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Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Awaiting signature of act
Regulation on distortive foreign subsidies	
Subject 2 Internal market, single market 6.20.02 Export/import control, trade defence, trade barriers	
Legislative priorities Joint Declaration 2022 Joint Declaration 2021	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 International Trade	 HANSEN Christophe	14/07/2021
		Shadow rapporteur	
		 RODRÍGUEZ-PIÑERO Inma	
		 RINZEMA Catharina	
		 BÜTIKOFER Reinhard	
		 CAMPOMENOSI Marco	
		 BOURGEOIS Geert	
		 MAUREL Emmanuel	
	Committee for opinion	Rapporteur for opinion	Appointed
	 Employment and Social Affairs	The committee decided not to give an opinion.	
	 Internal Market and Consumer Protection (Associated committee)		15/06/2021
		 DOLESCHAL Christian	
	 Economic and Monetary Affairs (Associated committee)		01/09/2021
		 YON-COURTIN Stéphanie	
	 Legal Affairs		14/06/2021
		 LEBRETON Gilles	
	 Development	The committee decided not to	

Key events

05/05/2021	Legislative proposal published	COM(2021)0223	Summary
07/06/2021	Committee referral announced in Parliament, 1st reading		
25/11/2021	Referral to associated committees announced in Parliament		
25/04/2022	Vote in committee, 1st reading		
28/04/2022	Committee report tabled for plenary, 1st reading	A9-0135/2022	
04/05/2022	Decision by Parliament, 1st reading	T9-0143/2022	Summary
04/05/2022	Matter referred back to the committee responsible		
10/11/2022	Decision by Parliament, 1st reading	T9-0379/2022	Summary
28/11/2022	Act adopted by Council after Parliament's 1st reading		

Technical information

Procedure reference	2021/0114(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the EU TFEU 207; Treaty on the Functioning of the EU TFEU 114; Rules of Procedure EP 57
Other legal basis	Rules of Procedure EP 159
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Awaiting signature of act
Committee dossier	INTA/9/05993

Documentation gateway

Legislative proposal	COM(2021)0223	05/05/2021	EC	Summary
Document attached to the procedure	SEC(2021)0182	06/05/2021	EC	
Document attached to the procedure	SWD(2021)0099	06/05/2021	EC	
Document attached to the procedure	SWD(2021)0100	06/05/2021	EC	
Economic and Social Committee: opinion, report	CES3401/2021	20/10/2021	ESC	

Committee draft report		PE703.002	18/12/2021	EP	
Amendments tabled in committee		PE719.563	09/02/2022	EP	
Amendments tabled in committee		PE719.564	09/02/2022	EP	
Committee opinion	IMCO	PE703.070	30/03/2022	EP	
Committee opinion	ECON	PE700.661	31/03/2022	EP	
Committee opinion	JURI	PE704.679	22/04/2022	EP	
Committee report tabled for plenary, 1st reading/single reading		A9-0135/2022	28/04/2022	EP	
Text adopted by Parliament, partial vote at 1st reading/single reading		T9-0143/2022	04/05/2022	EP	Summary
Coreper letter confirming interinstitutional agreement		GEDA/A/(2022)008224	13/07/2022	CSL	
Text adopted by Parliament, 1st reading/single reading		T9-0379/2022	10/11/2022	EP	Summary
Draft final act		00046/2022/LEX	14/12/2022	CSL	

Regulation on distortive foreign subsidies

PURPOSE: to propose a new instrument to address the potentially distorting effects of foreign subsidies in the single market.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: a strong, open and competitive single market allows both European and foreign companies to compete on the basis of merit, provided that a level playing field in the market is guaranteed.

In recent years, there have been cases where foreign subsidies have been found to have distorting effects on the EU's internal market, creating an uneven playing field. These foreign subsidies can take different forms, such as zero interest loans, unlimited state guarantees, tax exemptions or reductions for foreign investment or trade, or dedicated State funding.

EU rules on competition, public procurement and trade defence instruments play an important role in ensuring a level playing field for companies operating in the single market. However, none of these tools apply to foreign subsidies that give their beneficiaries an unfair advantage when acquiring EU companies, participating in public procurement in the EU or doing other business in the EU.

There are currently no specific EU rules to address the distorting effects that foreign subsidies can have on the internal market. It is therefore necessary to complement the existing EU instruments with a new instrument to effectively combat distortions in the internal market caused by foreign subsidies and to ensure a level playing field

The legislative proposal aims to fill a regulatory gap in the Single Market. It is in line with the new [Industrial Strategy for Europe](#) presented by the Commission in March 2020 and follows the adoption of the [White Paper](#) on foreign subsidies in June 2020.

CONTENT: the proposed regulation establishes rules and procedures for investigating foreign subsidies that distort the internal market and for remedying the distortions they cause. Such distortions may affect all economic activities, in particular in the case of mergers and public procurement procedures.

Under the proposed Regulation, the Commission will have the power to investigate financial contributions granted by public authorities of a non-EU country which benefit companies engaging in an economic activity in the EU and redress their distortive effects, as relevant. In this context, the Regulation proposes the introduction of three tools:

- Component 1: a notification-based tool to investigate concentrations involving a financial contribution by a non-EU government, where the EU turnover of the company to be acquired (or of at least one of the merging parties) is EUR 500 million or more and the foreign financial contribution is at least EUR 50 million;
- Component 2: a notification-based tool to investigate bids in public procurements involving a financial contribution by a non-EU government, where the estimated value of the procurement is EUR 250 million or more; and
- Component 3: a tool to investigate all other market situations and smaller concentrations and public procurement procedures, which the Commission can start on its own initiative (ex-officio) and may request ad-hoc notifications.

Ex officio examination of subsidies.

The proposal provides that the Commission could, on its own initiative, examine information from any source concerning alleged distortive foreign subsidies, either as a preliminary examination or as a full investigation. It would be able to conduct on-site inspections in the EU and elsewhere.

The Commission should take into account the positive effects of the foreign subsidy on the development of the subsidised economic activity in question. It should balance these positive effects against the negative effects of a foreign subsidy in terms of distortion in the internal market.

If the negative effects outweigh the positive effects, the Commission could impose remedial measures or accept undertakings from the companies concerned to remedy the distortions. The proposal foresees a range of structural or behavioural remedies, such as divestment of certain assets or prohibition of a certain market behaviour.

The Commission could impose fines and periodic penalty payments for procedural infringements, such as the supply of incorrect or incomplete information in an investigation, and for non-compliance with a Commission decision imposing redressive, interim measures or commitments.

Concentration and bids in public procurement

As regards mergers and public procurement, the proposal involves a system of ex ante notification of the largest and potentially most distortive case. It sets out the conditions under which a foreign subsidy is considered to distort the internal market.

The Commission would have the power, upon notification, to examine information on foreign financial contributions in the context of a proposed merger. Companies should not be allowed to implement the concentration before the conclusion of the Commission's review. The proposal specifies when a concentration should be suspended and sets out the relevant time limits.

The proposed Regulation provides that if an undertaking fails to comply with the obligation to notify a subsidised concentration or a financial contribution in the context of public procurement contracts meeting the thresholds, the Commission could impose fines and periodic penalty payments. Fines and periodic penalty payments could also be imposed in the case of notifications containing incorrect information or in the case of failure to notify.

In case of notified transactions, the Commission should also have the power to prohibit the subsidised acquisition or the award of the public procurement contract to the subsidised bidder.

Budgetary impact

The total administrative expenditure for the implementation of the proposal in 2021-2027 will thus amount to EUR 90.340 million, part of which will be financed from the single market programme.

Regulation on distortive foreign subsidies

The European Parliament adopted by 627 votes to 8, with 11 abstentions, amendments to the proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market.

The matter was referred back to the competent committee for inter-institutional negotiations.

The proposed 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.

The main amendments adopted in plenary relate to the following issues.

Distortions in the internal market

Members clarified that a foreign subsidy would be unlikely to distort the internal market if its total amount is less than EUR 4 million (EUR 5 million according to the original proposal) over a period of three consecutive years.

The Commission should be able to consider in its assessment of a distortion whether a third country has an effective system for the control of subsidies in place which is at least equivalent to the system in the Union and which would make subsidies granted by such a third country less likely to distort the internal market within the meaning of this Regulation.

In the interests of efficiency and transparency, the Commission should publish guidelines within 2 years of the entry into force of the Regulation, including explanations and examples of how each indicator is to be applied. The Commission, in close cooperation with the Member States, should regularly update these guidelines and keep the European Parliament and the Council informed.

Categories of foreign subsidies most likely to distort the internal market

These categories should also include: (i) export financing subsidy granted by a third country which is not a signatory to the OECD Arrangement on Officially Supported Export Credits; (ii) foreign subsidies to an undertaking active in a sector characterised by structural excess capacity.

Balancing

Where warranted, the Commission could balance the negative effects of a foreign subsidy in terms of distortion of the internal market against its positive effects on the development of the relevant economic activity in the internal market. No later than 24 months after the entry into force of the Regulation, the Commission should publish guidelines on the application of the balancing test, including the criteria used in the balancing.

Undertakings and redress

The Commission should impose redressive measures to address the actual or potential distortion of the internal market caused by a foreign subsidy, unless it has accepted commitments offered by the undertaking concerned.

The Commission could accept commitments offered by the undertaking concerned, where such commitments fully and effectively remedy the distortion on the internal market. By accepting such commitments, the Commission should make them binding on the undertaking in a decision with commitments. The Commission should monitor the undertakings compliance with the commitments agreed upon.

Commitments or redressive measures could take, inter alia, the following forms: (i) a reduction in capacity or market presence, including by means of a temporary restriction of commercial activity in the internal market; (ii) an obligation on the undertakings concerned to notify the

Commission of any participation in future public procurement procedures in the Union for an appropriate period of time where the estimated value of the public contract is below certain thresholds; (iii) an obligation on the undertakings concerned to adapt their governance structure. The Commission should impose information and transparency obligations.

Ex officio examination of foreign subsidies

The Commission could, on its own initiative, examine information from any source, including from Member States and companies or EU-wide social partners, concerning alleged distortive foreign subsidies. The Commission should establish a contact point through which such information can be provided on a confidential basis. The competent public authorities should collect and exchange data with the Commission.

Interim measures

The Commission could take interim measures, including during the preliminary review period. Interim measures would be limited in time and could be prolonged where an indication of distortive effects or a serious risk of substantial and irreparable damage to competition on the internal market continues to exist.

In order to carry out its tasks under the Regulation, the Commission would have to carry out inspections of undertakings where necessary.

Fines and periodic penalty payments

The Commission would, by decision, impose fines and periodic penalty payments where an undertaking or association of undertakings concerned, intentionally or negligently, supplies incomplete, incorrect or misleading information.

Definition and thresholds for notification of concentrations

A notifiable concentration would be deemed to arise where, in the context of a concentration, the acquired undertaking or at least one of the merging undertakings is established in the Union and generates an aggregate turnover of at least EUR 400 million (EUR 500 million under the proposal).

A notifiable foreign financial contribution in an EU public procurement procedure should be deemed to arise where the estimated total value of that public procurement is equal to or greater than EUR 200 million (instead of EUR 250 million).

Third-country dialogue

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

That dialogue should not prevent the Commission from taking further action, including the opening or continuation of investigations or the application of interim or redressive measures.

The Commission could also seek to obtain the cessation or modification of the systemic distortive subsidies also by raising the matter in any relevant international forum. The Commission should inform the European Parliament and the Council of relevant developments.

Regulation on distortive foreign subsidies

The European Parliament adopted by 598 votes to 5, with 9 abstentions, a legislative resolution on the proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market.

The European Parliament's first reading position under the ordinary legislative procedure amends the proposal as follows:

Subject matter and scope

The purpose of this Regulation is to contribute to the proper functioning of the internal market by establishing a harmonised framework to address distortions caused, directly or indirectly, by foreign subsidies, with a view to ensuring a level playing field.

The Regulation:

- lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions. Such distortions can arise with respect to any economic activity, and in particular in concentrations and public procurement procedures;
- addresses foreign subsidies granted to an undertaking, including a public undertaking which is directly or indirectly controlled by the State, engaging in an economic activity in the internal market.

Distortions of competition

Where the total amount of a foreign subsidy to an undertaking does not exceed EUR 4 million over any consecutive period of three years, that foreign subsidy shall be considered unlikely to distort the internal market. In addition, a foreign subsidy may be considered not to distort the internal market to the extent that it is aimed at making good the damage caused by natural disasters or exceptional occurrences.

Investigation of financial contributions

The Commission will be empowered to investigate the financial contributions granted by the public authorities of a non-EU country to undertakings engaging in an economic activity in the EU by means of two prior authorisation tools: (i) to ensure a level playing field for the largest mergers and bids in large-scale public procurement; (ii) a general market investigation tool to investigate all other market situations and lower-value mergers and public procurement procedures.

Balancing test

The Commission may, on the basis of the information received, balance the negative and positive effects of a foreign subsidy in terms of distortion in the internal market. If the negative effects outweigh the positive effects, the Commission will be empowered to impose redressive measures or to accept commitments from the undertakings concerned that remedy the distortion.

Ex officio review of foreign subsidies

The Commission may, on its own initiative, examine information from any source, including Member States, a natural or legal person or an association, concerning alleged foreign subsidies distorting the internal market.

Where the Commission considers that the information indicates the possible existence of a foreign subsidy distorting the internal market, it will seek all information it deems necessary to make a preliminary review of whether the financial contribution distorts the internal market. For this purpose, the Commission may request information and conduct inspections inside and outside the Union.

Where the Commission, in the course of a preliminary review, concludes that there are insufficient indications to initiate an in-depth investigation, either because there is no foreign subsidy or because there are insufficient indications of an actual or potential distortion in the internal market, it shall close the preliminary review, inform the undertaking under investigation and Member States that were informed, as well as the contracting authority or contracting entity concerned.

During the in-depth investigation, the Commission will further assess the foreign subsidy in the decision to initiate the in-depth investigation and will seek all information it deems necessary. If it finds that a foreign subsidy distorts the internal market, the Commission may adopt an implementing act in the form of a decision imposing remedial measures. The Commission will endeavour to adopt a decision within 18 months of the initiation of the in-depth investigation.

Member States will be regularly informed and involved in the decisions adopted under the Regulation via the advisory procedure.

Notification thresholds

Under the new rules, companies should notify the Commission of planned mergers and acquisitions if at least one of the merging parties has a turnover of at least EUR 500 million in the EU and if there is a foreign financial contribution of at least EUR 50 million. The Commission should also investigate public procurement tenders if the value of a contract is at least EUR 250 million.

If a company fails to comply with the obligation to notify a subsidised concentration or financial contribution in public procurement contracts meeting the thresholds, the Commission may impose fines and examine the transaction as if it had been notified.

In the context of the ex ante review mechanism for concentrations, undertakings should be able to request pre-notification consultations with the Commission based on good faith, with the aim of receiving guidance on whether the thresholds for notification are met.

Third-country dialogue

Where, following a market investigation, the Commission suspects the existence of repeated foreign subsidies distorting the internal market, the Commission may engage in a dialogue with the third country concerned, to explore options aimed at obtaining the cessation or modification of such subsidies with a view to eliminating their distortive effects on the internal market. The Commission should inform the European Parliament and the Council of any relevant developments.

Guidelines

In order to foster the predictability of this Regulation, the Commission should publish and regularly update guidelines regarding the criteria for determining the existence of a distortion caused by a foreign subsidy on the internal market, the application of the balancing test, the application of its power to request a prior notification of any concentration or foreign financial contributions received by an economic operator in a public procurement procedure, and the assessment of a distortion in a public procurement procedure.

Transparency				
RINZEMA Catharina	Shadow rapporteur	INTA	04/05/2022	Vereniging VNO-NCW
BÜTIKOFER Reinhard	Shadow rapporteur	INTA	06/05/2022	Europa Institut, Saarland University, International Law School
BÜTIKOFER Reinhard	Shadow rapporteur	INTA	27/06/2022	Progressive Policy Institute
BÜTIKOFER Reinhard	Shadow rapporteur	INTA	15/08/2022	Bundesministerium für Wirtschaft und Klimaschutz
RINZEMA Catharina	Shadow rapporteur	INTA	19/10/2022	Canada Embassy to the EU
VAUTMANS Hilde	Member	22/03/2022	Karel De Gucht	