



2021/0114(COD)

17.12.2021

*****I**

DRAFT REPORT

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

Committee on International Trade

Rapporteur: Christophe Hansen

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

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

Symbols for procedures

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

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

Amendments to a draft act

Amendments by Parliament set out in two columns

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

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

Amendments by Parliament in the form of a consolidated text

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

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

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0223),
 - having regard to Article 294(2) and Articles 207 and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0167/2021),
 - having regard to the opinion of the European Economic and Social Committee of 20 October 2021¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the opinions of the Committee on Economic and Monetary Affairs, the Committee on the Internal Market and Consumer Protection and the Committee on Legal Affairs;
 - having regard to the report of the Committee on International Trade (A9-0000/2021),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation Recital 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

Amendment

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

¹ OJ C [...], [...], p. [...].

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.

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. ***Privileged access of an undertaking to its domestic market, for instance through measures equivalent to special or exclusive rights that are not adequately remunerated, could also be considered as a financial contribution.***

Or. en

Amendment 2

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 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.

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. **Nevertheless, the evolution of the economic activity should also be taken into account to enable the Commission to take action when an undertaking's level of activity is small at the time of assessment, but is expected to grow strongly.** 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 3

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

Amendment

(16) The Commission should take into account the positive effects of the foreign subsidy on the development of the relevant subsidised economic activity, ***including positive effects consistent with public policy objectives***. The Commission should weigh these positive effects against the negative effects of a foreign subsidy in terms of distortion on the internal market in order to determine, if applicable, the appropriate redressive measure or accept commitments. The balancing 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

positive than negative effects.

likely to have more positive than negative effects. ***The Commission should also take into account the positive effects of subsidies granted to remedy a serious national or global disturbance of the economy. The Commission should develop guidelines on the application of the balancing test.***

Or. en

Amendment 4

Proposal for a regulation Recital 17

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 5

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

Amendment

(21) The Commission should have the power, on its own initiative, to examine any information on foreign subsidies. ***The Commission should be able to act upon information received from any relevant***

a preliminary review and an in-depth investigation.

source, including Member States and undertakings or their professional associations. 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 6

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 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 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 7

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

Or. en

Amendment 8

Proposal for a regulation Recital 32

Text proposed by the Commission

(32) When reviewing a concentration, the assessment of whether there is a distortion in the internal market should be limited to the concentration at stake, and only foreign subsidies granted in the three years prior to the concentration should be considered in the assessment.

Amendment

(32) When reviewing a concentration, the assessment of whether there is a distortion in the internal market should be limited to the concentration at stake, and only foreign subsidies granted in the three years prior to the concentration, ***or known future subsidies that have been decided and will become effective within one year following the concentration,*** should be considered in the assessment.

Or. en

Amendment 9

Proposal for a regulation Recital 32 a (new)

Text proposed by the Commission

Amendment

(32a) In the context of the ex ante review mechanism for concentrations, concerned undertakings should 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 10

Proposal for a regulation Recital 34

Text proposed by the Commission

Amendment

(34) When a foreign financial contribution is notified in the context of a public procurement procedure, the assessment should be limited to that procedure.

(34) When a foreign financial contribution is notified in the context of a public procurement procedure, the assessment should be limited to that procedure ***and only foreign subsidies granted in the three years prior to the notification, or known future subsidies that have been decided and will become effective within one year following the submission of the tender or request to participate in the public procurement procedure, should be considered in the assessment.***

Or. en

Amendment 11

Proposal for a regulation Recital 37

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 12

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

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.

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 13

Proposal for a regulation Recital 43 a (new)

Text proposed by the Commission

Amendment

(43a) In order to encourage the development of multilateral rules to address distortive subsidies and their root causes, it is necessary to set up a third country dialogue. When the Commission discovers or suspects the existence of a systemic distortive foreign subsidy scheme operated by a third country, it should be able to engage in dialogue with the third country in question to explore options aimed at obtaining the cessation or modification of the distortive subsidy scheme with a view to eliminating its distortive effects in the internal market. Where a bilateral agreement between the Union and a third country provides for a consultation mechanism that covers subsidies which fall within the scope of this Regulation, this mechanism should be used to facilitate the third country dialogue. The Commission should also be able to endeavour to obtain the cessation or modification of the distortive subsidy scheme by raising the matter in any relevant international forum or through cooperation with any other third country affected by the same systemic distortive subsidy scheme, or with any interested third country. This engagement should not preclude the Commission from

opening, nor suspending ongoing, investigations under this Regulation, nor constitute an alternative to redressive measures where the need for such measures has been established. The Commission should, without undue delay, inform the European Parliament and the Council of relevant developments.

Or. en

Amendment 14

Proposal for a regulation

Recital 47

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 15

Proposal for a regulation Recital 48

Text proposed by the Commission

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

Amendment

(48) In order to ensure a level playing field on the internal market also in the long term, with a view to ensuring adequate coverage of cases investigated both through notifications as well as ex officio, ***the Commission should evaluate the functioning and effectiveness of this Regulation at the latest three years after its entry into force, and every two years thereafter, and present that evaluation by means of a report to the European Parliament and the Council. That report should include an assessment of whether or not this Regulation should be amended. Where the report proposes amending the Regulation, it may be accompanied by a legislative proposal, in particular*** in respect of amending the notification thresholds for concentrations and for public procurement procedures, exempting certain categories of undertakings from the notification obligations under this Regulation, ***introducing lower notification thresholds specific to certain economic sectors***, as well as amending the time limits for the preliminary review and the in-depth investigations of notified concentrations or notified financial contributions in the context of a public procurement procedure. In relation to financial contributions in the context of a public procurement procedure, ***the evaluation should be conducted in a way that takes into account the interests of SMEs. During its evaluation, the Commission should consider to abrogate the present Regulation, if it considers that the development of multilateral rules to address distortive subsidies has rendered this Regulation fully redundant.***

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

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

Or. en

Amendment 16

Proposal for a regulation

Article 2 – paragraph 2 – point a – point ii

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 17

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(iii) inadequately remunerated special or exclusive rights; or

Or. en

Amendment 18

Proposal for a regulation

Article 2 – paragraph 2 – point a – point iii

Text proposed by the Commission

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

Amendment

(iii) the provision of goods or services or the purchase of goods and services, *unless such provision or purchase is carried out following a competitive,*

transparent, non-discriminatory and unconditional tender procedure;

Or. en

Amendment 19

Proposal for a regulation

Article 3 – paragraph 1 – point d

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 20

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

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

Amendment

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

(a) its total amount is below EUR 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 21

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

Text proposed by the Commission

Amendment

2a. 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 22

Proposal for a regulation Article 5 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

By ... [the date of application of this Regulation], 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 23

Proposal for a regulation Article 6 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 24

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 25

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. ***Where the Commission accepts commitments offered by*** an undertaking which fully and effectively remedy the distortion on the internal market, ***it shall make those commitments*** binding on the undertaking in a decision with commitments according to Article 9(3).

Or. en

Amendment 26

Proposal for a regulation Article 6 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 27

Proposal for a regulation Article 7 – paragraph 1

Text proposed by the Commission

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

Amendment

The Commission may on its own initiative examine information from any source, *including Member States and undertakings or their professional associations*, regarding alleged distortive foreign subsidies.

Or. en

Amendment 28

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

Text proposed by the Commission

(b) inform the undertaking concerned;

Amendment

(b) inform the undertaking *and*

and

Member States concerned; and

Or. en

Amendment 29

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 and inform the undertaking *and Member States* concerned.

Or. en

Amendment 30

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

Text proposed by the Commission

Amendment

Interim measures shall be limited in time. They may be prolonged where the indication of distortive effects or the serious risk of damage to competition on the internal market continue to exist.

Or. en

Amendment 31

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 32

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 33

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 34

Proposal for a regulation

Article 15 – paragraph 5 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 35

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 three calendar years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a 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 36

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 is established in the Union and generates an aggregate turnover in the Union of at least EUR 500 million; and

Or. en

Amendment 37

Proposal for a regulation

Article 19 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 38

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

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).

limits referred to in Article 23(1) and (4).

Or. en

Amendment 39

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 40

Proposal for a regulation Article 26 – paragraph 1

Text proposed by the Commission

Foreign subsidies that cause or risk causing a distortion in a public procurement procedure shall be understood as foreign subsidies that enable an undertaking to submit a tender that is unduly advantageous in relation to the works, supplies or services concerned. The assessment of whether there is a distortion on the internal market pursuant to Article 3

Amendment

Foreign subsidies that cause or risk causing a distortion in a public procurement procedure shall be understood as foreign subsidies that enable an undertaking to submit a tender that is unduly advantageous in relation to the works, supplies or services concerned. The assessment of whether there is a distortion on the internal market pursuant to Article 3

and whether a tender is unduly advantageous in relation to the works, supplies or services concerned shall be limited to the public procurement procedure at stake. Only foreign subsidies granted during the three years prior to the notification shall be taken into account in the assessment.

and whether a tender is unduly advantageous in relation to the works, supplies or services concerned shall be limited to the public procurement procedure at stake. Only foreign subsidies granted during the three years prior to the notification, ***or known future subsidies that have been decided and will become effective within one year following the submission of the tender or request to participate in the public procurement procedure***, shall be taken into account in the assessment.

Or. en

Amendment 41

Proposal for a regulation Article 27 – paragraph 2

Text proposed by the Commission

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

Amendment

2. For the purpose of Article 28, a notifiable foreign financial contribution in an EU public procurement procedure shall be deemed to arise where the estimated ***total*** value of that public procurement, ***calculated in accordance with the provisions laid down in Article 5 of Directive 2014/24/EU***, is equal or greater than EUR 250 million.

Or. en

Amendment 42

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

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 **30%** of the estimated value of the contract.

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

Or. en

Amendment 43

Proposal for a regulation Article 28 – paragraph 6

Text proposed by the Commission

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

Amendment

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

deemed to be a notifiable foreign financial contribution in a public procurement procedure.

Or. en

Amendment 44

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 **30** days after it received the notification.

Or. en

Amendment 45

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 **100** 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 46

Proposal for a regulation Article 32 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 47

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 48

**Proposal for a regulation
Article 33 – paragraph 2**

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 49

Proposal for a regulation Article 34 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 50

Proposal for a regulation Article 34 a (new)

Text proposed by the Commission

Amendment

Article 34a

Third country dialogue

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

2. ***That dialogue shall not prevent the Commission from opening or continuing investigations under this Regulation nor***

constitute an alternative to redressive measures pursuant to article 6 where the need for such measures has been established.

3. The Commission may seek to obtain the cessation or modification of the distortive subsidy scheme also by raising the matter in any relevant international forum.

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

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

Or. en

Amendment 51

Proposal for a regulation

Article 42 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The first such implementing act shall be adopted no later than one year after the entry into force of this Regulation

Or. en

Amendment 52

Proposal for a regulation

Article 44

Text proposed by the Commission

Amendment

Article 44

deleted

Delegated acts

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

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

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

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

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

Or. en

Amendment 53

**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. en

Amendment 54

Proposal for a regulation Article 46 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Within **three** years after the entry into force of this Regulation at the latest, ***and every two years thereafter,*** the Commission shall ***review and evaluate the functioning and effectiveness of this Regulation and*** present a report to the European Parliament and the Council on ***its*** application.

Or. en

Amendment 55

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

Text proposed by the Commission

Amendment

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

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

c) to establish specific thresholds for notifications for certain economic sectors, especially where the practice of the Commission enables the identification of economic activities where 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 abrogate the present Regulation, if the Commission considers that multilateral rules to address distortive subsidies have rendered this Regulation fully redundant.

Or. en

EXPLANATORY STATEMENT

General Appreciation

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

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

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

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

Proposed changes

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

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

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

These considerations have led the Rapporteur to maintain the **thresholds for the notification based instruments**. According to the Commission's calculations, lowering the threshold for

the Public Procurement instrument (Art. 27(2)) to a value of EUR 100 million would lead to a five-fold increase of the administrative burden for the Commission. The additional workload associated with this increase would cripple the *ex officio* instrument and the capacity of the Commission to focus on the most distortive cases. The Rapporteur considers the current thresholds to strike a delicate balance between the ambition to cover a significant number of cases, while allowing the Commission to prioritise its work and initiate *ex officio* investigations where there are grounds to suspect unwarranted subsidies.

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

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

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

With a view to **reducing to a minimum the administrative burden** that this new instrument will inevitably impose on European as well as foreign companies, and on the Commission as sole enforcer, the Rapporteur has clarified that where a third country is found to operate a **subsidy control mechanism that is equivalent to the Union's**, both in law and in practice, foreign subsidies provided by such countries may be considered as unlikely to be distortive. Additionally, to prevent over-compliance and the associated red tape, the Rapporteur has introduced the possibility for companies to approach the Commission for **pre-notification consultations** in order to establish whether the formal requirements for notification in the case of concentrations have been met.

Another major point of focus for the Rapporteur has been to **reinforce the international dimension**. This Regulation is conceived as an autonomous instrument in the absence of progress within the multilateral fora such as the WTO, where the problem of distortive subsidies for services and investment would ideally be solved. For the Rapporteur this

instrument is therefore the occasion for the EU to double down on its commitment to advance multilateral and plurilateral solutions to distortive subsidies.

In this light, the Rapporteur has introduced the possibility for the European Commission to engage on behalf of the Union in **third country dialogue** where persistent and systemic distortive subsidy schemes, run by a third country, are discovered. These schemes should also be addressed at the appropriate multilateral fora in the hope that this will give impetus to the development of multilateral solutions. In the same vein, the Rapporteur has insisted that the **Regulation be repealed** should it ever be made redundant by fully-fledged multilateral rules that are guaranteed to be as effective as the present instrument.