



**2021/0114(COD)**

3.2.2022

# **AMENDMENTS**

## **40 - 328**

**Draft opinion**  
**Stéphanie Yon-Courtin**  
(PE700.661v01-00)

Foreign subsidies distorting the internal market

Proposal for a regulation  
(COM(2021)0223 – C9-0167/2021 – 2021/0114(COD))



**Amendment 40**  
**France Jamet, Gunnar Beck**

**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) The Union benefits from a system of State aid control, aiming at ensuring fair conditions for all undertakings engaging in an economic activity in the internal market.

Or. fr

**Amendment 41**  
**Alfred Sant**

**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 *all* undertakings *active in the Union* 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 *aims at preventing* Member States from granting State aid that unduly distorts competition in the internal market.

Or. en

## Amendment 42

Gunnar Beck, France Jamet, Jessica Stegrud, Roman Haider, Gerolf Annemans

### 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, **including monetary financing of an economy to artificially lower the production costs**, are currently not subject to Union State aid rules.

Or. en

*Justification*

*The prohibition on monetary financing is enshrined in European legislation, in Article 123 (1) TFEU, and should be applied mutatis mutandis.*

## Amendment 43

Alfred Sant

### 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

*Amendment*

(2) At the same time, undertakings might receive subsidies from third countries which **could be used** to finance economic activities in the internal market, 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

as critical infrastructure and innovative technologies. Such subsidies are currently not subject to Union State aid rules.

not subject to Union State aid rules.

Or. en

#### **Amendment 44**

**Markus Ferber**

#### **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.***

Or. en

#### **Amendment 45**

**France Jamet, Gunnar Beck**

#### **Proposal for a regulation**

##### **Recital 2 a (new)**

###### *Text proposed by the Commission*

###### *Amendment*

***(2a) Points out that competition policies were originally intended to prevent foreign and domestic powers from being able to undermine national sovereignty or the democratic exercise of popular sovereignty.***

**Amendment 46**  
**France Jamet, Gunnar Beck**

**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, undermine the level playing field for various economic activities in the Union **and pose a threat to Member State sovereignty**. This could in particular occur in the context of concentrations entailing a change of control over **Member State** 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 47**  
**Jonás Fernández**

**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 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. **Apart from distorting**

*competition, foreign subsidies may also lead to the delocalisation of companies active in the internal market when production facilities are relocated to a third country following an acquisition. This can have adverse consequences to labour markets such as job losses and a decline of aggregate consumer demand and real wages.*

Or. en

**Amendment 48**  
**France Jamet, Gunnar Beck**

**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 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.

*Amendment*

(4) No existing Union instruments address distortions *or breaches of Member State sovereignty* 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.

Or. fr

**Amendment 49**  
**Alfred Sant**

**Proposal for a regulation**  
**Recital 4**

*Text proposed by the Commission*

*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.

(4) Union instruments *do not properly* 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.

Or. en

## Amendment 50 Alfred Sant

### 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 ***have in place an international structure that deals with the area of subsidies from different jurisdictions. In its absence***, a new tool to effectively deal with distortions in the internal market caused by foreign subsidies and ***to*** ensure a level playing field ***will be created***. The new tool complements Union State aid rules which deal with distortions in the internal market caused by Member State subsidies.

Or. en

## Amendment 51 France Jamet, Gunnar Beck

### 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, ensure a level playing field **and protect the economic sovereignty of Member States**. In particular, the new tool complements Union State aid rules which deal with distortions in the internal market caused by Member State subsidies.

Or. fr

**Amendment 52**

**Gunnar Beck, Michiel Hoogeveen, France Jamet, Jessica Stegrud, Roman Haider, Gerolf Annemans**

**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 **could** therefore **be useful** 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.

Or. en

**Amendment 53**

**Gunnar Beck, France Jamet, Jessica Stegrud, Roman Haider, Gerolf Annemans**

**Proposal for a regulation**

**Recital 6**

*Text proposed by the Commission*

(6) Rules and procedures to investigate foreign subsidies that actually or

*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.

potentially distort the internal market should be laid down and, where relevant, those distortions should be redressed. Foreign subsidies **benefitting a certain economic activity of an undertaking** could distort the internal market if the undertaking benefitting from the foreign subsidy engages in **that subsidized** 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.

Or. en

**Amendment 54**  
**France Jamet, Gunnar Beck**

**Proposal for a regulation**  
**Recital 7**

*Text proposed by 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 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.**

**deleted**

**Amendment 55**

**Gunnar Beck, Michiel Hoogeveen, France Jamet, Jessica Stegrud, Roman Haider, Gerolf Annemans**

**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 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.

Or. en

**Amendment 56**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**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

*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. 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.

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.

Or. en

**Amendment 57**  
**Alfred Sant**

**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 **have a pivotal role when applying** this Regulation. The Commission **in conjunction with national competition authorities** 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 **in order to establish a Union dimension to the impact such subsidy could have**. 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.

Or. en

**Amendment 58**

**Alfred Sant**

**Proposal for a regulation**

**Recital 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***(7 a) The competent authority having the power to investigate and redress foreign subsidies that have a Union dimension, and thereby distort the internal market, is the European Commission. A Union dimension is established when a clear impact on the internal market has been recognised, as based on the notification thresholds listed in this Regulation. National competent authorities should be empowered to investigate and redress the foreign subsidies, if the subsidy has a distortive effect on the internal market without meeting the notification thresholds listed in this Regulation, or if the investigated foreign subsidy involves only one specific Member State. In the latter case, the Commission may also refer a notification to the competent authority of the Member State concerned. In this Regulation the reference to the competent authority will be the investigative authority unless otherwise specifically indicated.***

Or. en

**Amendment 59**

**Alfred Sant**

**Proposal for a regulation**

**Recital 7 b (new)**

**(7 b) A structured communication network between investigative authorities should be established.**

Or. en

**Amendment 60**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**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** provided, directly or indirectly, by the public authorities of a third country. The financial contribution **or the economically equivalent support** 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 **contribution or economically equivalent support** may also be granted through a private entity if its actions can be attributed to the third country.

Or. en

**Amendment 61**

**Alfred Sant**

**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 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 ***in the form of a foreign subsidy*** may also be granted through a private entity if its actions can be attributed to the third country.

Or. en

**Amendment 62**

**France Jamet, Gunnar Beck**

**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 loan***, 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 63****Gunnar Beck, France Jamet, Jessica Stegrud, Roman Haider, Gerolf Annemans****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 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. ***Corporate bonds bought by a foreign central bank should also be considered as financial contributions.***

Or. en

**Amendment 64****Claude Gruffat**

on behalf of the Verts/ALE Group

**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-

*Amendment*

(10) Such a financial contribution ***or economically equivalent support*** should confer a benefit to an undertaking engaging in an economic activity in the internal market. A financial contribution ***or***



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.

*economically equivalent support that benefits* an entity engaging in non-economic activities *do* 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. *This assessment should also give due regard to any environmentally or socially harmful effects of such a benefit.* If no directly comparable benchmarks are available, existing benchmarks could be adjusted or alternative benchmarks could be established based on generally accepted assessment methods.

Or. en

## Amendment 65

**Gunnar Beck, Michiel Hoogeveen, France Jamet, Jessica Stegrud, Roman Haider, Gerolf Annemans**

### 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 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

##### *Amendment*

(10) Such a financial contribution should confer a benefit to an undertaking engaging in an economic activity in the internal market. 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, *tailored lending conditions*, 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.

assessment methods.

Or. en

**Amendment 66**  
**France Jamet, Gunnar Beck**

**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 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*

(10) Such a financial contribution, **or loan**, 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.

Or. fr

**Amendment 67**  
**Esther de Lange**

**Proposal for a regulation**  
**Recital 10 a (new)**

*Text proposed by the Commission*

*Amendment*

***(10 a) Such a financial contribution should also include a situation where the beneficiary has privileged access to its domestic market, for example 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 a competitive advantage that could be leveraged in the EU internal market and thereby exacerbate the distortive effect of any subsidy.*

Or. en

### **Amendment 68**

**Gunnar Beck, France Jamet, Roman Haider, Gerolf Annemans**

#### **Proposal for a regulation**

##### **Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

***(11 a) Foreign subsidies to undertakings supplying energy to the Member States should be exempt from this Regulation;***

Or. en

### **Amendment 69**

**France Jamet, Gunnar Beck**

#### **Proposal for a regulation**

##### **Recital 12**

*Text proposed by the Commission*

*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. 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

(12) Once the existence of a foreign subsidy is established, the Commission, ***together with the Member States***, 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

officially supported export credits. The Commission should assess on a case-by-case basis whether a foreign subsidy distorts the internal market.

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.

Or. fr

**Amendment 70**  
**Alfred Sant**

**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. 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. ***If the threshold for notification is not met, the case can be referred by the Commission to the national competition authorities of the relevant Member States.***

Or. en

**Amendment 71**  
**Alfred Sant**

**Proposal for a regulation**  
**Recital 13**

*Text proposed by the Commission*

*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, 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.

(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 **and equally difficult for companies to identify all the relevant subsidies**. 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 **investigative authority** 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.

Or. en

**Amendment 72**  
**Inese Vaidere**

**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

*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 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.

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. 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. ***Where the Commission has found that a third country has in place a system for the provision of subsidies which ensures 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, 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. 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 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, notably within the WTO. 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.*

Or. en

**Amendment 73**  
**Alfred Sant**

**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

*Amendment*

(14) When applying these indicators, the **investigative authority** 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

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.

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 unlikely to distort the internal market within the meaning of this Regulation.

Or. en

**Amendment 74**  
**Jonás Fernández**

**Proposal for a regulation**  
**Recital 15 a (new)**

*Text proposed by the Commission*

*Amendment*

***(15 a) Goods and services from third countries entering the internal market should respect core labour and environmental standards in public procurement.***

Or. en

**Amendment 75**  
**Alfred Sant**

**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 **investigative authority** 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 **should also take into account the contribution of a foreign subsidy to overarching goals based on international agreements such as the Paris Agreement and the Sustainable Development Goals (SDGs)**. 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. **To this effect, the Commission should adopt a delegated act with guidance on the procedure adopted to balance the effects of foreign subsidies.**

Or. en

## Amendment 76 Markus Ferber

### 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

*Amendment*

(16) The Commission should take into account the positive effects of the foreign subsidy on the development of the relevant subsidised economic activity, **where the subsidised activity is in line with EU policy objectives**. The Commission should weigh these positive effects against the negative effects of a foreign subsidy in

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.

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.

Or. en

**Amendment 77**  
**Michiel Hoogeveen**

**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. 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 *to* 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 predicted* to have *overwhelmingly* negative *rather than positive* effects.

Or. en

**Amendment 78**  
**Elisabetta Gualmini**

**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. 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. ***The Commission should develop guidelines on the application of the balancing test.***

Or. en

**Amendment 79**  
**Alfred Sant**

**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*

***deleted***

Or. en

**Amendment 80**  
**France Jamet, Gunnar Beck**

**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 ***or breach of Member State sovereignty*** caused by a foreign subsidy in the internal market. Redressive measures should be proportionate and suitable to remedy the ***economic and political imbalances created***. They should include behavioural or structural remedies or the repayment of the foreign subsidy.

Or. fr

**Amendment 81**  
**France Jamet, Gunnar Beck**

**Proposal for a regulation**  
**Recital 18**

*Text proposed by the Commission*

(18) The undertaking concerned should have the possibility to offer commitments in order to remedy the distortion caused by the foreign subsidy. If the Commission considers that the commitments offered fully and effectively remedy the distortion, it could accept them and make them binding by decision.

*Amendment*

(18) The undertaking concerned should have the possibility to offer commitments in order to remedy the distortion ***or breach of Member State sovereignty*** caused by the foreign subsidy. If the Commission, ***together with the Member States,*** considers that the commitments offered fully and effectively remedy the distortion, it could accept them and make them binding by decision.

Or. fr

**Amendment 82**

**Alfred Sant**

**Proposal for a regulation**

**Recital 18**

*Text proposed by the Commission*

(18) The undertaking concerned should have the possibility to offer commitments in order to remedy the distortion caused by the foreign subsidy. If the **Commission** considers that the commitments offered fully and effectively remedy the distortion, it could accept them and make them binding by decision.

*Amendment*

(18) The undertaking concerned should have the possibility to offer commitments in order to remedy the distortion caused by the foreign subsidy. If the **investigative authority** considers that the commitments offered fully and effectively remedy the distortion, it could accept them and make them binding by decision.

Or. en

**Amendment 83**

**Alfred Sant**

**Proposal for a regulation**

**Recital 19**

*Text proposed by the Commission*

(19) The undertaking concerned could offer to repay the subsidy, together with appropriate interest. The **Commission** should accept a repayment offered as a commitment if it can ascertain that the repayment fully remedies the distortion, is executed in a transparent manner and is effective in practice, while taking into account the risk of circumvention of the objectives of this Regulation.

*Amendment*

(19) The undertaking concerned could offer to repay the subsidy, together with appropriate interest. The **investigative authority** should accept a repayment offered as a commitment if it can ascertain that the repayment fully remedies the distortion, is executed in a transparent manner and is effective in practice, while taking into account the risk of circumvention of the objectives of this Regulation.

Or. en

**Amendment 84**

**France Jamet, Gunnar Beck**

**Proposal for a regulation**

**Recital 20**

*Text proposed by the Commission*

(20) Unless the undertakings concerned offer commitments that would fully and effectively remedy the identified distortion, the Commission should have the power to prohibit a concentration or the award of a public contract before it takes place. Where the concentration has already been implemented, notably in cases where no prior notification was required because the notification thresholds were not reached, the distortion may nonetheless be so substantial that it cannot be remedied by behavioural or structural measures or by the repayment of the subsidy. In such cases, the Commission could decide to remedy the distortion by ordering the undertakings concerned to dissolve the concentration.

*Amendment*

(20) Unless the undertakings concerned offer commitments that would fully and effectively remedy the identified distortion **or breach of Member State sovereignty**, the Commission should have the power to prohibit a concentration or the award of a public contract before it takes place. Where the concentration has already been implemented, notably in cases where no prior notification was required because the notification thresholds were not reached, the distortion may nonetheless be so substantial that it cannot be remedied by behavioural or structural measures or by the repayment of the subsidy. In such cases, the Commission, **together with the Member States**, could decide to remedy the distortion by ordering the undertakings concerned to dissolve the concentration.

Or. fr

**Amendment 85**

**Alfred Sant**

**Proposal for a regulation**

**Recital 20**

*Text proposed by the Commission*

(20) Unless the undertakings concerned offer commitments that would fully and effectively remedy the identified distortion, the **Commission** should have the power to prohibit a concentration or the award of a public contract before it takes place. Where the concentration has already been implemented, notably in cases where no prior notification was required because the notification thresholds were not reached, the distortion may nonetheless be so substantial that it cannot be remedied by behavioural or structural measures or by the repayment of the subsidy. In such cases, the **Commission** could decide to remedy the distortion by ordering the

*Amendment*

(20) Unless the undertakings concerned offer commitments that would fully and effectively remedy the identified distortion, the **investigative authority** should have the power to prohibit a concentration or the award of a public contract before it takes place. Where the concentration has already been implemented, notably in cases where no prior notification was required because the notification thresholds were not reached, the distortion may nonetheless be so substantial that it cannot be remedied by behavioural or structural measures or by the repayment of the subsidy. In such cases, the **investigative authority** could decide to remedy the distortion by ordering

undertakings concerned to dissolve the concentration.

the undertakings concerned to dissolve the concentration.

Or. en

**Amendment 86**  
**Alfred Sant**

**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 *investigative authority* should have the power to examine any *relevant* 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.

Or. en

**Amendment 87**  
**Elisabetta Gualmini**

**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 to open such a procedure.*

Or. en

**Amendment 88**

Alfred Sant

## 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 available if the undertaking in question does not cooperate.

*Amendment*

(22) The **investigative authority** 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 **investigative authority** 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 **investigative authority** could also address questions to Member States or to third countries. Furthermore, the **investigative authority** 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 **investigative authority** should also have the power to take decisions on the basis of facts available if the undertaking in question does not cooperate.

Or. en

## Amendment 89

Markus Ferber

## 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

*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 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.

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 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.

Or. en

**Amendment 90**  
**Alfred Sant**

**Proposal for a regulation**  
**Recital 23**

*Text proposed by the Commission*

(23) Furthermore, where necessary to restore competition in the internal market immediately and to prevent irreparable harm, the *Commission* should have the power to adopt interim measures.

*Amendment*

(23) Furthermore, where necessary to restore competition in the internal market immediately and to prevent irreparable harm, the *investigative authority* should have the power to adopt interim measures.

Or. en

**Amendment 91**  
**Alfred Sant**

**Proposal for a regulation**  
**Recital 24**

*Text proposed by the Commission*

*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.

(24) In all cases where, as a result of the preliminary review, the **investigative authority** has sufficient indications of the existence of a foreign subsidy distorting the internal market, the **investigative authority** 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.

Or. en

**Amendment 92**  
**Markus Ferber**

**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 order not to put on hold the underlying economic activities for too long.***

Or. en

**Amendment 93**  
**Alfred Sant**

**Proposal for a regulation**  
**Recital 25**

*Text proposed by the Commission*

*Amendment*

(25) The **Commission** should close the in-depth investigation by adopting a decision.

(25) The **investigative authority** should close the in-depth investigation by adopting a decision.

Or. en

**Amendment 94**  
**France Jamet, Gunnar Beck**

**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, **together with the Member States**, should have the power to impose fines and periodic penalty payments.

Or. fr

**Amendment 95**  
**Alfred Sant**

**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 **investigative authority** 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 **investigative authority** should have the power to impose fines and periodic penalty payments.

## Amendment 96

Alfred Sant

### 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 **investigative authority** 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.

Or. en

## Amendment 97

France Jamet, Gunnar Beck

### Proposal for a regulation

#### Recital 28

*Text proposed by the Commission*

(28) Given the potentially significant impact of concentrations on the internal market, the Commission should have the power, upon notification, to examine information on foreign financial contributions in the context of a proposed concentration. Undertakings should not be allowed to implement the concentration prior to the conclusion of the Commission's review.

*Amendment*

(28) Given the potentially significant impact of concentrations on the internal market **and Member State sovereignty**, the Commission should have the power, upon notification, to examine information on foreign financial contributions in the context of a proposed concentration. Undertakings should not be allowed to implement the concentration prior to the conclusion of the Commission's review.

Or. fr

## Amendment 98

**Alfred Sant**

**Proposal for a regulation**

**Recital 28**

*Text proposed by the Commission*

(28) Given the potentially significant impact of concentrations on the internal market, the **Commission** should have the power, upon notification, to examine information on foreign financial contributions in the context of a proposed concentration. Undertakings should not be allowed to implement the concentration prior to the conclusion of the **Commission's** review.

*Amendment*

(28) Given the potentially significant impact of concentrations on the internal market, the **investigative authority** should have the power, upon notification, to examine information on foreign financial contributions in the context of a proposed concentration. Undertakings should not be allowed to implement the concentration prior to the conclusion of the **investigative authority's** review.

Or. en

**Amendment 99**

**Alfred Sant**

**Proposal for a regulation**

**Recital 29**

*Text proposed by the Commission*

(29) This examination by the **Commission** should follow the same procedure as the one where a foreign subsidy is reviewed on the **Commission's** initiative, subject to adjustments to reflect the specificities of concentrations.

*Amendment*

(29) This examination by the **investigative authority** should follow the same procedure as the one where a foreign subsidy is reviewed on the **investigative authority's** initiative, subject to adjustments to reflect the specificities of concentrations.

Or. en

**Amendment 100**

**Alfred Sant**

**Proposal for a regulation**

**Recital 31**

*Text proposed by the Commission*

*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.

(31) Below the notification thresholds, the **investigative authority** 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 **investigative authority** should also have the possibility to carry out a review on its own initiative of already implemented concentrations or awarded public contracts.

Or. en

## **Amendment 101** **Elisabetta Gualmini**

### **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 a guidance on the criteria to require such a notification.***

Or. en

## **Amendment 102** **Stéphanie Yon-Courtin**

**Proposal for a regulation**  
**Recital 32 a (new)**

*Text proposed by the Commission*

*Amendment*

***(32 a) Notwithstanding any potential pre-notifications contacts, if undertakings that generated and aggregated turnover in the Union of at least EUR 500 million and received from third countries an aggregate financial contribution in the three years prior to notification of more than EUR 50 million, 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 a concentration compatible with the internal market.***

Or. en

**Amendment 103**  
**Inese Vaidere**

**Proposal for a regulation**  
**Recital 32 a (new)**

*Text proposed by the Commission*

*Amendment*

***(32 a) In the context of the ex-ante review mechanism for concentrations, concerned undertakings should have the possibility to request pre-notification consultations with the Commission based on good faith, with a view to avoiding over-compliance and excessive administrative burden for both the Commission and potentially concerned undertakings. The aim of those consultations should be to receive guidance on whether or not the formal thresholds for notification have been met. The Commission should ensure that***

*undertakings are informed of this possibility to the broadest extent possible.*

Or. en

## **Amendment 104**

**France Jamet, Gunnar Beck**

### **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 Council<sup>40</sup>, Article 19(2) of Directive 2014/24/EU of the European Parliament and of the Council<sup>41</sup> and Article 37(2) of Directive 2014/25/EU of the European Parliament and of the Council<sup>42</sup>. It should also apply to the main subcontractors and the main suppliers of undertaking.

##### *Amendment*

(33) The need to address foreign subsidies *that cause distortions or breaches of Member State sovereignty* 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, *together with the Member State concerned by the public procurement procedure*, 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 Council<sup>40</sup>, Article 19(2) of Directive 2014/24/EU of the European Parliament and of the Council<sup>41</sup> and Article 37(2) of Directive 2014/25/EU of the European Parliament and of the Council<sup>42</sup>. It should also apply to the main subcontractors and the main suppliers of undertaking.



---

<sup>40</sup> 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).

<sup>41</sup> 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).

<sup>42</sup> 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).

---

<sup>40</sup> 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).

<sup>41</sup> 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).

<sup>42</sup> 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).

Or. fr

## **Amendment 105**

### **Alfred Sant**

#### **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

##### *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. The **investigative authority** 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 Council<sup>40</sup>, Article 19(2) of Directive 2014/24/EU of the European Parliament and of the Council<sup>41</sup> and Article 37(2) of Directive 2014/25/EU of the European Parliament and of the Council<sup>42</sup>. It should also apply to the main subcontractors and the main suppliers of undertaking.

---

<sup>40</sup> 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).

<sup>41</sup> 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).

<sup>42</sup> 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).

apply to groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU of the European Parliament and of the Council<sup>40</sup>, Article 19(2) of Directive 2014/24/EU of the European Parliament and of the Council<sup>41</sup> and Article 37(2) of Directive 2014/25/EU of the European Parliament and of the Council<sup>42</sup>. It should also apply to the main subcontractors and the main suppliers of undertaking.

---

<sup>40</sup> 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).

<sup>41</sup> 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).

<sup>42</sup> 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).

Or. en

## **Amendment 106**

**France Jamet, Gunnar Beck**

### **Proposal for a regulation**

**Recital 35**

*Text proposed by the Commission*

***(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***

*Amendment*

***deleted***

*investigations initiated and pending pursuant to this Regulation.*

Or. fr

**Amendment 107**

**Alfred Sant**

**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 **investigative authority** on its own initiative. Financial contributions of which the **investigative authority** 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 **investigative authority** 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.

Or. en

**Amendment 108**

**Alfred Sant**

**Proposal for a regulation**

**Recital 39**

*Text proposed by the Commission*

(39) In the interest of transparency and

*Amendment*

(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**.

legal certainty, it is appropriate **that the Commission publishes** either in full or in a summary form all decisions adopted by the **different investigative authorities**.

Or. en

**Amendment 109**  
**Alfred Sant**

**Proposal for a regulation**  
**Recital 40**

*Text proposed by the Commission*

(40) **The Commission**, when publishing **its** decisions, should respect the rules on professional secrecy, including the protection of all confidential information, business secrets and personal data, in accordance with Article 339 of the Treaty.

*Amendment*

(40) When publishing decisions, **investigative authorities** should respect the rules on professional secrecy, including the protection of all confidential information, business secrets and personal data, in accordance with Article 339 of the Treaty.

Or. en

**Amendment 110**  
**Alfred Sant**

**Proposal for a regulation**  
**Recital 41**

*Text proposed by the Commission*

(41) In cases where information marked by the undertaking as confidential or business secret does not seem to be covered by obligations of professional secrecy, it is appropriate to have a mechanism in place according to which the **Commission** can decide the extent to which such information can be disclosed. Any such decision to reject a claim that information is confidential should indicate a period at the end of which the information will be disclosed, so that the respondent can make use of any judicial protection available to it, including any

*Amendment*

(41) In cases where information marked by the undertaking as confidential or business secret does not seem to be covered by obligations of professional secrecy, it is appropriate to have a mechanism in place according to which the **investigative authority** can decide the extent to which such information can be disclosed. Any such decision to reject a claim that information is confidential should indicate a period at the end of which the information will be disclosed, so that the respondent can make use of any judicial protection available to it, including

interim measure.

any interim measure.

Or. en

**Amendment 111**  
**Inese Vaidere**

**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.***

Or. en

**Amendment 112**  
**Alfred Sant**

**Proposal for a regulation**  
**Recital 46**

*Text proposed by the Commission*

(46) Where the **Commission** adopts a decision at the end of an in-depth investigation, Member States should be adequately involved prior to the decision making in an advisory procedure pursuant to Article 4 of Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>46</sup>. The choice of this procedure is justified taking into account the role of Member States in competition and State aid instruments, which also aim at levelling the playing field in the internal market.

*Amendment*

(46) Where the **investigative authority** adopts a decision at the end of an in-depth investigation, Member States should be adequately involved prior to the decision making in an advisory procedure pursuant to Article 4 of Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>46</sup>. The choice of this procedure is justified taking into account the role of Member States in competition and State aid instruments, which also aim at levelling the playing field in the internal market.

---

<sup>46</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

---

<sup>46</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Or. en

## **Amendment 113**

### **Alfred Sant**

#### **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

##### *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, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission ***to provide details on the structure of a communication network between the different investigative authorities, detailed rules on the calculation of time limits, the conditions and time limits for proposing commitments under Article 30, provide detailed rules on the procedural steps referred to in Articles 28, 29, 30 and 31 as well as to provide with guidance on the procedure adopted to balance the effects of foreign subsidies.*** 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-Making<sup>47</sup>. In particular, to ensure equal participation in

that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>47</sup>. 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.

---

<sup>47</sup> 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).

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.

---

<sup>47</sup> 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).

Or. en

#### **Amendment 114**

**Claude Gruffat**

on behalf of the Verts/ALE Group

#### **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.

Or. en

#### **Amendment 115**

**Alfred Sant**

**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 ***eventually*** redressing such distortions ***where detected***. Such distortions may arise with respect to any economic activity, and in particular in concentrations and public procurement procedures.

Or. en

**Amendment 116**  
**France Jamet, Gunnar Beck**

**Proposal for a regulation**  
**Article premier – paragraph 1 – subparagraph 1 (new)**

*Text proposed by the Commission*

*Amendment*

***This Regulation should also make it possible to check whether foreign subsidies pose a threat to Member State sovereignty, to gauge the impact of such subsidies on the proper functioning of democracy and on the plurality of information, and to prevent a harmful level of economic leverage from being obtained.***

Or. fr

**Amendment 117**  
**Michiel Hoogeveen**

**Proposal for a regulation**  
**Article 1 – paragraph 2**

*Text proposed by the Commission*

*Amendment*



(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.

(2) This Regulation addresses foreign subsidies **conferring an advantage** to an undertaking engaging in **any** economic activity in the internal market. **Such advantage is deemed to exist from the moment it can cause distortions, including prior to the actual receipt of, or entitlement to, the subsidy by the beneficiary. Among others,** 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.

Or. en

#### **Amendment 118**

**Gunnar Beck, France Jamet, Jessica Stegrud, Roman Haider, Gerolf Annemans**

#### **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 **benefitting a certain economic activity of** an undertaking engaging in **that subsidized** 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.

Or. en

#### **Amendment 119**

**Alfred Sant**

#### **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 granted to an undertaking engaging in an economic activity in the **EU's** internal market. **Specifically**, 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.

Or. en

**Amendment 120**  
**Alfred Sant**

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

*Text proposed by the Commission*

*Amendment*

***(2 a) The competent authority having the power to investigate and redress foreign subsidies that have a Union dimension and thereby distort the internal market is the European Commission. A Union dimension is established when a clear impact on the internal market has been recognised, as based on the notification thresholds listed in this Regulation.***

Or. en

**Amendment 121**  
**Gunnar Beck, France Jamet, Roman Haider, Gerolf Annemans**

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

*Text proposed by the Commission*

*Amendment*

***(2 a) Foreign subsidies to undertakings supplying energy to Member States shall***

*be exempt from this Regulation;*

Or. en

**Amendment 122**

**Alfred Sant**

**Proposal for a regulation**

**Article 1 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

*(2 b) A national competent authority shall have the same powers where the investigated foreign subsidy has a distortive effect on the internal market but falls below the notification thresholds, or if the subsidy involves only one specific Member State, or where a Union dimension has not been established. In this Regulation the reference to the competent authority will be the investigative authority unless otherwise specifically indicated.*

Or. en

**Amendment 123**

**Alfred Sant**

**Proposal for a regulation**

**Article 1 – paragraph 2 c (new)**

*Text proposed by the Commission*

*Amendment*

*(2 c) A structured communication network between investigative authorities shall be established.*

Or. en

**Amendment 124**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**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 shall be deemed to exist where a third country provides a financial contribution ***or an economically equivalent support*** 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.

Or. en

**Amendment 125**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**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***:

Or. en

**Amendment 126**

**Gunnar Beck, France Jamet, Jessica Stegrud, Roman Haider, Gerolf Annemans**

**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

*Amendment*

(i) the transfer of funds or liabilities, such as capital injections, grants, loans, loan guarantees, ***tailored lending conditions***, fiscal incentives, setting off of operating losses, compensation for

authorities, debt forgiveness, debt to equity swaps or rescheduling;

financial burdens imposed by public authorities, debt forgiveness, debt to equity swaps or rescheduling, ***corporate bond buying programmes***;

Or. en

**Amendment 127**  
**Esther de Lange**

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

*Text proposed by the Commission*

*Amendment*

***(iii a) any regulatory intervention which favours certain undertakings or the production of certain goods and affects the profitability of some actors on their domestic markets.***

Or. en

**Amendment 128**  
**Claude Gruffat**  
on behalf of the Verts/ALE Group

**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 any other economically equivalent support*** provided by the third country shall include the financial contribution ***or any other economically equivalent support*** provided by:

Or. en

**Amendment 129**  
**Gunnar Beck, France Jamet, Jessica Stegrud, Roman Haider, Gerolf Annemans**

## Proposal for a regulation

### Article 2 – paragraph 2 – point b – point ii

*Text proposed by the Commission*

(ii) foreign public entities, whose actions can be attributed to the third country, taking into account elements such as the characteristics of the entity, the legal and economic environment prevailing in the State in which the entity operates including the government's role in the economy; or

*Amendment*

(ii) foreign public entities, whose actions can be attributed to the third country, taking into account elements such as the characteristics of the entity, the legal and economic environment prevailing in the State in which the entity operates including the government's role in the economy, ***such as central banks or public investment banks***; or

Or. en

## Amendment 130

**Claude Gruffat**

on behalf of the Verts/ALE Group

## Proposal for a regulation

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

*Text proposed by the Commission*

*Amendment*

***(b a) support that is economically equivalent to financial contribution shall :***

***i) refer to a policy action or non-action in a third country including inadequately remunerated special or exclusive rights as well as any selective exemption from or failure to ensure compliance with applicable rules, such as obligations relating to applicable environmental, social and labour law and standards; and***

***ii) result in a benefit to an undertaking engaging in an economic activity in the internal market that is economically equivalent to the benefit conferred by a financial contribution referred to under point b).***

Or. en

**Amendment 131**

**Alfred Sant**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(b a) The undertaking(s) concerned received from third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR50 million.***

Or. en

**Amendment 132**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**Proposal for a regulation**

**Article 2 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2 a) The Commission is empowered to adopt a delegated act for the purpose of specifying the definition of economically equivalent support referred to in paragraphs 1 and 2(ba).***

Or. en

**Amendment 133**

**Alfred Sant**

**Proposal for a regulation**

**Article 2 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2 a) To fall under the scope of this Regulation, such subsidy shall be deemed to have a Union dimension and thus have an impact on the EU's internal market. A subsidy which would not significantly***

*impede effective competition in the internal market or in a substantial part of it, shall be deemed out of the scope of this regulation.*

Or. en

**Amendment 134**  
**France Jamet, Gunnar Beck**

**Proposal for a regulation**  
**Article 3 – title**

*Text proposed by the Commission*

Distortions on the internal market

*Amendment*

Distortions on the internal market *and the threat to Member State sovereignty*

Or. fr

**Amendment 135**  
**Michiel Hoogeveen**

**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 may include, *inter alia*, the following:

Or. en

**Amendment 136**



**Michiel Hoogeveen**

**Proposal for a regulation**

**Article 3 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

**(c a) *the sector concerned;***

Or. en

**Amendment 137**

**Michiel Hoogeveen**

**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;

Or. en

**Amendment 138**

**Michiel Hoogeveen**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

**(d a) *the level of economic activity of the undertaking concerned on the domestic market;***

Or. en

**Amendment 139**

**France Jamet, Gunnar Beck**

**Proposal for a regulation**

**Article 3 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1a) A breach of Member State sovereignty shall be determined where:***

***(a) one of the Member States reports to the Commission that a foreign subsidy is threatening its sovereignty;***

***(b) a foreign subsidy, through the beneficial entity, is intended to restrict the quantity and quality of information, thereby undermining plurality;***

***(c) that subsidy is likely to create or foster the creation of an entity capable solely by economic power of undermining the free exercise of democracy.***

Or. fr

**Amendment 140**  
**Inese Vaidere**

**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 5 million over any consecutive period of three fiscal years; or***

***(b) 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.***

*A Commission decision ascertaining equivalence under point (b) of the first subparagraph shall be valid for three years and may be prolonged, if appropriate.*

Or. en

**Amendment 141**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**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 ***the de minimis threshold rule, laid down in Commission Regulation (EU) No 1407/2013*** over any consecutive period of three fiscal years.

Or. en

**Amendment 142**

**Michiel Hoogeveen**

**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:

Or. en

**Amendment 143**

**Michiel Hoogeveen**

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

*Text proposed by the Commission*

*Amendment*

**(a) its total amount is below EUR 5 million over any consecutive period of three fiscal years;**

Or. en

**Amendment 144**  
**Michiel Hoogeveen**

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

*Text proposed by the Commission*

*Amendment*

**(b) 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. A Commission decision ascertaining equivalence under point (b) of the first subparagraph shall be valid for three years and may be prolonged, if appropriate.**

Or. en

**Amendment 145**  
**Michiel Hoogeveen**

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

*Text proposed by the Commission*

*Amendment*

***(2 a) The Commission shall publish guidelines on the application of this Article. Those guidelines shall be regularly updated, in close cooperation with the Member States, while keeping the European Parliament and the Council informed.***

Or. en

**Amendment 146**  
**Inese Vaidere**

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

*Text proposed by the Commission*

*Amendment*

***(2 a) The Commission shall publish guidelines on the application of this Article. Those guidelines shall be regularly updated, in close cooperation with the Member States, while keeping the European Parliament and the Council informed.***

Or. en

**Amendment 147**  
**Claude Gruffat**  
on behalf of the Verts/ALE Group

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

*Text proposed by the Commission*

*Amendment*

***(2 a) The Commission is empowered to adopt a delegated act for the purpose of specifying and supplementing the indicators referred to in paragraph 1.***

Or. en

**Amendment 148**  
**Michiel Hoogeveen**

**Proposal for a regulation**  
**Article 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 3 a**

***The European Commission's findings of subsidies benefitting third country producers in a given sector made in relevant and recent Trade Defence Instruments (TDIs) investigations, or subsidies documented in reports published by international intergovernmental organizations shall constitute sufficient evidence of distortive subsidies to operators in the countries and sectors concerned having met the relevant threshold.***

Or. en

**Amendment 149**  
**France Jamet, Gunnar Beck**

**Proposal for a regulation**  
**Article 4 – title**

*Text proposed by the Commission*

*Amendment*

Categories of foreign subsidies most likely to distort the internal market

Categories of foreign subsidies most likely to distort the internal market ***or breach Member State sovereignty***

Or. fr

**Amendment 150**  
**Alfred Sant**

**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;

Or. en

### **Amendment 151**

**Claude Gruffat**

on behalf of the Verts/ALE Group

#### **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 as defined in the Directive 2014/24/EU***, on the basis of which the undertaking would be awarded the public contract.

Or. en

### **Amendment 152**

**Markus Ferber**

#### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

*Export credits that are not in line with the OECD Arrangement on officially supported export credits should be mentioned as foreign subsidies of particular concern.*

**Amendment 153**

**France Jamet, Gunnar Beck**

**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.**

**deleted**

Or. fr

**Amendment 154**

**Alfred Sant**

**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 *investigative authority* 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 *taking into account the contribution of a foreign subsidy to overarching goals based on international agreements such as the Paris Agreement and the Sustainable Development Goals (SDGs).***

Or. en

**Amendment 155**



**Claude Gruffat**  
on behalf of the Verts/ALE Group

**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, where warranted, balance the **short and long-term** 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 any positive environmental or social externalities**.

Or. en

**Amendment 156**  
**Markus Ferber**

**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, 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, **where this economic activity is in line with the EU's policy goals**.

Or. en

**Amendment 157**  
**Alfred Sant**

**Proposal for a regulation**  
**Article 5 – paragraph 2**

*Text proposed by the Commission*

(2) The **Commission** shall take into

*Amendment*

(2) The **investigative authority** shall

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.

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 ***while respecting the international regime on trade.***

Or. en

**Amendment 158**  
**Markus Ferber**

**Proposal for a regulation**  
**Article 5 – paragraph 2**

*Text proposed by the Commission*

(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.

*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 those redressive measures or commitments. ***The Commission shall base its analysis on the general principles applied when assessing the compatibility of state aid with the single market.***

Or. en

*Justification*

*In order to ensure a level playing field, EU state aid rules should be the baseline for the balancing analysis.*

**Amendment 159**  
**Elisabetta Gualmini**

**Proposal for a regulation**  
**Article 5 – paragraph 2**

*Text proposed by the Commission*

(2) The Commission shall take into account the balancing between the negative

*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 those redressive measures or commitments.

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.  
***By [the date of application of this Regulation], the Commission will publish guidance on how to perform the balancing exercise.***

Or. en

#### **Amendment 160**

**Claude Gruffat**

on behalf of the Verts/ALE Group

#### **Proposal for a regulation**

##### **Article 5 – paragraph 2**

*Text proposed by the Commission*

(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.

*Amendment*

(2) The Commission shall take into account the balancing between the negative and positive effects when deciding whether to ***adopt a decision to initiate an in-depth investigation as provided for in Article 9,*** impose redressive measures or to accept commitments, and the nature and level of those redressive measures or commitments.

Or. en

#### **Amendment 161**

**Claude Gruffat**

on behalf of the Verts/ALE Group

#### **Proposal for a regulation**

##### **Article 5 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2 a) 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.*

Or. en

**Amendment 162**  
**Alfred Sant**

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

*Text proposed by the Commission*

*Amendment*

***(2 a) The Commission shall be empowered to adopt delegated acts under Article 44 of this Regulation to specify how an investigative authority should apply this Article.***

Or. en

**Amendment 163**  
**Claude Gruffat**  
on behalf of the Verts/ALE Group

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

*Text proposed by the Commission*

*Amendment*

***(2 b) The Commission is empowered to adopt a delegated act for the purpose of specifying the methodology underlying the balancing assessment and in particular for the determination of positive effects referred to in paragraph 1 as well as criteria for outweighing effects.***

Or. en

**Amendment 164**  
**Alfred Sant**

**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 **investigative authority** may impose redressive measures. The undertaking concerned may also offer commitments.

Or. en

**Amendment 165**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**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 assessment referred to in Article 5 determines that positive effects outweigh negative ones.**

Or. en

**Amendment 166**

**France Jamet, Gunnar Beck**

**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, **together with the Member States**, may impose redressive measures. The undertaking concerned may also offer commitments.

**Amendment 167**

**France Jamet, Gunnar Beck**

**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 ***or breach of Member State sovereignty*** caused by the foreign subsidy in the internal market.

Or. fr

**Amendment 168**

**France Jamet, Gunnar Beck**

**Proposal for a regulation**

**Article 6 – paragraph 3 – point h**

*Text proposed by the Commission*

***(h) repayment of the foreign subsidy, including an appropriate interest rate.***

*Amendment*

***deleted***

Or. fr

**Amendment 169**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(h a) restricting to participate, directly or indirectly, in new public procurement or concession contract procedures in the internal market.***

**Amendment 170**  
**Esther de Lange**

**Proposal for a regulation**  
**Article 6 – paragraph 3 – point h a (new)**

*Text proposed by the Commission*

*Amendment*

***(h a) requiring the undertakings concerned to adapt their governance structure***

Or. en

**Amendment 171**  
**Markus Ferber**

**Proposal for a regulation**  
**Article 6 – paragraph 3 – point h a (new)**

*Text proposed by the Commission*

*Amendment*

***(h a) prohibition of the award of a public contract.***

Or. en

**Amendment 172**  
**Alfred Sant**

**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 ***investigative authority*** may impose reporting and transparency requirements.

Or. en

## Amendment 173

Alfred Sant

### 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 **investigative authority** may accept them and make them binding on the undertaking in a decision with commitments according to Article 9(3).

Or. en

## Amendment 174

Claude Gruffat

on behalf of the Verts/ALE Group

### 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 **shall** accept them and make them binding on the undertaking in a decision with commitments according to Article 9(3).

Or. en

## Amendment 175

Markus Ferber

### Proposal for a regulation

#### Article 6 – paragraph 5

*Text proposed by the Commission*

(5) If an undertaking offers

*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).

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.***

Or. en

#### **Amendment 176**

**Alfred Sant**

#### **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 **investigative authority** 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.

Or. en

#### **Amendment 177**

**Alfred Sant**

#### **Proposal for a regulation**

#### **Article 7**

*Text proposed by the Commission*

#### **Article 7**

#### ***Ex officio review of foreign subsidies***

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

*Amendment*

***deleted***

**Amendment 178**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**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 and social partners.***

***A Member State that is in possession of evidence of the existence of a potentially distortive subsidy, may provide such evidence to the Commission. Each Member State and the Commission shall establish a contact point for the implementation of this Regulation. A secure system shall be provided by the Commission to support direct cooperation and exchange of information between the contact points and the Commission.***

**Amendment 179**

**Jonás Fernández**

**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.

***Where a Member State is in possession of sufficient evidence of a foreign subsidy distorting the internal market, it may***

*request to the Commission to review that evidence.*

*The evidence shall be communicated to the Commission. The Commission shall examine whether there are reasonable grounds to open an in-depth investigation.*

Or. en

**Amendment 180**

**France Jamet, Gunnar Beck**

**Proposal for a regulation**

**Article 7 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*Any Member State may call on the Commission to conduct an investigation into a foreign subsidy*

Or. fr

**Amendment 181**

**Alfred Sant**

**Proposal for a regulation**

**Article 8**

*Text proposed by the Commission*

*Amendment*

*Article 8*

*deleted*

*Preliminary review*

*(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:*

*(a) request information in accordance with Article 11;*

*(b) conduct inspections in and outside the*

*Union in accordance with Article 12 or Article 13.*

*(2) Where the Commission, based on the preliminary review, considers that there are sufficient indications that an undertaking has been granted a foreign subsidy that distorts the internal market, it shall*

*(a) adopt a decision to initiate an in-depth investigation ('decision to initiate the in-depth investigation'), which shall summarise the relevant issues of fact and law and shall include the preliminary assessment of the existence of a foreign subsidy and of the actual or potential distortion on the internal market;*

*(b) inform the undertaking concerned; and*

*(c) publish a notice in the Official Journal of the European Union, which invites interested parties, Member States and the third country concerned to express their views in writing within a prescribed period of time.*

*(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.*

Or. en

**Amendment 182**  
**Victor Negrescu**

**Proposal for a regulation**  
**Article 8 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

(2) Where the Commission, based on

(2) Where the Commission, based on

the preliminary review, considers that there are sufficient indications that an undertaking has been granted a foreign subsidy that distorts the internal market, it shall

the preliminary review ***and in the light of solid evidence***, considers that there are sufficient indications that an undertaking has been granted a foreign subsidy that distorts the internal market, it shall

Or. ro

**Amendment 183**  
**Victor Negrescu**

**Proposal for a regulation**  
**Article 8 – paragraph 2 – point c**

*Text proposed by the Commission*

(c) publish a notice in the Official Journal of the European Union, which invites interested parties, Member States and the third country concerned to express their views in writing within a prescribed period of time.

*Amendment*

(c) publish a notice in the Official Journal of the European Union, which, ***while respecting confidential company information***, invites interested parties, Member States and the third country concerned to express their views in writing within a prescribed period of time

Or. ro

**Amendment 184**  
**Claude Gruffat**  
on behalf of the Verts/ALE Group

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

*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, inform the undertaking concerned ***and publish its preliminary assessment***.

**Amendment 185**  
**Victor Negrescu**

**Proposal for a regulation**  
**Article 8 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) In the course of the investigation launched by the Commission or other national partner authorities and in the absence of a final verdict confirming such suspicions, the company shall be presumed innocent and shall carry on its business as usual without being prejudiced in any way by the ongoing investigation.***

Or. ro

**Amendment 186**  
**Elisabetta Gualmini**

**Proposal for a regulation**  
**Article 8 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3 a) By [the date of application of this Regulation], the Commission will publish guidance on the criteria to open such a procedure.***

Or. en

**Amendment 187**  
**Alfred Sant**

**Proposal for a regulation**  
**Article 9**

*Text proposed by the Commission*

*Amendment*

***In-depth investigation***

***(1) During the in-depth investigation, the Commission shall further assess the foreign subsidy distorting the internal market that has been identified in the decision to initiate the in-depth investigation, seeking all the information it considers necessary in accordance with Articles 11, 12 and 13.***

***(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').***

***(3) Where the Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 to 5 and the undertaking concerned offers commitments, which the Commission deems appropriate and sufficient to fully and effectively remedy the distortion, it may by a decision make these commitments binding on the undertaking ('decision with commitments'). A decision accepting the repayment of a foreign subsidy in accordance with Article 6(6) shall be considered a decision with commitments.***

***(4) The Commission shall adopt a no objection decision where it finds that:***

***(a) the preliminary assessment as set out in its decision to initiate the in-depth investigation is not confirmed; or***

***(b) a distortion on the internal market is outweighed by positive effects within the meaning of Article 5.***

Or. en

**Amendment 188**  
**Victor Negrescu**

**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 to 5, it may impose redressive measures ('decision with redressive measures') ***or it may require the company to remedy the situation urgently under strict supervision, within a specified period of time and subject to certain conditions.***

Or. ro

**Amendment 189**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**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 to 5, it ***shall*** impose redressive measures ('decision with redressive measures').

Or. en

**Amendment 190**

**Alfred Sant**

**Proposal for a regulation**

**Article 10**

*Text proposed by the Commission*

***Article 10***

***Interim measures***

***The Commission may take interim measures, where:***

***(1) there are indications that a financial***

*Amendment*

***deleted***



*contribution constitutes a foreign subsidy and distorts the internal market; and*  
*(2) there is a serious risk of substantial and irreparable damage to competition on the internal market.*

Or. en

**Amendment 191**  
**France Jamet, Gunnar Beck**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. fr

**Amendment 192**  
**Markus Ferber**

**Proposal for a regulation**  
**Article 10 – paragraph 1 – point 2**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*"Irreparable damage" is an ill-defined concept.*

**Amendment 193**  
**Victor Negrescu**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(2a) there is a risk for small and medium-sized enterprises (SMEs) in that it may unfairly affect their competitive position on the market or result in significant damage to their business.***

Or. ro

**Amendment 194**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(2 a) 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 on the internal market continue to exist.***

Or. en

**Amendment 195**

**France Jamet, Gunnar Beck**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(2a) if a foreign subsidy is likely to breach the sovereignty of a Member State***

Or. fr

**Amendment 196**

Alfred Sant

**Proposal for a regulation**  
**Article 11**

*Text proposed by the Commission*

*Amendment*

**Article 11**

**deleted**

**Information requests**

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

**(2) The Commission may also request such information from other undertakings or associations of undertakings.**

**(3) A request for information to an undertaking or an association of undertakings shall:**

**(a) state its legal basis and its purpose, specify what information is required and set an appropriate time limit within which the information is to be provided;**

**(b) contain a statement that if the information supplied is incorrect, incomplete or misleading fines and periodic penalty payments provided for in Article 15 could be imposed;**

**(c) contain a statement that, pursuant to Article 14, a lack of cooperation from the undertaking concerned allows the Commission to take a decision on the basis of the facts that are available.**

**(4) At the request of the Commission, Member States shall provide it with all necessary information to carry out the duties assigned to it by this Regulation.**

**(5) The Commission may also request a third country concerned to provide all necessary information.**

Or. en

**Amendment 197**

**Claude Gruffat**  
on behalf of the Verts/ALE Group

**Proposal for a regulation**  
**Article 11 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 198**  
**Markus Ferber**

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

*Text proposed by the Commission*

*Amendment*

***(c a) respect the the principle of proportionality;***

Or. en

*Justification*

*Information requests should adhere to the principle of proportionality.*

**Amendment 199**  
**Victor Negrescu**

**Proposal for a regulation**  
**Article 11 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***(5a) The information requested under paragraphs (1), (2), (4) and (5) shall be used strictly for the purpose of clarifying suspected distortions of the internal market through the granting of foreign subsidies and shall not be the object of any other investigation or action by the***

**Amendment 200**  
**Alfred Sant**

**Proposal for a regulation**  
**Article 12**

*Text proposed by the Commission*

*Amendment*

**Article 12**

**deleted**

***Inspections within the Union***

- (1) The Commission may conduct the necessary inspections of undertakings.***
- (2) Where the Commission undertakes such an inspection, the officials authorised by the Commission to conduct an inspection shall be empowered:***
- (a) to enter any premises and land of the undertaking concerned;***
- (b) to examine books and other business records and take, or request copies;***
- (c) to ask any representative or member of staff of the undertaking for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers;***
- (d) to seal any business premises and books or records for the period and to the extent necessary for the inspection.***
- (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:***
- (a) specifying the subject matter and purpose of the inspection;***
- (b) containing a statement that, pursuant to Article 14, a lack of cooperation from***

*the undertaking concerned allows the Commission to take a decision on the basis of the facts that are available;*

*(c) referring to the possibility to impose fines and penalties provided for in Article 15.*

*(4) In good time before the inspection, the Commission shall give notice of the inspection to the Member State in whose territory it is to be conducted.*

*(5) Officials of the Commission as well as officials authorised or appointed by the Member State in whose territory the inspection is to be conducted shall, at the request of the Member State or of the Commission, actively assist the officials and other accompanying persons authorised by the Commission. To this end, they shall enjoy the powers specified in paragraph 2.*

*(6) Where officials or other accompanying persons authorised by the Commission find that an undertaking opposes an inspection within the meaning of this Article, the Member State concerned shall provide them with the necessary assistance and shall request, where appropriate, the assistance of the police or of an equivalent enforcement authority so as to enable them to conduct their inspection.*

*(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.*

Or. en

**Amendment 201**  
**Markus Ferber**

**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 purpose of the application of this regulation and only in duly justified cases,*** the Commission may conduct the necessary inspections of undertakings.

Or. en

*Justification*

*Inspections of undertakings are a severe intrusion into individual privacy and should be limited to exceptional circumstances.*

### Amendment 202

France Jamet, Gunnar Beck

#### 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) The Commission, ***systematically together with the authorities of the Member States concerned,*** may conduct the necessary inspections of undertakings.

Or. fr

### Amendment 203

Claude Gruffat

on behalf of the Verts/ALE Group

#### 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) The Commission ***shall*** conduct the necessary inspections of undertakings.

Or. en

**Amendment 204**  
**France Jamet, Gunnar Beck**

**Proposal for a regulation**  
**Article 12 – paragraph 2 – introductory part**

*Text proposed by the Commission*

(2) *Where the Commission undertakes such an inspection, the officials authorised by the Commission to conduct an inspection shall be empowered:*

*Amendment*

(2) *In such cases, the Commission may call on the national authorities:*

Or. fr

**Amendment 205**  
**France Jamet, Gunnar Beck**

**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. *To conduct an inspection, the national authorities will be required to produce a decision from the Commission or from their national regulatory bodies:*

Or. fr

**Amendment 206**  
**France Jamet, Gunnar Beck**

**Proposal for a regulation**  
**Article 12 – paragraph 5**

*Text proposed by the Commission*

(5) *Officials of the Commission as well as officials authorised or appointed by the Member State in whose territory*

*Amendment*

*deleted*



*the inspection is to be conducted shall, at the request of the Member State or of the Commission, actively assist the officials and other accompanying persons authorised by the Commission. To this end, they shall enjoy the powers specified in paragraph 2.*

Or. fr

**Amendment 207**  
**France Jamet, Gunnar Beck**

**Proposal for a regulation**  
**Article 12 – paragraph 6**

*Text proposed by the Commission*

(6) *Where officials or other accompanying persons authorised by the Commission find that an undertaking opposes an inspection within the meaning of this Article, the Member State concerned shall provide them with the necessary assistance and shall request, where appropriate, the assistance of the police or of an equivalent enforcement authority so as to **enable them to conduct their inspection.***

*Amendment*

(6) The Member State concerned shall provide them with the necessary assistance and shall request, where appropriate, the assistance of the police or of an equivalent enforcement authority so as to **ensure the inspection is properly conducted.**

Or. fr

**Amendment 208**  
**France Jamet, Gunnar Beck**

**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*

*Amendment*

*deleted*

*market.*

Or. fr

**Amendment 209**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**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** 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.

Or. en

**Amendment 210**

**Victor Negrescu**

**Proposal for a regulation**

**Article 12 – paragraph 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***(7a) Where a Member State has reasons to suspect distortion of the internal market within its territory through the granting of foreign subsidies and does not have the necessary infrastructure, mechanisms and instruments to launch a thorough investigation, it may request the assistance of the European Commission.***

Or. ro

**Amendment 211**

Alfred Sant

**Proposal for a regulation**  
**Article 13**

*Text proposed by the Commission*

*Amendment*

**Article 13**

**deleted**

***Inspection outside the Union***

***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.***

Or. en

**Amendment 212**  
**Markus Ferber**

**Proposal for a regulation**  
**Article 13 – paragraph 1**

*Text proposed by the Commission*

*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 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.

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.

Or. en

*Justification*

*The consent of the third-country government should suffice. Proposed changes also align the text with the provisions for inspections inside the EU (Art. 12).*

**Amendment 213**  
**Alfred Sant**

**Proposal for a regulation**  
**Article 14**

*Text proposed by the Commission*

*Amendment*

*Article 14*

*deleted*

*Non-cooperation*

*(1) The Commission may take a decision pursuant to Article 8 or Article 9 on the basis of the facts available, if an undertaking concerned or a third country:*

*(a) provides incomplete, incorrect or misleading information in response to an information request under Article 11;*

*(b) fails to provide the information requested within the time limit prescribed by the Commission;*

*(c) refuses to submit to the Commission's inspection within or outside the Union ordered under Article 12 or Article 13; or*

*(d) otherwise impedes the preliminary review or the in-depth investigation.*

*(2) Where an undertaking or association of undertakings, a Member State or the third country has supplied incorrect or misleading information to the Commission, that information shall be disregarded.*

*(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.*

*(4) When applying facts available, the result of the procedure may be less favourable to the undertaking concerned than if it had cooperated.*

**Amendment 214**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**Proposal for a regulation**

**Article 14 – paragraph 1 – introductory part**

*Text proposed by the Commission*

(1) The Commission *may* take a decision pursuant to Article 8 or Article 9 on the basis of the facts available, if an undertaking concerned or a third country:

*Amendment*

(1) The Commission *shall* take a decision pursuant to Article 8 or *may take a decision pursuant to* Article 9 on the basis of the facts available, if an undertaking concerned or a third country:

Or. en

**Amendment 215**

**Victor Negrescu**

**Proposal for a regulation**

**Article 14 – paragraph 2**

*Text proposed by the Commission*

(2) Where an undertaking or association of undertakings, a Member State or the third country has supplied incorrect or misleading information to the Commission, that information shall be disregarded.

*Amendment*

(2) Where an undertaking or association of undertakings, a Member State or the third country has supplied incorrect or misleading information to the Commission, that information shall be disregarded *and the appropriate penalties applied.*

Or. ro

**Amendment 216**

**Alfred Sant**

**Proposal for a regulation**

**Article 15**

*Text proposed by the Commission*

*Amendment*

[...]

*deleted*

Or. en

**Amendment 217**  
**France Jamet, Gunnar Beck**

**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, ***together with the Member States***, may impose by decision fines and periodic penalty payments where an undertaking concerned or an association of undertakings, intentionally or negligently:

Or. fr

**Amendment 218**  
**Claude Gruffat**  
on behalf of the Verts/ALE Group

**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 concerned or an association of undertakings, intentionally or negligently:

Or. en

**Amendment 219**  
**France Jamet, Gunnar Beck**

**Proposal for a regulation**  
**Article 15 – paragraph 2**

*Text proposed by the Commission*

(2) Fines imposed in the cases referred to in paragraph 1 shall not exceed **1** % of the **aggregate** turnover of the undertaking or association of undertakings concerned in the preceding business year.

*Amendment*

(2) Fines imposed in the cases referred to in paragraph 1 shall not exceed **5** % of the **global** turnover of the undertaking or association of undertakings concerned in the preceding business year.

Or. fr

**Amendment 220**

**France Jamet, Gunnar Beck**

**Proposal for a regulation**

**Article 15 – paragraph 3**

*Text proposed by the Commission*

(3) Periodic penalty payments imposed in the cases referred to in paragraph 1 shall not exceed **5%** of the average daily **aggregate** turnover of the undertaking or association of undertakings concerned in the preceding business year for each working day of delay, calculated from the date established in the decision, until it submits complete and correct information as requested by the Commission.

*Amendment*

(3) Periodic penalty payments imposed in the cases referred to in paragraph 1 shall not exceed **7%** of the average daily **global** turnover of the undertaking or association of undertakings concerned in the preceding business year for each working day of delay, calculated from the date established in the decision, until it submits complete and correct information as requested by the Commission.

Or. fr

**Amendment 221**

**France Jamet, Gunnar Beck**

**Proposal for a regulation**

**Article 15 – paragraph 5 – point a**

*Text proposed by the Commission*

(a) fines not exceeding 10 % of the **aggregate** turnover of the undertaking concerned in the preceding business year; and

*Amendment*

(a) fines not exceeding 10 % of the **global** turnover of the undertaking concerned in the preceding business year; and

Or. fr

**Amendment 222**  
**France Jamet, Gunnar Beck**

**Proposal for a regulation**  
**Article 15 – paragraph 5 – point b**

*Text proposed by the Commission*

(b) periodic penalty payments not exceeding 5% of the average daily **aggregate** turnover of the undertaking concerned in the preceding business year for each day of non-compliance, starting from the day of the Commission decision imposing such penalty payments, until the Commission finds that the undertaking concerned complies with the decision.

*Amendment*

(b) periodic penalty payments not exceeding 5% of the average daily **global** turnover of the undertaking concerned in the preceding business year for each day of non-compliance, starting from the day of the Commission decision imposing such penalty payments, until the Commission finds that the undertaking concerned complies with the decision.

Or. fr

**Amendment 223**  
**Alfred Sant**

**Proposal for a regulation**  
**Article 16**

*Text proposed by the Commission*

**Article 16**

**Revocation**

***The Commission may revoke a decision taken pursuant to Article 9(2), (3) or (4) and adopt a new decision in any of the following cases:***

***(1) where the undertaking concerned acts contrary to its commitments or the redressive measures imposed;***

***(2) where the decision was based on incomplete, incorrect or misleading information.***

*Amendment*

***deleted***

Or. en



**Amendment 224**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**Proposal for a regulation**

**Article 16 – paragraph 1 – introductory part**

*Text proposed by the Commission*

The Commission *may* revoke a decision taken pursuant to Article 9(2), (3) or (4) and adopt a new decision in any of the following cases:

*Amendment*

The Commission *shall* revoke a decision taken pursuant to Article 9(2), (3) or (4) and adopt a new decision in any of the following cases:

Or. en

**Amendment 225**

**France Jamet, Gunnar Beck**

**Proposal for a regulation**

**Article 17 – title**

*Text proposed by the Commission*

Distortions on the internal market by foreign subsidies in concentrations

*Amendment*

Distortions on the internal market *or breaches of Member State sovereignty* by foreign subsidies in concentrations

Or. fr

**Amendment 226**

**Michiel Hoogeveen**

**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

*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 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.

controlling interest *or known future subsidies that have been decided and will become effective within one year following the concentration*, shall be considered in the assessment.

Or. en

#### **Amendment 227**

**Markus Ferber**

#### **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.

Or. en

#### **Amendment 228**

**Elisabetta Gualmini**

#### **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 *each* generates an aggregate turnover in the Union of at least EUR 500 million; and

Or. en

**Amendment 229**

**Chris MacManus**

on behalf of the The Left Group

**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 **100** million; and

Or. en

**Amendment 230**

**Markus Ferber**

**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 **250** million; and

Or. en

**Amendment 231**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**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

*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 **500** million; and

EUR **250** million; and

Or. en

**Amendment 232**  
**Elisabetta Gualmini**

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

Or. en

**Amendment 233**  
**Michiel Hoogeveen**

**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) the undertakings concerned received aggregate **foreign subsidies** in the three calendar years prior to notification of more than EUR 50 million.

Or. en

**Amendment 234**  
**Markus Ferber**

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

*Text proposed by the Commission*

*Amendment*

(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.

(b) the undertakings concerned received from third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR **25** million.

Or. en

#### **Amendment 235**

**Chris MacManus**

on behalf of the The Left Group

#### **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) the undertakings concerned received from third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR **25** million.

Or. en

#### **Amendment 236**

**Claude Gruffat**

on behalf of the Verts/ALE Group

#### **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) the undertakings concerned received from third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR **25** million.

Or. en

#### **Amendment 237**

**Markus Ferber**

**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 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

Or. en

**Amendment 238**  
**Michiel Hoogeveen**

**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 received from third countries an aggregate ***subsidy*** in the three calendar years prior to notification of more than EUR 50 million.

Or. en

**Amendment 239**  
**Claude Gruffat**  
on behalf of the Verts/ALE Group

**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 received from third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR **25** million.

**Amendment 240**

**Markus Ferber**

**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 received from third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR **25** million.

Or. en

**Amendment 241**

**Michiel Hoogeveen**

**Proposal for a regulation**

**Article 18 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4 a) By way of derogation from paragraphs 3 and 4 of this Article, sector-specific aggregate turnovers in the Union are taken into account for a “notifiable concentration” to be deemed to arise in the field of emerging technologies.***

Or. en

**Amendment 242**

**Alfred Sant**

**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

*Amendment*

(1) Notifiable concentrations ***above the thresholds outlined in Article 18*** shall be

implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

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.

Or. en

**Amendment 243**  
**Michiel Hoogeveen**

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

*Text proposed by the Commission*

*Amendment*

***(1 a) 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.***

Or. en

**Amendment 244**  
**Inese Vaidere**

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

*Text proposed by the Commission*

*Amendment*

***(1 a) 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.***

Or. en

**Amendment 245**  
**Alfred Sant**



**Proposal for a regulation**  
**Article 19 – paragraph 2**

*Text proposed by the Commission*

(2) The undertakings concerned may also notify the proposed concentration when they demonstrate **to the Commission** a good faith intention to conclude an agreement or, in the case of a public bid, where they have publicly announced their intention to make such a bid, provided that the intended agreement or bid would result in a notifiable concentration under paragraph 1.

*Amendment*

(2) The undertakings concerned may also notify the proposed concentration when they demonstrate a good faith intention to conclude an agreement or, in the case of a public bid, where they have publicly announced their intention to make such a bid, provided that the intended agreement or bid would result in a notifiable concentration under paragraph 1.

Or. en

**Amendment 246**  
**Alfred Sant**

**Proposal for a regulation**  
**Article 19 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3 a) Prior to the notification of a concentration within the meaning of paragraph 1, the persons or undertakings referred to in paragraph 2 may inform the Commission, by means of a reasoned submission, that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market and should therefore be examined, in whole or in part, by that Member State.***

***The Commission shall transmit this submission to all Member States without delay. The Member State referred to in the reasoned submission shall, within 15 working days of receiving the submission, express its agreement or disagreement as regards the request to refer the case. Where that Member State takes no such decision within this period, it shall***

*be deemed to have agreed.*

*Unless that Member State disagrees, the Commission, where it considers that such a distinct market exists, and that competition in that market may be significantly affected by the concentration, may decide to refer the whole or part of the case to the competent authorities of that Member State with a view to the application of that State's national competition law.*

*The decision whether or not to refer the case in accordance with the third subparagraph shall be taken within 25 working days starting from the receipt of the reasoned submission by the Commission. The Commission shall inform the other Member States and the persons or undertakings concerned of its decision. If the Commission does not take a decision within this period, it shall be deemed to have adopted a decision to refer the case in accordance with the submission made by the persons or undertakings concerned.*

*If the Commission decides, or is deemed to have decided, pursuant to the third and fourth subparagraphs, to refer the whole of the case, no notification shall be made pursuant to paragraph 1 and national competition law shall apply. Article 23a (6) to (9) shall apply mutatis mutandis.*

Or. en

**Amendment 247**  
**Alfred Sant**

**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**

**deleted**

***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).***

Or. en

**Amendment 248**  
**Inese Vaidere**

**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).

Or. en

**Amendment 249**  
**Claude Gruffat**  
on behalf of the Verts/ALE Group

**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).

Or. en

**Amendment 250**  
**Michiel Hoogeveen**

**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 benefitted from foreign subsidies in the three years prior to the concentration ***or where there are reasonable grounds to suspect that an undertaking will benefit from foreign subsidies in the year following the concentration.*** That concentration shall be deemed to be a notifiable concentration for the purposes of this Regulation.

Or. en

**Amendment 251**  
**Elisabetta Gualmini**

**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 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. ***By [the date of application of this Regulation], the***

***Commission shall publish guidance on the criteria to require such a notification.***

Or. en

**Amendment 252**

**Alfred Sant**

**Proposal for a regulation**

**Article 22 – paragraph 1**

*Text proposed by the Commission*

The aggregate financial contribution to an undertaking concerned shall be calculated by adding together the respective financial contributions received from third countries by all undertakings referred to in Article 21(4), points (a) to (e).

*Amendment*

The aggregate financial contribution to an undertaking concerned shall be calculated by adding together the respective financial contributions ***in the form of distortive State aid*** received from third countries by all undertakings referred to in Article 21(4), points (a) to (e).

Or. en

**Amendment 253**

**Michiel Hoogeveen**

**Proposal for a regulation**

**Article 22 – paragraph 1**

*Text proposed by the Commission*

The aggregate ***financial contribution*** to an undertaking concerned shall be calculated by adding together the respective ***financial contributions*** received from third countries by all undertakings referred to in Article 21(4), points (a) to (e).

*Amendment*

The aggregate ***foreign subsidies*** to an undertaking concerned shall be calculated by adding together the respective ***foreign subsidies*** received from third countries by all undertakings referred to in Article 21(4), points (a) to (e).

Or. en

**Amendment 254**

**Michiel Hoogeveen**

**Proposal for a regulation**

## Article 23 – paragraph 8 a (new)

*Text proposed by the Commission*

*Amendment*

***(8 a) Each preliminary review or in-depth investigation is communicated to the Member States that may be concerned***

Or. en

## Amendment 255

Alfred Sant

### Proposal for a regulation

#### Article 23 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 23 a*

***Referral to the competent authorities of the Member States***

***1. The Commission may, by means of a decision notified without delay to the undertakings concerned and the competent authorities of the other Member States, refer a notified concentration to the competent authorities of the Member State concerned in the following circumstances.***

***2. Within 15 working days of the date of receipt of the copy of the notification, a Member State, on its own initiative or upon the invitation of the Commission, may inform the Commission, which shall inform the undertakings concerned, that:***

***(a) a concentration threatens to affect significantly competition in a market within that Member State, which presents all the characteristics of a distinct market, or***

***(b) a concentration affects competition in a market within that Member State, which presents all the characteristics of a distinct market and which does not constitute a substantial part of the common market.***

***3. If the Commission considers that, having regard to the market for the products or services in question and the geographical reference market within the meaning of paragraph 7, there is such a distinct market and that such a threat exists, either:***

***(a) it shall itself deal with the case in accordance with this Regulation; or***

***(b) it shall refer the whole or part of the case to the competent authorities of the Member State concerned with a view to the application of that State's national competition law.***

***If, however, the Commission considers that such a distinct market or threat does not exist, it shall adopt a decision to that effect which it shall address to the Member State concerned, and shall itself deal with the case in accordance with this Regulation.***

***In cases where a Member State informs the Commission pursuant to paragraph 2(b) that a concentration affects competition in a distinct market within its territory that does not form a substantial part of the common market, the Commission shall refer the whole or part of the case relating to the distinct market concerned, if it considers that such a distinct market is affected.***

***4. A decision to refer or not to refer pursuant to paragraph 3 shall be taken:***

***(a) as a general rule within the period provided for in Article 10 (1) of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, second subparagraph, where the Commission, pursuant to Article 6(1)(b) of the same Regulation No 139/2004, has not initiated proceedings; or***

***(b) within 65 working days at most of the notification of the concentration concerned where the Commission has initiated proceedings under Article 6(1)(c) - Regulation No 139/2004 -, without***

*taking the preparatory steps in order to adopt the necessary measures under Article 8(2), (3) or (4) - Regulation No 139/2004 - to maintain or restore effective competition on the market concerned.*

*5. If within the 65 working days referred to in paragraph 4(b) the Commission, despite a reminder from the Member State concerned, has not taken a decision on referral in accordance with paragraph 3 nor has taken the preparatory steps referred to in paragraph 4(b), it shall be deemed to have taken a decision to refer the case to the Member State concerned in accordance with paragraph 3(b).*

*6. The competent authority of the Member State concerned shall decide upon the case without undue delay.*

*Within 45 working days after the Commission's referral, the competent authority of the Member State concerned shall inform the undertakings concerned of the result of the preliminary competition assessment and what further action, if any, it proposes to take. The Member State concerned may exceptionally suspend this time limit where necessary information has not been provided to it by the undertakings concerned as provided for by its national competition law.*

*Where a notification is requested under national law, the period of 45 working days shall begin on the working day following that of the receipt of a complete notification by the competent authority of that Member State.*

*7. The geographical reference market shall consist of the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas. This assessment should take into account in*



*particular the nature and characteristics of the products or services concerned, of the existence of entry barriers or of consumer preferences, of appreciable differences of the undertakings' market shares between the area concerned and neighbouring areas or of substantial price differences.*

*8. In applying the provisions of this Article, the Member State concerned may take only the measures strictly necessary to safeguard or restore effective competition on the market concerned.*

*9. In accordance with the relevant provisions of the Treaty, any Member State may appeal to the Court of Justice, and in particular request the application of Article 279 of the Treaty, for the purpose of applying its national competition law.*

Or. en

**Amendment 256**  
**Michiel Hoogeveen**

**Proposal for a regulation**  
**Article 25 – paragraph 2**

*Text proposed by the Commission*

(2) In addition, the Commission may impose by decision on 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 19 or supplement thereto.

*Amendment*

(2) In addition, the Commission may impose **fin**es by decision on undertakings **that benefit from a foreign subsidy referred to in Article 2 and Article 19(3).** Fines **will not exceed 1 % of the undertakings'** aggregate turnover in the preceding business year where they, intentionally or negligently, supply incorrect or misleading information in a notification pursuant to Article 19 or supplement thereto.

Or. en

**Amendment 257**  
**Elisabetta Gualmini**

**Proposal for a regulation**  
**Article 25 – paragraph 2**

*Text proposed by the Commission*

(2) In addition, the Commission may impose by decision on 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 19 or supplement thereto.

*Amendment*

(2) In addition, the Commission may impose by decision on undertakings concerned fines not exceeding 1 % of **the** aggregate turnover **generated by the undertaking concerned** in the preceding business year where they, intentionally or negligently, supply incorrect or misleading information in a notification pursuant to Article 19 or supplement thereto.

Or. en

*Justification*

*It is necessary to ensure that the fine is determined on the basis of the turnover generated by the individual undertaking concerned.*

**Amendment 258**  
**Elisabetta Gualmini**

**Proposal for a regulation**  
**Article 25 – paragraph 3 – introductory part**

*Text proposed by the Commission*

(3) The Commission may impose by decision on undertakings concerned fines not exceeding 10 % of **their** aggregate turnover in the preceding business year where they, intentionally or negligently:

*Amendment*

(3) The Commission may impose by decision on undertakings concerned fines not exceeding 10 % of **the** aggregate turnover **generated by the undertaking concerned** in the preceding business year where they, intentionally or negligently:

Or. en

*Justification*

*It is necessary to ensure that the fine is determined on the basis of the turnover generated by the individual undertaking concerned.*

**Amendment 259**  
**France Jamet, Gunnar Beck**

**Proposal for a regulation**  
**Article 26 – title**

*Text proposed by the Commission*

Distortions on the internal market by foreign subsidies in public procurement procedures

*Amendment*

Distortions on the internal market by foreign subsidies ***or breaches of Member State sovereignty*** in public procurement procedures

Or. fr

**Amendment 260**  
**Alfred Sant**

**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 250 million ***and the undertaking concerned received from third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR 50 million.***

Or. en

**Amendment 261**  
**Claude Gruffat**  
on behalf of the Verts/ALE Group

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

*Text proposed by the Commission*

*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 **250** million.

(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 **100** million.

Or. en

#### **Amendment 262**

**Chris MacManus**

on behalf of the The Left Group

#### **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 **100** million.

Or. en

#### **Amendment 263**

**Markus Ferber**

#### **Proposal for a regulation**

##### **Article 28 – paragraph 1**

###### *Text proposed by the Commission*

(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

###### *Amendment*

(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 **by the undertaking or its parent company** in the **five** 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

shall not be awarded the contract.

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

Or. en

*Justification*

*Inclusion of parent companies prevent circumvention possibilities.*

**Amendment 264**  
**Alfred Sant**

**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 **35%** of the estimated value of the contract.

Or. en

**Amendment 265**  
**Alfred Sant**

**Proposal for a regulation**  
**Article 28 – paragraph 4**

*Text proposed by the Commission*

(4) The contracting authority or the contracting entity shall transfer the notification to the *Commission* without

*Amendment*

(4) The contracting authority or the contracting entity shall transfer the notification to the *investigative*

delay.

*authority* without delay.

Or. en

## **Amendment 266**

**Alfred Sant**

### **Proposal for a regulation**

#### **Article 28 – paragraph 5**

*Text proposed by the Commission*

(5) Where the undertaking, economic operators or groups of economic operators referred to in paragraph 1 fail to notify a foreign financial contribution, ***or where such a notification is not transferred to the Commission, the Commission*** may initiate a review.

*Amendment*

(5) Where the undertaking, economic operators or groups of economic operators referred to in paragraph 1 fail to notify a foreign financial contribution, ***the investigative authority*** may initiate a review.

Or. en

## **Amendment 267**

**Alfred Sant**

### **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

*Amendment*

(6) Where the ***investigative authority*** 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 ***investigative authority*** has requested the notification of such a financial contribution, it is deemed to be a notifiable foreign financial contribution in

a public procurement procedure.

a public procurement procedure.

Or. en

### **Amendment 268**

**Alfred Sant**

#### **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 *investigative authority* shall carry out a preliminary review no later than **30 working** days after it received the notification.

Or. en

### **Amendment 269**

**Markus Ferber**

#### **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 carry out a preliminary review no later than **25** days after it received the notification.

Or. en

*Justification*

*The public procurement procedure should not be put on hold for too long.*

### **Amendment 270**

**Jonás Fernández**

#### **Proposal for a regulation**

##### **Article 29 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**(2 a) In both procedures under Articles 19 and 28, the Commission shall involve the Member States in the examination procedure and shall maintain a regular exchange of information with them.**

Or. en

**Amendment 271**  
**Alfred Sant**

**Proposal for a regulation**  
**Article 29 – paragraph 3**

*Text proposed by the Commission*

(3) The **Commission** shall decide whether to initiate an in-depth investigation within the time limit for completing the preliminary review and inform the undertaking concerned and the contracting authority or the contracting entity **without delay**.

*Amendment*

(3) The **investigative authority** shall decide whether to initiate an in-depth investigation within the time limit for completing the preliminary review and inform the undertaking concerned and the contracting authority or the contracting entity **within a 15 working day period**.

Or. en

**Amendment 272**  
**Alfred Sant**

**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 **investigative authority** may adopt a decision closing the in-depth investigation no later than **60 working** 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.

Or. en



## Amendment 273

Markus Ferber

### 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 **90** 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.

Or. en

##### *Justification*

*The public procurement procedure should not be put on hold for too long.*

## Amendment 274

Alfred Sant

### Proposal for a regulation

#### Article 30 – paragraph 1

##### *Text proposed by the Commission*

(1) Where, after an in-depth investigation, the **Commission** finds that an undertaking benefits from a foreign subsidy which distorts the internal market pursuant to Articles 3 to 5, and where the undertaking concerned offers commitments that fully and effectively remove the distortion on the internal market, it shall adopt a decision with commitments pursuant to Article 9(3). The assessment under Article 5 shall not result in a modification of the initial tender submitted by the undertaking that is incompatible with Union law.

##### *Amendment*

(1) Where, after an in-depth investigation, the **investigative authority** finds that an undertaking benefits from a foreign subsidy which distorts the internal market pursuant to Articles 3 to 5, and where the undertaking concerned offers commitments that fully and effectively remove the distortion on the internal market, it shall adopt a decision with commitments pursuant to Article 9(3). The assessment under Article 5 shall not result in a modification of the initial tender submitted by the undertaking that is incompatible with Union law.

Or. en

## Amendment 275

Alfred Sant

### 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 **investigative authority** 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”).

Or. en

## Amendment 276

Alfred Sant

### Proposal for a regulation

#### Article 30 – paragraph 3

*Text proposed by the Commission*

(3) Where, after an in-depth investigation, the **Commission** does not find that an undertaking benefits from a foreign subsidy which distorts the internal market, it shall adopt a decision pursuant to Article 9(4).

*Amendment*

(3) Where, after an in-depth investigation, the **investigative authority** does not find that an undertaking benefits from a foreign subsidy which distorts the internal market, it shall adopt a decision pursuant to Article 9(4).

Or. en

## Amendment 277

Alfred Sant

### Proposal for a regulation

#### Article 31 – paragraph 2

*Text proposed by the Commission*

*Amendment*

(2) If a decision to open an in-depth investigation is taken pursuant to Article 29(3), the contract shall not be awarded to an undertaking submitting a notification under Article 28 until the **Commission** reaches a decision under Article 30(3) or the time limit set in Article 29(4) elapses. If the **Commission** has not adopted a decision within this time limit, the contract may be awarded to any undertaking, including the one submitting the notification.

(2) If a decision to open an in-depth investigation is taken pursuant to Article 29(3), the contract shall not be awarded to an undertaking submitting a notification under Article 28 until the **investigative authority** reaches a decision under Article 30(3) or the time limit set in Article 29(4) elapses. If the **investigative authority** has not adopted a decision within this time limit, the contract may be awarded to any undertaking, including the one submitting the notification.

Or. en

**Amendment 278**  
**Alfred Sant**

**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 **investigative authority** 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.

Or. en

**Amendment 279**  
**Alfred Sant**

**Proposal for a regulation**  
**Article 31 – paragraph 4**

*Text proposed by the Commission*

(4) Where the **Commission** issues a decision under Article 30(2) regarding the

*Amendment*

(4) Where the **investigative authority** issues a decision under Article 30(2)

most economically advantageous tender, the contract may be awarded to the undertaking having submitted the next best tender not subject to a decision under Article 30(2).

regarding the most economically advantageous tender, the contract may be awarded to the undertaking having submitted the next best tender not subject to a decision under Article 30(2).

Or. en

**Amendment 280**  
**Alfred Sant**

**Proposal for a regulation**  
**Article 31 – paragraph 5**

*Text proposed by the Commission*

(5) Where the *Commission* adopts a decision in accordance with Article 30(1) or (3), the contract may be awarded to any undertaking having submitted the most economically advantageous tender, including, as the case may be, the undertaking(s) having submitted the notification under Article 28.

*Amendment*

(5) Where the *investigative authority* adopts a decision in accordance with Article 30(1) or (3), the contract may be awarded to any undertaking having submitted the most economically advantageous tender, including, as the case may be, the undertaking(s) having submitted the notification under Article 28.

Or. en

**Amendment 281**  
**Alfred Sant**

**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 *investigative authority* of any decision relating to the outcome of the public procurement procedure.

Or. en

**Amendment 282**

**Alfred Sant**

**Proposal for a regulation  
Article 31 – paragraph 8**

*Text proposed by the Commission*

(8) Each time limit shall begin on the working day following that of the receipt of the notification or of the adoption of the relevant **Commission** decision.

*Amendment*

(8) Each time limit shall begin on the working day following that of the receipt of the notification or of the adoption of the relevant decision **by the investigative authority**.

Or. en

**Amendment 283  
Alfred Sant**

**Proposal for a regulation  
Article 32 – paragraph 1**

*Text proposed by the Commission*

(1) The **Commission** may impose fines and periodic penalty payments as set out in Article 15.

*Amendment*

(1) The **investigative authority** may impose fines and periodic penalty payments as set out in Article 15.

Or. en

**Amendment 284  
Alfred Sant**

**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 **investigative authority** 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 285**

**Alfred Sant**

**Proposal for a regulation**

**Article 32 – paragraph 3**

*Text proposed by the Commission*

(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.

*Amendment*

(3) The **investigative authority** 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.

Or. en

**Amendment 286**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**Proposal for a regulation**

**Article 32 – paragraph 3**

*Text proposed by the Commission*

(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.

*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 fail to notify a subsidy in accordance with Article 28 during the public procurement procedure.

Or. en

**Amendment 287**

**Alfred Sant**

**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 **Articles 18 and 19** may be relevant and assessed again in relation to another economic activity.

Or. en

**Amendment 288**  
**Michiel Hoogeveen**

**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 **subsidy** 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.

Or. en

**Amendment 289**  
**Alfred Sant**

**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 **Articles 27 and 28** may be relevant and assessed again in relation to another economic activity.

Or. en

## Amendment 290

Alfred Sant

### 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 ***above the thresholds established in this regulation***, in a particular sector, for a particular type of economic activity or based on a particular subsidy instrument may distort the internal market, the ***investigative authority*** 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 ***investigative authority*** may request the undertakings or associations of undertakings concerned, ***as well as the relevant national authorities***, to supply the necessary information and may carry out the necessary inspections.

Or. en

## Amendment 291

Claude Gruffat

on behalf of the Verts/ALE Group

### 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

##### *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 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.

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. en

#### **Amendment 292**

**Alfred Sant**

#### **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 **investigative authority** 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.

Or. en

#### **Amendment 293**

**Claude Gruffat**

on behalf of the Verts/ALE Group

#### **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.

Or. en

**Amendment 294**  
**Alfred Sant**

**Proposal for a regulation**  
**Article 34 – paragraph 3**

*Text proposed by the Commission*

(3) The **Commission** may use the information obtained from such market investigations in the framework of procedures under this Regulation.

*Amendment*

(3) The **investigative authority** may use the information obtained from such market investigations in the framework of procedures under this Regulation.

Or. en

**Amendment 295**  
**Claude Gruffat**  
on behalf of the Verts/ALE Group

**Proposal for a regulation**  
**Article 34 – paragraph 3**

*Text proposed by the Commission*

(3) The Commission **may** use the information obtained from such market investigations in the framework of procedures under this Regulation.

*Amendment*

(3) The Commission **shall** use the information obtained from such market investigations in the framework of procedures under this Regulation.

Or. en

**Amendment 296**  
**Alfred Sant**

**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

*Amendment*

(1) The powers **conferred** under Article 9 shall be subject to a limitation period of **five** years, starting on the day on which a foreign subsidy is granted to the undertaking concerned. Any action taken under Articles 8, 11, 12 or 13 with respect

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.

to a foreign subsidy shall interrupt the limitation period. After each interruption, the limitation period shall start to run afresh.

Or. en

#### **Amendment 297**

**Markus Ferber**

#### **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.

Or. en

#### **Amendment 298**

**Alfred Sant**

#### **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

##### *Amendment*

(2) The powers to impose fines and periodic penalty payments under Articles

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.

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 **investigative authority** 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.

Or. en

**Amendment 299**  
**Alfred Sant**

**Proposal for a regulation**  
**Article 35 – paragraph 3**

*Text proposed by the Commission*

(3) The powers of the **Commission** to enforce decisions imposing 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 **Commission** decision imposing fines or periodic penalty payments was taken. Any action taken by the **Commission, or by a Member State acting upon request of the Commission**, intended to enforce payment of the fine or periodic penalty payment shall interrupt that limitation period. After each interruption, the limitation period shall start to run afresh.

*Amendment*

(3) The powers of the **investigative authority** to enforce decisions imposing 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 decision imposing fines or periodic penalty payments was taken. Any action taken by the **investigative authority** intended to enforce payment of the fine or periodic penalty payment shall interrupt that limitation period. After each interruption, the limitation period shall start to run afresh.

Or. en

**Amendment 300**  
**Alfred Sant**

**Proposal for a regulation**  
**Article 36 – paragraph 1**

*Text proposed by the Commission*

(1) **The Commission** shall publish a summary notice of the decisions adopted pursuant to Article 8(2).

*Amendment*

(1) **Each investigative authority** shall publish a summary notice of the decisions adopted pursuant to Article 8(2).

Or. en

**Amendment 301**  
**Alfred Sant**

**Proposal for a regulation**  
**Article 36 – paragraph 2**

*Text proposed by the Commission*

(2) **The Commission** shall publish the decisions adopted pursuant to Article 9(2), (3) and (4), Article 24(3), and Article 30(1), (2) and (3) in the Official Journal of the European Union.

*Amendment*

(2) **Each investigative authority** shall publish the decisions adopted pursuant to Article 9(2), (3) and (4), Article 24(3), and Article 30(1), (2) and (3) in the Official Journal of the European Union.

Or. en

**Amendment 302**  
**Alfred Sant**

**Proposal for a regulation**  
**Article 36 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**(2 a) The Commission shall publish either in full or in a summary form all decisions adopted by the different investigative authorities.**

Or. en

**Amendment 303**

**Alfred Sant**

**Proposal for a regulation  
Article 36 – paragraph 3**

*Text proposed by the Commission*

(3) When publishing summary notices and decisions, **the Commission shall take** due account of the legitimate interests of undertakings in the protection of their business secrets and other confidential information.

*Amendment*

(3) When publishing summary notices and decisions, due account of the legitimate interests of undertakings in the protection of their business secrets and other confidential information **shall be taken**.

Or. en

**Amendment 304  
Alfred Sant**

**Proposal for a regulation  
Article 37 – paragraph 1**

*Text proposed by the Commission*

(1) Decisions adopted pursuant to Articles 8, 9, 15, 24(3), 25, 30(1) and 32 shall be addressed to the undertakings or to the association of undertakings concerned. The **Commission** shall notify the decision to the addressee without delay and shall give the addressee the opportunity to indicate **to the Commission** which information it considers to be confidential. The **Commission** shall provide the contracting authority or the contracting entity concerned with a copy of any **Commission** decision addressed to an undertaking participating in a public procurement procedure.

*Amendment*

(1) Decisions adopted pursuant to Articles 8, 9, 15, 24(3), 25, 30(1) and 32 shall be addressed to the undertakings or to the association of undertakings concerned. The **investigative authority** shall notify the decision to the addressee without delay and shall give the addressee the opportunity to indicate which information it considers to be confidential. The **investigative authority** shall provide the contracting authority or the contracting entity concerned with a copy of any decision **it** addressed to an undertaking participating in a public procurement procedure.

Or. en

**Amendment 305  
Alfred Sant**

**Proposal for a regulation**

## Article 37 – paragraph 2

*Text proposed by the Commission*

(2) Decisions adopted pursuant to Article 30(2) and (3) shall be addressed to the contracting authority or the contracting entity concerned. The **Commission** shall provide the undertaking to which the award of the public contract is prohibited with a copy of that decision.

*Amendment*

(2) Decisions adopted pursuant to Article 30(2) and (3) shall be addressed to the contracting authority or the contracting entity concerned. The **investigative authority** shall provide the undertaking to which the award of the public contract is prohibited with a copy of that decision.

Or. en

## Amendment 306 Alfred Sant

### 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 **investigative authority** 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 **a decision** intends to **be adopted**.

Or. en

## Amendment 307 Alfred Sant

### Proposal for a regulation Article 38 – paragraph 2

*Text proposed by the Commission*

(2) The **Commission** shall base its decision only on grounds on which the undertakings concerned have been given the opportunity to submit their observations.

*Amendment*

(2) The **investigative authority** shall base its decision only on grounds on which the undertakings concerned have been given the opportunity to submit their observations.

**Amendment 308**

**Alfred Sant**

**Proposal for a regulation**

**Article 42 – paragraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

**(e) detailed rules on the calculation of time limits;** **deleted**

Or. en

**Amendment 309**

**Alfred Sant**

**Proposal for a regulation**

**Article 42 – paragraph 1 – point f**

*Text proposed by the Commission*

*Amendment*

**(f) the conditions and time limits for proposing commitments under Article 30;** **deleted**

Or. en

**Amendment 310**

**Alfred Sant**

**Proposal for a regulation**

**Article 42 – paragraph 1 – point g**

*Text proposed by the Commission*

*Amendment*

**(g) detailed rules on the procedural steps referred to in Article 28, 29, 30 and 31 concerning investigations regarding public procurement procedures.** **deleted**

Or. en



**Amendment 311**

**Alfred Sant**

**Proposal for a regulation**

**Article 44 – paragraph 1 – point a**

*Text proposed by the Commission*

*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 five years of application of this Regulation, and taking into account the effectiveness of application;**

**deleted**

Or. en

**Amendment 312**

**Claude Gruffat**

on behalf of the Verts/ALE Group

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

**(a a) specifying the methodologies and indicators referred to under Articles 2, 3 and 5;**

Or. en

**Amendment 313**

**Alfred Sant**

**Proposal for a regulation**

**Article 44 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(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**

**deleted**

*application of this Regulation, in case this practice allows to identify economic activities where foreign subsidies are unlikely to distort the internal market;*

Or. en

**Amendment 314**  
**Alfred Sant**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 315**  
**Claude Gruffat**  
on behalf of the Verts/ALE Group

**Proposal for a regulation**  
**Article 44 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(c a) specifying the methodologies and indicators referred to under Articles 2, 3 and 5.*

Or. en

**Amendment 316**  
**Alfred Sant**

**Proposal for a regulation**  
**Article 44 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(c a) determining the structure of a communication network between the different competent authorities;***

Or. en

**Amendment 317**

**Alfred Sant**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(c b) establishing detailed rules on the calculation of time limits;***

Or. en

**Amendment 318**

**Alfred Sant**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(c c) determining the conditions and time limits for proposing commitments under Article 30;***

Or. en

**Amendment 319**

**Alfred Sant**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(c d) establishing detailed rules on the procedural steps referred to in Articles 28 to 31 concerning investigations***

*regarding public procurement  
procedures;*

Or. en

**Amendment 320**

**Alfred Sant**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

*(c e) specifying the application of the  
balancing tool outlined in Article 5.*

Or. en

**Amendment 321**

**France Jamet, Gunnar Beck**

**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.*

Or. fr

**Amendment 322**  
**Michiel Hoogeveen**

**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*

*By ... [three years from the entry into force of this Regulation], and every two years thereafter, the Commission shall review the functioning and effectiveness of this Regulation and 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.

Or. en

### Amendment 323

Inese Vaidere

#### 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*

***By ... [three years from*** the entry into force of this Regulation***], and every two years thereafter***, 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.

Or. en

### Amendment 324

Markus Ferber

#### 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*

***By ... [three years after*** the entry into force of this Regulation***], 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. In its report, the Commission shall in particular analyse the appropriateness of the thresholds for concentrations laid down in Article 18.***

Or. en

*Justification*

*Given that this is a novel policy instrument, an earlier review is justified.*

**Amendment 325**

**Alfred Sant**

**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*

*By ... [two* years after the entry into force of this Regulation], *and every year thereafter*, 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.

Or. en

**Amendment 326**

**Michiel Hoogeveen**

**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, including:*

*a) to amend the thresholds for notifications as set out in Articles 18 and 27;*

*b) to exempt certain categories of undertakings concerned from the obligation to notify pursuant to Articles*

*19 and 28, especially where the practice of the Commission enables the identification of economic activities in respect of which foreign subsidies are unlikely to distort the internal market;*

*c) to establish specific thresholds for notifications for certain economic sectors, especially where the practice of the Commission enables the identification of economic activities in respect of which foreign subsidies are more likely to distort the internal market;*

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

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

Or. en

#### **Amendment 327**

**Alfred Sant**

#### **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 **five** 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.

Or. en

#### **Amendment 328**

**Markus Ferber**

#### **Proposal for a regulation**

#### **Article 47 – paragraph 3**



*Text proposed by the Commission*

(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.

*Amendment*

(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.

Or. en

*Justification*

*Current wording of paragraphs 1 and 3 are contradictory. Clarification is needed to avoid retroactive application of this regulation for concentrations.*