

# Regulation on distortive foreign subsidies

2021/0114(COD) - 10/11/2022 - Text adopted by Parliament, 1st reading/single reading

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.