarks could be adjusted or alternative benchmarks could be established based on generally accepted assessment methods.

Amendment 8

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) Once the existence of a foreign subsidy is established, the Commission should assess whether the foreign subsidy distorts the internal market. Unlike State aid granted by a Member State, foreign subsidies are not generally prohibited. Subsidies in the form of export financing may be a cause of particular concern because of their distortive effects. This is not the case if such financing is provided in line with the OECD Arrangement on officially supported export credits. The Commission should assess on a case-by-case basis whether a foreign subsidy distorts the internal market.

Amendment

(12) Once the existence of a foreign subsidy is established, the Commission should assess whether the foreign subsidy distorts the internal market. Unlike State aid granted by a Member State, foreign subsidies are not generally prohibited. ***This asymmetry should prompt the Union to revise its own rules to offer better support to companies through State aid and to help implement an industrial strategy capable of enhancing our economy's potential for job and value creation.*** Subsidies in the form of export financing may be a cause of particular concern because of their distortive effects. This is not the case if such financing is provided in line with the OECD Arrangement on officially supported export credits. The Commission should assess on a case-by-

case basis whether a foreign subsidy distorts the internal market.

Amendment 9

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) The Commission should take into account the positive effects of the foreign subsidy on the development of the relevant subsidised economic activity. The Commission should weigh these positive effects against the negative effects of a foreign subsidy in terms of distortion on the internal market in order to determine, if applicable, the appropriate redressive measure or accept commitments. The balancing may also lead to the conclusion that no redressive measures should be imposed. Categories of foreign subsidies that are deemed most likely to distort the internal market are less likely to have more positive than negative effects.

Amendment

(16) The Commission should take into account the positive effects of the foreign subsidy on the development of the relevant subsidised economic activity, ***in particular as regards its contribution to the Union's objectives and key priorities.*** The Commission should weigh these positive effects against the negative effects of a foreign subsidy in terms of distortion on the internal market in order to determine, if applicable, the appropriate ***and proportionate*** redressive measure or accept commitments. The balancing may also lead to the conclusion that no redressive measures should be ***imposed. Categories*** of foreign subsidies that are deemed most likely to distort the internal market are less likely to have more positive than negative effects.

Amendment 10

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) The Commission should have the power, on its own initiative, to examine any information on foreign subsidies. To this end, it is necessary to establish a procedure consisting of two steps, namely a preliminary review and an in-depth investigation.

Amendment

(21) The Commission should have the power, on its own initiative, to examine any information on foreign subsidies ***or other relevant non-financial benefit from a third country, whether this consists of standards or practices of a specific or general nature, which has the same effect as a subsidy. The Commission should be able to act on the basis of substantiated***

information received from any relevant sources including Member States, industrial, business and trade associations or undertakings and Union-wide social partners and local authorities. To this end, it is necessary to establish a procedure consisting of two steps, namely a preliminary review and an in-depth investigation.

Amendment 11

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) In all cases where, as a result of the preliminary review, the Commission has sufficient indications of the existence of a foreign subsidy distorting the internal market, the Commission should have the power to launch an in-depth investigation to gather additional relevant information to assess the foreign subsidy, **and to** allow the interested parties to exercise their rights of defence.

Amendment

(24) In all cases where, as a result of the preliminary review, the Commission has sufficient indications of the existence of a foreign subsidy distorting the internal market, the Commission should have the power to launch an in-depth investigation to gather additional relevant information to assess the foreign subsidy **and how it might distort the internal market. It should inform the undertaking and Member States concerned about this fact** **and** allow the interested parties to exercise their rights of defence.

Amendment 12

Proposal for a regulation Recital 26

Text proposed by the Commission

(26) The Commission should have appropriate instruments to ensure the effectiveness of commitments and redressive measures. If the undertaking concerned does not comply with a decision with commitments, a decision imposing redressive measures, or a decision ordering interim measures, the Commission should have the power to impose fines and

Amendment

(26) The Commission should have appropriate instruments to ensure the effectiveness of commitments and redressive measures, **ensuring that they are suitable and proportionate.** If the undertaking concerned does not comply with a decision with commitments, a decision imposing redressive measures, or a decision ordering interim measures, the

periodic penalty payments.

Commission should have the power to impose fines and periodic penalty payments *of a value high enough to put an end to the potential or actual distortion of the internal market, so that they have a deterrent effect.*

Amendment 13

Proposal for a regulation Recital 27

Text proposed by the Commission

(27) In order to ensure the correct and effective application of this Regulation, the Commission should have the power to revoke a decision and adopt a new one, where the decision was based on incomplete, incorrect or misleading information, or where an undertaking acts contrary to its commitments or the redressive measures imposed.

Amendment

(27) In order to ensure the correct and effective application of this Regulation, the Commission should have the power to revoke a decision and adopt a new one, where the decision was based on incomplete, incorrect or misleading information, or where an undertaking acts contrary to its commitments or the redressive measures imposed. ***The Commission should duly justify the revocation of a decision and the need to adopt a new decision.***

Amendment 14

Proposal for a regulation Recital 31

Text proposed by the Commission

(31) Below the notification thresholds, the Commission ***could*** require the notification of potentially subsidised concentrations that were not yet implemented or the notification of potentially subsidised bids prior to the award of a public contract, if it considers that the concentration or the bid would merit ex-ante review given their impact in the Union. The Commission should also have the possibility to carry out a review on its own initiative of already implemented concentrations or awarded

Amendment

(31) Below the notification thresholds, the Commission ***should*** require the notification of potentially subsidised concentrations that were not yet implemented or the notification of potentially subsidised bids prior to the award of a public contract, if it considers that the concentration or the bid would merit ex-ante review given their impact in the Union. The Commission should also have the possibility to carry out a review on its own initiative of already implemented concentrations or awarded

public contracts.

public contracts.

Amendment 15

Proposal for a regulation

Recital 39

Text proposed by the Commission

(39) In the interest of transparency and legal certainty, it is appropriate to publish either in full or in a summary form all decisions adopted by the Commission.

Amendment

(39) In the interest of transparency and legal certainty, it is appropriate to publish either in full or ***at least*** in a summary form all decisions adopted by the Commission.

Amendment 16

Proposal for a regulation

Recital 43

Text proposed by the Commission

(43) The implementation of this Regulation by the Union should comply with Union law, ***the WTO Agreement and*** be consistent with commitments made under other trade and investment agreements to which the Union or the Member States are parties.

Amendment

(43) The implementation of this Regulation by the Union should comply with Union law, be consistent ***with WTO Agreements and*** with commitments made under other trade and investment agreements to which the Union or the Member States are parties. ***This Regulation should be without prejudice to the development of multilateral rules to address distortive subsidies.***

Amendment 17

Proposal for a regulation

Article 1 – paragraph 1

Text proposed by the Commission

(1) This Regulation lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions. Such distortions may arise with respect to any economic activity, and in particular in concentrations and public procurement

Amendment

(1) This Regulation lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions ***with a view to ensuring a level playing field for the functioning of the internal market.*** Such distortions may arise with respect to

procedures.

any economic activity, and in particular in concentrations and public procurement procedures.

Amendment 18

Proposal for a regulation Article 2 – paragraph 1

Text proposed by the Commission

(1) For the purpose of this Regulation, a foreign subsidy shall be deemed to exist where a third country provides a financial contribution which confers a benefit to an undertaking engaging in an economic activity in the internal market and which is limited, in law or in fact, to an individual undertaking or industry or to several undertakings or industries.

Amendment

(1) For the purpose of this Regulation, a foreign subsidy ***or any other measure with an equivalent effect*** shall be deemed to exist where a third country provides a financial ***or non-financial*** contribution ***or an economically equivalent support measure*** which confers a benefit to an undertaking engaging in an economic activity in the internal market and which is limited, in law or in fact, to an individual undertaking or industry or to several undertakings or industries.

Amendment 19

Proposal for a regulation Article 2 – paragraph 2 – point a – point ii

Text proposed by the Commission

(ii) the foregoing of revenue that is otherwise due; ***or***

Amendment

(ii) the foregoing of revenue that is otherwise due;

Amendment 20

Proposal for a regulation Article 2 – paragraph 2 – point a – point ii a (new)

Text proposed by the Commission

Amendment

(iia) inadequately remunerated special or exclusive rights or alternatively:

Amendment 21

Proposal for a regulation

Article 2 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) a support measure that is economically equivalent to a financial contribution:

Amendment 22

Proposal for a regulation

Article 2 – paragraph 2 – point b – introductory part

Text proposed by the Commission

Amendment

(b) the financial contribution provided by the third country shall include the financial contribution provided by:

(b) the financial contribution **or an economically equivalent support measure** provided by the third country shall include the financial contribution **or an economically equivalent support measure** provided by:

Amendment 23

Proposal for a regulation

Article 3 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) the level of economic activity of the undertaking concerned on the internal market;

(d) the level **and evolution** of economic activity of the undertaking concerned on the internal market;

Amendment 24

Proposal for a regulation

Article 4 – paragraph 1 – point 4 a (new)

Text proposed by the Commission

Amendment

(4a) any other non-financial measure with an effect equivalent to a subsidy for the beneficiary.

Amendment 25

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

(1) The Commission shall, **where warranted**, balance the negative effects of a foreign subsidy in terms of distortion on the internal market with positive effects on the development of the relevant economic activity.

Amendment

(1) The Commission shall balance the negative effects of a foreign subsidy in terms of distortion on the internal market with positive effects on the development of the relevant economic activity, **including positive contributions to Union's objectives**.

Amendment 26

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

(1) To remedy the distortion on the internal market actually or potentially caused by a foreign subsidy, the Commission may impose redressive measures. The undertaking concerned may also offer commitments.

Amendment

(1) To remedy the distortion on the internal market actually or potentially caused by a foreign subsidy, the Commission may impose **suitable and proportionate** redressive measures. The undertaking concerned may also offer commitments **to put an end as quickly as possible to the potential or actual distortion caused by a subsidy or other benefit with an equivalent effect**.

Amendment 27

Proposal for a regulation Article 6 – paragraph 2

Text proposed by the Commission

(2) Commitments or redressive measures shall fully and effectively remedy the distortion caused by the foreign subsidy in the internal market.

Amendment

(2) Commitments or redressive measures shall fully and effectively remedy the distortion **actually or potentially** caused by the foreign subsidy in the internal market.

Amendment 28

Proposal for a regulation

Article 6 – paragraph 3 – introductory part

Text proposed by the Commission

(3) Commitments or redressive measures may consist of the following:

Amendment

(3) Commitments or redressive measures may ***inter alia*** consist of the following:

Amendment 29

Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

(4) The Commission may impose reporting and transparency requirements.

Amendment

(4) The Commission may impose reporting and transparency requirements ***and follow up on them.***

Amendment 30

Proposal for a regulation

Article 6 – paragraph 6

Text proposed by the Commission

(6) Where the undertaking concerned proposes to repay the foreign subsidy including an appropriate interest rate, the Commission shall accept such repayment as commitment ***if*** it can ascertain that the repayment is transparent ***and*** effective, while taking into account the risk of circumvention.

Amendment

(6) Where the undertaking concerned proposes to repay the foreign subsidy including an appropriate interest rate, the Commission shall accept such repayment as commitment ***only where*** it can ascertain that the repayment is transparent, effective ***and adequately remedies the actual distortion caused,*** while taking into account the risk of circumvention.

Amendment 31

Proposal for a regulation

Article 7 – paragraph 1

Text proposed by the Commission

The Commission may on its own initiative examine information from any source regarding alleged distortive foreign subsidies.

Amendment

The Commission may on its own initiative ***or at the request of the competent national authorities*** examine information from any source regarding alleged distortive foreign subsidies ***including substantiated relevant information submitted by Member States, industrial, business and trade associations, undertakings or Union-wide social partners***

Amendment 32

Proposal for a regulation

Article 8 – paragraph 1 – introductory part

Text proposed by the Commission

(1) The Commission shall seek all the information it considers necessary to assess, on a preliminary basis, whether the financial contribution under examination constitutes a foreign subsidy and whether it distorts the internal market. To that end, the Commission may in particular:

Amendment

(1) The Commission shall seek all the information it considers necessary to assess, on a preliminary basis, whether the financial contribution ***or the economically equivalent support measure*** under examination constitutes a foreign subsidy and whether it distorts the internal market. To that end, the Commission may in particular:

Amendment 33

Proposal for a regulation

Article 8 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) where applicable, use information provided by the national authorities in support of their request;

Amendment 34

Proposal for a regulation

Article 8 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) inform the undertaking concerned;
and

(b) inform the undertaking **and**
Member States concerned; and

Amendment 35

Proposal for a regulation
Article 8 – paragraph 3

Text proposed by the Commission

Amendment

(3) Where the Commission, after a preliminary assessment, concludes that there are no sufficient grounds to initiate the in-depth investigation, either because there is no foreign subsidy or because there are no indications of an actual or potential distortion on the internal market, it shall close the preliminary review **and** inform the undertaking concerned.

(3) Where the Commission, after a preliminary assessment, concludes that there are no sufficient grounds to initiate the in-depth investigation, either because there is no foreign subsidy or because there are no indications of an actual or potential distortion on the internal market, it shall close the preliminary review, inform the undertaking concerned **and the national competent authorities, and publish the assessment.**

Amendment 36

Proposal for a regulation
Article 10 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

(1) there are indications that a financial contribution constitutes a foreign subsidy and distorts the internal market; and

(1) there are **firm** indications that a financial contribution **or an economically equivalent support measure** constitutes a foreign subsidy and distorts the internal market; and

Amendment 37

Proposal for a regulation
Article 10 – paragraph 1 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) Interim measures shall be limited in time. They may be prolonged where the

indication of distortive effects or the serious risk of substantial and irreparable damage to competition in the internal market continue to exist.

Amendment 38

Proposal for a regulation

Article 12 – paragraph 2 – point a

Text proposed by the Commission

(a) to enter any premises **and land** of the undertaking concerned;

Amendment

(a) to enter any premises, **land and means of transport** of the undertaking concerned;

Amendment 39

Proposal for a regulation

Article 12 – paragraph 7

Text proposed by the Commission

(7) Upon **request of** the Commission, a Member State shall in its own territory carry out any inspection or other fact-finding measure under its national law in order to establish whether there is a foreign subsidy distorting the internal market.

Amendment

(7) Upon **notification to** the Commission, a Member State shall in its own territory carry out any inspection or other fact-finding measure under its national law in order to establish whether there is a foreign subsidy distorting the internal market.

Amendment 40

Proposal for a regulation

Article 13 – paragraph 1

Text proposed by the Commission

In order to carry out the duties assigned to it by this Regulation, the Commission may conduct inspections in the territory of a third country, provided that **the undertaking concerned has given its consent** and the government of the third country has been officially notified and has agreed to the inspection. Article 12(1), (2),

Amendment

In order to carry out the duties assigned to it by this Regulation, the Commission may conduct inspections in the territory of a third country, provided that the government of the third country has been officially notified and has agreed to the inspection. Article 12(1), (2), and (3) points (a) and (b) shall apply by analogy.

and (3) points (a) and (b) shall apply by analogy.

Amendment 41

Proposal for a regulation Article 14 – paragraph 3

Text proposed by the Commission

(3) Where an undertaking concerned, including a public undertaking which is directly or indirectly controlled by the State, fails to provide the necessary information to determine whether a financial contribution confers a benefit to it, that undertaking may be deemed to have received such benefit.

Amendment

(3) Where an undertaking concerned, including a public undertaking which is directly or indirectly controlled by the State, fails to provide the necessary information to determine whether a financial contribution **or an economically equivalent support measure** confers a benefit to it, that undertaking may be deemed to have received such benefit.

Amendment 42

Proposal for a regulation Article 15 – paragraph 1 – introductory part

Text proposed by the Commission

(1) The Commission may impose by decision fines and periodic penalty payments where an undertaking **concerned** or an association of undertakings, intentionally or negligently:

Amendment

(1) The Commission may impose by decision fines and periodic penalty payments where an undertaking or an association of undertakings **concerned**, intentionally or negligently:

Amendment 43

Proposal for a regulation Article 15 – paragraph 5 – introductory part

Text proposed by the Commission

(5) Where an undertaking concerned does not comply with a decision with commitments pursuant to Article 9(3), a decision ordering interim measures pursuant to Article 10 or a decision imposing redressive measures pursuant to

Amendment

(5) Where an undertaking **or association of undertakings** concerned does not comply with a decision with commitments pursuant to Article 9(3), a decision ordering interim measures pursuant to Article 10 or a decision

Article 9(2), the Commission may impose by decision:

imposing redressive measures pursuant to Article 9(2), the Commission may impose by decision:

Amendment 44

Proposal for a regulation

Article 18 – paragraph 4 – point a a (new)

Text proposed by the Commission

Amendment

(aa) the joint venture itself or one of its parent undertakings is established in the Union and generates an aggregate turnover in the Union of at least EUR 250 million; and

Amendment 45

Proposal for a regulation

Article 19 – paragraph 4

Text proposed by the Commission

Amendment

(4) If the undertakings concerned fail to meet their obligation to notify, the Commission **may** review a notifiable concentration in accordance with this Regulation by requesting the notification of that concentration. In that case the Commission shall not be bound by the time limits referred to in Article 23(1) and (4).

(4) If the undertakings concerned fail to meet their obligation to notify, the Commission **shall** review a notifiable concentration in accordance with this Regulation by requesting the notification of that concentration. In that case the Commission shall not be bound by the time limits referred to in Article 23(1) and (4).

Amendment 46

Proposal for a regulation

Article 29 – paragraph 4

Text proposed by the Commission

Amendment

(4) The Commission may adopt a decision closing the in-depth investigation no later than **200** days after it received the notification. In exceptional circumstances, this time limit may be extended after consultation with the concerned

(4) The Commission may adopt a decision closing the in-depth investigation no later than **120** days after it received the notification.

contracting authority or contracting entity.

Amendment 47

Proposal for a regulation

Article 31 – paragraph 7

Text proposed by the Commission

(7) The principles governing public procurement, including proportionality, non-discrimination, equal treatment, **and** transparency, shall be observed as regards all undertakings involved in the public procurement procedure. The investigation of foreign subsidies pursuant to this Regulation shall not result in the contracting authority or the contracting entity treating the undertaking concerned in a way that is contrary to those principles.

Amendment

(7) The principles governing public procurement, including proportionality, non-discrimination, equal treatment, transparency **and compliance with obligations relating to applicable due diligence, environmental, social and labour law and standards, or governance**, shall be observed as regards all undertakings involved in the public procurement procedure. The investigation of foreign subsidies pursuant to this Regulation shall not result in the contracting authority or the contracting entity treating the undertaking concerned in a way that is contrary to those principles.

Amendment 48

Proposal for a regulation

Article 33 – paragraph 1

Text proposed by the Commission

(1) A financial contribution notified in the context of a concentration under Article 19 may be relevant and assessed again in relation to another economic activity.

Amendment

(1) A financial contribution notified in the context of a concentration under Article 19 may be relevant and assessed again **under this Regulation** in relation to another economic activity.

Amendment 49

Proposal for a regulation

Article 33 – paragraph 2

Text proposed by the Commission

(2) A financial contribution notified in

Amendment

(2) A financial contribution notified in

the context of a public procurement procedure under Article 28 may be relevant and assessed again in relation to another economic activity.

the context of a public procurement procedure under Article 28 may be relevant and assessed again ***under this Regulation*** in relation to another economic activity.

Amendment 50

Proposal for a regulation Article 34 – paragraph 1

Text proposed by the Commission

(1) Where the information available substantiates a reasonable suspicion that foreign subsidies in a particular sector, for a particular type of economic activity or based on a particular subsidy instrument may distort the internal market, the Commission may conduct a market investigation into the particular sector, the particular type of economic activity or into the use of the subsidy instrument concerned. In the course of that market investigation, the Commission may request the undertakings or associations of undertakings concerned to supply the necessary information and may carry out the necessary inspections. The Commission may also request the Member State or third country concerned to supply information.

Amendment

(1) Where the information available substantiates a reasonable suspicion that foreign subsidies in a particular sector, for a particular type of economic activity or based on a particular subsidy instrument may distort the internal market, the Commission may conduct a market investigation into the particular sector, the particular type of economic activity or into the use of the subsidy instrument concerned. In the course of that market investigation, the Commission may request the undertakings or associations of undertakings concerned to supply the necessary information and may carry out the necessary inspections. The Commission may also request the Member State or third country concerned to supply information, ***or consult Member States' trade associations and Union-wide social partners.***

Amendment 51

Proposal for a regulation Article 34 – paragraph 2

Text proposed by the Commission

(2) The Commission ***may*** publish a report on the results of its market investigation into particular sectors, particular types of economic activity or particular subsidy instruments and invite

Amendment

(2) The Commission ***shall*** publish a report on the results of its market investigation into particular sectors, particular types of economic activity or particular subsidy instruments and invite

comments from interested parties.

comments from interested parties.

Amendment 52

Proposal for a regulation

Article 44 – paragraph 1

Text proposed by the Commission

(1) The Commission is empowered to adopt delegated acts for the purposes of:

(a) amending the thresholds for notifications as set out in Articles 18 and 27, in the light of the practice of the Commission during the first five years of application of this Regulation, and taking into account the effectiveness of application;

(b) exempting certain categories of undertakings concerned from the obligation to notify pursuant to Articles 19 and 28, in light of the practice of the Commission in the first five years of application of this Regulation, in case this practice allows to identify economic activities where foreign subsidies are unlikely to distort the internal market;

(c) amending the timelines for review and in-depth investigations as set out in Articles 24 and 29.

Amendment

(1) The Commission is empowered to adopt delegated acts for the purposes of:

Amendment 53

Proposal for a regulation

Article 44 – paragraph 1 – point -a (new)

Text proposed by the Commission

Amendment

(-a) specifying the definition of ‘financial contribution’, the definition of ‘economically equivalent support measure’, as well as establishing criteria for identifying actions that can be attributed to third countries as referred to in Article 2;

Amendment 54

Proposal for a regulation

Article 44 – paragraph 1 – point -a a (new)

Text proposed by the Commission

Amendment

(-aa) supplementing the indicators set out for determining distortive subsidies in the single market as referred to in Article 3;

Amendment 55

Proposal for a regulation

Article 44 – paragraph 1 – point -a b (new)

Text proposed by the Commission

Amendment

(-ab) specifying the methodology underlying the balancing assessment, and in particular for the determination of the positive effects, as well as the criteria for outweighing the negative and the positive effects, referred to in Article 5;

Amendment 56

Proposal for a regulation

Article 44 – paragraph 1 – point -a c (new)

Text proposed by the Commission

Amendment

(-ac) for the purpose of adopting interim measures, specifying a methodology for determining that a serious risk of substantial and irreparable damage to competition arises on the internal market as referred to in Article 10;

Amendment 57

Proposal for a regulation

Article 46 – paragraph 1

Text proposed by the Commission

Within **five** years after the entry into force of this Regulation at the latest, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation, accompanied, where the Commission considers it appropriate, by relevant legislative proposals.

Amendment

Within **three** years after the entry into force of this Regulation at the latest, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation, accompanied, where the Commission considers it appropriate, by relevant legislative proposals.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Foreign subsidies distorting the internal market
References	COM(2021)0223 – C9-0167/2021 – 2021/0114(COD)
Committee responsible Date announced in plenary	INTA 7.6.2021
Opinion by Date announced in plenary	JURI 7.6.2021
Rapporteur for the opinion Date appointed	Gilles Lebreton 14.6.2021
Discussed in committee	10.1.2022 28.2.2022
Date adopted	28.3.2022
Result of final vote	+: 15 –: 3 0: 1
Members present for the final vote	Pascal Arimont, Manon Aubry, Gunnar Beck, Ilana Cicurel, Geoffroy Didier, Pascal Durand, Angel Dzhambazki, Jean-Paul Garraud, Sergey Lagodinsky, Gilles Lebreton, Maria-Manuel Leitão-Marques, Sabrina Pignedoli, Jiří Pospíšil, Raffaele Stancanelli, Adrián Vázquez Lázara, Axel Voss, Marion Walsmann, Tiemo Wölken, Lara Wolters
Substitutes present for the final vote	Patrick Breyer, Daniel Buda, Antonius Manders, Emil Radev, Nacho Sánchez Amor, Yana Toom

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

15	+
PPE	Pascal Arimont, Geoffroy Didier, Antonius Manders, Jiří Pospíšil, Emil Radev, Axel Voss, Marion Walsmann
Renew	Yana Toom
Verts/ALE	Patrick Breyer, Sergey Lagodinsky
ID	Jean-Paul Garraud, Gilles Lebreton
ECR	Raffaele Stancanelli
The Left	Manon Aubry
NI	Sabrina Pignedoli

3	-
Renew	Ilana Cicurel, Pascal Durand, Adrián Vázquez Lázara

1	0
ID	Gunnar Beck

Key to symbols:

+ : in favour

- : against

0 : abstention

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Foreign subsidies distorting the internal market			
References	COM(2021)0223 – C9-0167/2021 – 2021/0114(COD)			
Date submitted to Parliament	6.5.2021			
Committee responsible Date announced in plenary	INTA 7.6.2021			
Committees asked for opinions Date announced in plenary	DEVE 7.6.2021	ECON 7.6.2021	EMPL 7.6.2021	IMCO 7.6.2021
	JURI 7.6.2021			
Not delivering opinions Date of decision	DEVE 26.5.2021	EMPL 27.5.2021		
Associated committees Date announced in plenary	ECON 25.11.2021	IMCO 25.11.2021		
Rapporteurs Date appointed	Christophe Hansen 14.7.2021			
Discussed in committee	25.10.2021	25.1.2022	14.3.2022	
Date adopted	25.4.2022			
Result of final vote	+: –: 0:	42 0 0		
Members present for the final vote	Barry Andrews, Anna-Michelle Asimakopoulou, Tiziana Beghin, Geert Bourgeois, Saskia Bricmont, Markus Buchheit, Udo Bullmann, Jordi Cañas, Daniel Caspary, Arnaud Danjean, Paolo De Castro, Emmanouil Fragkos, Raphaël Glucksmann, Markéta Gregorová, Roman Haider, Christophe Hansen, Heidi Hautala, Danuta Maria Hübner, Karin Karlsbro, Danilo Oscar Lancini, Bernd Lange, Gabriel Mato, Sara Matthieu, Emmanuel Maurel, Carles Puigdemont i Casamajó, Samira Rafaela, Catharina Rinzema, Inma Rodríguez-Piñero, Massimiliano Salini, Ernő Schaller-Baross, Sven Simon, Dominik Tarczyński, Mihai Tudose, Kathleen Van Brempt, Marie-Pierre Vedrenne, Jörgen Warborn, Iuliu Winkler, Jan Zahradil, Juan Ignacio Zoido Alvarez			
Substitutes present for the final vote	Marco Campomenosi, Agnes Jongerius, Javier Moreno Sánchez			
Date tabled	28.4.2022			

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

42	+
ECR	Geert Bourgeois, Emmanouil Fragkos, Dominik Tarczyński, Jan Zahradil
ID	Markus Buchheit, Marco Campomenosi, Roman Haider, Danilo Oscar Lancini
NI	Tiziana Beghin, Carles Puigdemont i Casamajó, Ernő Schaller-Baross
PPE	Anna-Michelle Asimakopoulou, Daniel Caspary, Arnaud Danjean, Christophe Hansen, Danuta Maria Hübner, Gabriel Mato, Massimiliano Salini, Sven Simon, Jörgen Warborn, Iuliu Winkler, Juan Ignacio Zoido Álvarez
Renew	Barry Andrews, Jordi Cañas, Karin Karlsbro, Samira Rafaela, Catharina Rinzema, Marie-Pierre Vedrenne
S&D	Udo Bullmann, Paolo De Castro, Raphaël Glucksmann, Agnes Jongerius, Bernd Lange, Javier Moreno Sánchez, Inma Rodríguez-Piñero, Mihai Tudose, Kathleen Van Brempt
The Left	Emmanuel Maurel
Verts/ALE	Saskia Bricmont, Markéta Gregorová, Heidi Hautala, Sara Matthieu

0	-

0	0

Key to symbols:

+ : in favour

- : against

0 : abstentions