



2021/0114(COD)

22.4.2022

OPINION

of the Committee on Legal Affairs

for the Committee on International Trade

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

Rapporteur for opinion: Gilles Lebreton

PA_Legam

SHORT JUSTIFICATION

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

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

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

AMENDMENTS

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

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

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

Amendment

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

Amendment 2

Proposal for a regulation

Recital 2

Text proposed by the Commission

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

Amendment

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

Amendment 3

Proposal for a regulation

Recital 3

Text proposed by the Commission

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

Amendment

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

Amendment 4

Proposal for a regulation
Recital 5

Text proposed by the Commission

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

Amendment

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

Amendment 5

Proposal for a regulation
Recital 7

Text proposed by the Commission

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

Amendment

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

Commission.

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

Amendment 6

Proposal for a regulation

Recital 9

Text proposed by the Commission

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

Amendment

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

Amendment 7

Proposal for a regulation

Recital 10

Text proposed by the Commission

Amendment

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

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

Amendment 8

Proposal for a regulation Recital 12

Text proposed by the Commission

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

Amendment

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

case basis whether a foreign subsidy distorts the internal market.

Amendment 9

Proposal for a regulation

Recital 16

Text proposed by the Commission

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

Amendment

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

Amendment 10

Proposal for a regulation

Recital 21

Text proposed by the Commission

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

Amendment

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

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

Amendment 11

Proposal for a regulation Recital 24

Text proposed by the Commission

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

Amendment

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

Amendment 12

Proposal for a regulation Recital 26

Text proposed by the Commission

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

Amendment

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

periodic penalty payments.

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

Amendment 13

Proposal for a regulation Recital 27

Text proposed by the Commission

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

Amendment

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

Amendment 14

Proposal for a regulation Recital 31

Text proposed by the Commission

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

Amendment

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

public contracts.

public contracts.

Amendment 15

Proposal for a regulation

Recital 39

Text proposed by the Commission

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

Amendment

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

Amendment 16

Proposal for a regulation

Recital 43

Text proposed by the Commission

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

Amendment

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

Amendment 17

Proposal for a regulation

Article 1 – paragraph 1

Text proposed by the Commission

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

Amendment

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

procedures.

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

Amendment 18

Proposal for a regulation Article 2 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 19

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

Text proposed by the Commission

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

Amendment

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

Amendment 20

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

Text proposed by the Commission

Amendment

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

Amendment 21

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

Text proposed by the Commission

Amendment

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

Amendment 22

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

Text proposed by the Commission

Amendment

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

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

Amendment 23

Proposal for a regulation
Article 3 – paragraph 1 – point d

Text proposed by the Commission

Amendment

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

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

Amendment 24

Proposal for a regulation
Article 4 – paragraph 1 – point 4 a (new)

Text proposed by the Commission

Amendment

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

Amendment 25

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 26

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 27

Proposal for a regulation Article 6 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 28

Proposal for a regulation

Article 6 – paragraph 3 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 29

Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Amendment 30

Proposal for a regulation

Article 6 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Amendment 31

Proposal for a regulation

Article 7 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 32

Proposal for a regulation

Article 8 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Amendment 33

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Amendment 34

Proposal for a regulation

Article 8 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) inform the undertaking concerned;
and

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

Amendment 35

Proposal for a regulation
Article 8 – paragraph 3

Text proposed by the Commission

Amendment

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

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

Amendment 36

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

Text proposed by the Commission

Amendment

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

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

Amendment 37

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

Text proposed by the Commission

Amendment

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

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

Amendment 38

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

Text proposed by the Commission

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

Amendment

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

Amendment 39

Proposal for a regulation Article 12 – paragraph 7

Text proposed by the Commission

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

Amendment

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

Amendment 40

Proposal for a regulation Article 13 – paragraph 1

Text proposed by the Commission

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

Amendment

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

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

Amendment 41

Proposal for a regulation Article 14 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 42

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

Text proposed by the Commission

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

Amendment

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

Amendment 43

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

Text proposed by the Commission

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

Amendment

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

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

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

Amendment 44

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

Amendment 45

Proposal for a regulation

Article 19 – paragraph 4

Text proposed by the Commission

Amendment

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

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

Amendment 46

Proposal for a regulation

Article 29 – paragraph 4

Text proposed by the Commission

Amendment

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

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

contracting authority or contracting entity.

Amendment 47

Proposal for a regulation Article 31 – paragraph 7

Text proposed by the Commission

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

Amendment

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

Amendment 48

Proposal for a regulation Article 33 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 49

Proposal for a regulation Article 33 – paragraph 2

Text proposed by the Commission

(2) A financial contribution notified in

Amendment

(2) A financial contribution notified in

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

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

Amendment 50

Proposal for a regulation Article 34 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 51

Proposal for a regulation Article 34 – paragraph 2

Text proposed by the Commission

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

Amendment

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

comments from interested parties.

comments from interested parties.

Amendment 52

Proposal for a regulation Article 44 – paragraph 1

Text proposed by the Commission

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

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

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

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

Amendment 53

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

Text proposed by the Commission

Amendment

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

Amendment 54

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

Text proposed by the Commission

Amendment

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

Amendment 55

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

Text proposed by the Commission

Amendment

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

Amendment 56

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

Text proposed by the Commission

Amendment

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

Amendment 57

Proposal for a regulation Article 46 – paragraph 1

Text proposed by the Commission

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

Amendment

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

PROCEDURE – COMMITTEE ASKED FOR OPINION

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

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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

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

1	0
ID	Gunnar Beck

Key to symbols:

+ : in favour

- : against

0 : abstention