



2021/0114(COD)

31.3.2022

OPINION

of the Committee on Economic and Monetary 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(*): Stéphanie Yon-Courtin

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

PA_Legam

AMENDMENTS

The Committee on Economic and Monetary 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 and competitive internal market enables both European and foreign undertakings to compete on merits. ***When assessing a foreign subsidy, the Commission may take into account to what extent a regulatory or supervisory regime of a third country is similar to Union State aid control and effectively reduces distortions caused by a third country subsidy. If 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, the foreign subsidy is unlikely to distort the internal market.*** 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 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) At the same time, undertakings might receive subsidies from third countries, that provide public funds which are then used, for instance, to finance economic activities in the internal market in any sector of the economy, such as participation in public procurement tenders, or acquisitions of undertakings, including those with strategic assets such as critical infrastructure and innovative technologies. Such subsidies are currently not subject to Union State aid rules.
Similar concerns apply in relation to state-owned enterprises.

Amendment 3

Proposal for a regulation Recital 5

Text proposed by the Commission

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

Amendment

(5) It is therefore necessary to ***have in place an international structure that deals with the area of subsidies from different jurisdictions. In its absence,*** however, it is 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 4

Proposal for a regulation Recital 5 a (new)

(5a) The new instrument should be coherent with existing instruments, such as Council Regulation (EC) No 139/2004^{1a}, Directive 2014/24/EU of the European Parliament and of the Council^{1b} or Regulation (EU) 2019/452 of the European Parliament and of the Council^{1c}. In its application of the different instruments, the Commission should pay attention to ensure an efficient sharing of necessary information to safeguard a comprehensive approach.

^{1a} Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p.1).

^{1b} Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p.65).

^{1c} Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 791, 21.3.2019, p.1).

Amendment 5

Proposal for a regulation Recital 5 b (new)

(5b) Without prejudice to the budgetary procedure and through existing financial instruments, adequate human, financial and technical resources should be allocated to the Commission to ensure that it can effectively perform its duties

and exercise its powers in respect of the enforcement of this Regulation.

Amendment 6

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) Rules and procedures to investigate foreign subsidies that actually or potentially distort the internal market should be laid down and, where relevant, those distortions should be redressed. Foreign subsidies could distort the internal market if the undertaking benefitting from the foreign subsidy engages in an economic activity in the Union. This Regulation should therefore establish rules for all undertakings engaging in an economic activity in the Union. Given the significance of the economic activities pursued by SMEs, and their contribution to the fulfilment of the Union's key policy goals, special attention is given to the impact of this Regulation on them.

Amendment

(6) Rules and procedures to investigate foreign subsidies that actually or potentially distort the internal market should be laid down and, where relevant, those distortions should be redressed. Foreign subsidies could distort the internal market if the undertaking benefitting from the foreign subsidy engages in an economic activity in the Union. ***An efficient enforcement of the principles laid down in this Regulation will contribute to achieve the necessary resilience of the internal market towards external economic influence and resilience of Europe.*** This Regulation should therefore establish rules for all undertakings engaging in an economic activity in the Union. Given the significance of the economic activities pursued by SMEs, and their contribution to the fulfilment of the Union's key policy goals, special attention is given to the impact of this Regulation on them.

Amendment 7

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

Amendment

(7) To ensure a level playing field throughout the internal market and consistency in the application of this Regulation, the Commission should be the sole authority competent to apply this

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

Regulation. The Commission should examine any foreign subsidy to the extent it is in the scope of this Regulation in any sector of the economy on its own initiative relying on information from all available sources. To ensure effective control, in the specific case of large concentrations (mergers and acquisitions) and public procurement procedures above certain thresholds, the Commission should review foreign subsidies based on a prior notification by the undertaking to the Commission.

Amendment 8

Proposal for a regulation Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Given that relevant Member States' authorities are an integral part of the application of this Regulation, the Commission should set up a structured cooperation and communication network to share information, to coordinate and strengthen the European Union approach to foreign subsidies distorting the internal market.

Amendment 9

Proposal for a regulation Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) Such a financial contribution should also include a situation where the beneficiary has privileged access to its domestic market, namely through exclusive or special rights or equivalent measures, for the provision of goods or services in the third country conferred by

national law or the benefit of a domestic captive market due to the prevailing legal and economic conditions. This could lead to an artificial competitive advantage that could be leveraged in the internal market and thereby exacerbate the distortive effect of any subsidy.

Amendment 10

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) The benefit should be conferred to an individual undertaking or industry or several undertakings or industries. The benefit could be established by law or in fact.

Amendment

(11) The benefit should be conferred to an individual undertaking or industry or several undertakings or industries. The benefit could be established by law or in fact. ***Future benefits that have been agreed upon in a legally binding manner also fall into the scope of this Regulation. Such future benefits could also be contained in a legally binding announcement.***

Amendment 11

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

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. 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. Foreign subsidies not exceeding EUR 5 million should be deemed unlikely to distort the internal market within the meaning of this Regulation. **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.**

Amendment 12

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

Amendment

(16) The Commission should take into account the positive effects of the foreign subsidy on the development of the relevant

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

subsidised economic activity **taking into account policy objectives based on international agreements**. 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 **can be predicated** to have **overwhelmingly negative rather than** positive effects. **To this effect, the Commission should be empowered to adopt delegated acts on the application of the balancing test.**

Amendment 13

Proposal for a regulation

Recital 21

Text proposed by the Commission

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

Amendment

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

Amendment 14

Proposal for a regulation

Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) Member States should have a predefined information system and a

contact point at their disposal by which the Commission can receive alerts and information concerning evidence of the existence of a potentially distortive subsidy.

Amendment 15

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. ***To reinforce the dissuasive character of this Regulation, there should be the possibility to apply the different sanctions like redressive measures, fines and periodic penalty payments simultaneously if necessary.*** 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 ***with*** 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 16

Proposal for a regulation
Recital 24

Text proposed by the Commission

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

Amendment

(24) In all cases where, as a result of the preliminary review, the Commission has sufficient indications of the existence of a foreign subsidy distorting the internal market, the Commission should have the power to launch an in-depth investigation to gather additional relevant information to assess the foreign subsidy, and to allow the interested parties to exercise their rights of defence. ***Such in-depth investigations should be concluded swiftly, in line with established deadlines, in order not to put on hold the underlying economic activities for too long.***

Amendment 17

Proposal for a regulation
Recital 30

Text proposed by the Commission

(30) It is necessary to strike a balance between effective protection of the internal market and the need to limit the administrative burden on undertakings subject to this Regulation. Therefore, only concentrations meeting combined thresholds as defined in this Regulation based on the size of the turnover in the Union and the size of the subsidy should be subject to mandatory prior notification.

Amendment

(30) It is necessary to strike a balance between effective protection of the internal market and the need to limit the administrative burden on undertakings subject to this Regulation. Therefore, only concentrations meeting combined thresholds as defined in this Regulation based on the size of the turnover in the Union and the size of the subsidy should be subject to mandatory prior notification. ***The effectiveness of those thresholds should be subject to a separate report after one year of application.***

Amendment 18

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) ***When applying the ex officio review and dealing with notifications, the Commission should also ensure coherence and good coordination between this Regulation and screening mechanisms for investment, including for strategic sectors.*** Below the notification thresholds, the Commission *shall* require the notification of potentially subsidised concentrations that were not yet implemented or the notification of potentially subsidised bids prior to the award of a public contract, if it considers that the concentration or the bid would merit ex-ante review given their impact in the Union. The Commission should also have the possibility to carry out a review on its own initiative of already implemented concentrations or awarded public contracts. ***The Commission should publish a guidance on the criteria to require such a notification.***

Amendment 19

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

Text proposed by the Commission

Amendment

(32a) Notwithstanding any potential pre-notification contacts, for notifiable concentrations, and where there are no special circumstances, the Commission should have the possibility to carry out a simplified procedure under which the Commission treats certain concentrations on the basis that they do not raise competition concerns and adopts and publishes a short-form decision declaring that a distortion on the internal market is significantly outweighed by positive effects.

Amendment 20

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 **that the Commission publishes** all decisions adopted by the Commission, either in full or in a summary form

Amendment 21

Proposal for a regulation Recital 42

Text proposed by the Commission

(42) The undertakings or associations of undertakings concerned by an investigation under this Regulation should have the opportunity of submitting their observations. While ensuring preservation of the rights of defence of the undertakings concerned, it is essential that business secrets be protected.

Amendment

(42) The undertakings or associations of undertakings concerned by an investigation under this Regulation should have the opportunity of submitting their observations; **this comprises observations on the intended reasoning for interim measures or a revocation decision.** While ensuring preservation of the rights of defence of the undertakings concerned, it is essential that business secrets be protected.

Amendment 22

Proposal for a regulation Recital 43

Text proposed by the Commission

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

Amendment

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

Amendment 23

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

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 power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of ***specifying the methodology underlying the balancing assessment***, 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

dealing with the preparation of delegated acts.

acts.

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).

Amendment 24

Proposal for a regulation Recital 48 a (new)

Text proposed by the Commission

Amendment

(48a) This Regulation is closing the legal gap by addressing the distortions caused by foreign subsidies. Therefore, the Commission should review the application and effectiveness of this Regulation within three years and every two years thereafter. The Commission should publish an assessment report on the operation of the thresholds to notify cases of concentrations and public procurement procedures to the European Parliament and the Council by ... [12 months after the entry into force of this Regulation] to ensure the proper functioning of this Regulation. The Commission may decide on a legislative review if needed.

Amendment 25

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

Amendment

(1) This Regulation lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions. Such

(1) This Regulation lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions, ***with a***

distortions may arise with respect to any economic activity, and in particular in concentrations and public procurement procedures.

view to ensuring a fair level-playing field.
Such distortions may arise with respect to any economic activity, and in particular in concentrations and public procurement procedures.

Amendment 26

Proposal for a regulation Article 1 – paragraph 2

Text proposed by the Commission

(2) This Regulation addresses foreign subsidies granted to an undertaking engaging in ***an*** economic activity in the internal market. An undertaking acquiring control or merging with an undertaking established in the Union or an undertaking participating in a public procurement procedure is considered to be engaging in an economic activity in the internal market.

Amendment

(2) This Regulation addresses foreign subsidies ***conferring an advantage*** granted to an undertaking engaging in ***any*** economic activity in the internal market. An undertaking acquiring control or merging with an undertaking established in the Union or an undertaking participating in a public procurement procedure is considered to be engaging in an economic activity in the internal market.

Amendment 27

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

Text proposed by the Commission

(a) a financial contribution shall include:

Amendment

(a) a financial contribution shall include ***inter alia***:

Amendment 28

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

Text proposed by the Commission

Amendment

(iiia) special or exclusive rights.

Amendment 29

Proposal for a regulation

Article 3 – paragraph 1 – introductory part

Text proposed by the Commission

(1) A distortion on the internal market shall be deemed to exist where a foreign subsidy is liable to improve the competitive position of the undertaking concerned in the internal market and where, in doing so, it actually or potentially negatively affects competition on the internal market. Whether there is a distortion on the internal market shall be determined on the basis of indicators, which may include the following:

Amendment

(1) A distortion on the internal market shall be deemed to exist where a foreign subsidy is liable to improve the competitive position of the undertaking concerned in the internal market and where, in doing so, it actually or potentially negatively affects competition on the internal market. Whether there is a distortion on the internal market shall be determined on the basis of indicators, which may include, *inter alia*, the following:

Amendment 30

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;

Amendment 31

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(da) the level of economic activity of the undertaking concerned on the domestic market;

Amendment 32

Proposal for a regulation

Article 4 – paragraph 1 – point 1

Text proposed by the Commission

(1) a foreign subsidy granted to an ailing undertaking, ***that is to say which will*** likely go out of business in the short or medium term in the absence of any subsidy, unless there is a restructuring plan that is capable of leading to the long-term viability of that undertaking and includes a significant own contribution by the undertaking;

Amendment

(1) a foreign subsidy granted to an ailing undertaking, likely ***to*** go out of business in the short or medium term in the absence of any subsidy, unless there is a restructuring plan that is capable of leading to the long-term viability of that undertaking and includes a significant own contribution by the undertaking;

Amendment 33

Proposal for a regulation

Article 4 – paragraph 1 – point 4

Text proposed by the Commission

(4) a foreign subsidy enabling an undertaking to submit an unduly advantageous tender, on the basis of which the undertaking would be awarded the public contract.

Amendment

(4) a foreign subsidy enabling an undertaking to submit an unduly advantageous tender ***such as an abnormally low tender referred to in Article 69 of Directive 2014/24/EU of the European Parliament and of the Council^{1a}***, on the basis of which the undertaking would be awarded the public contract;

^{1a} *Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).*

Amendment 34

Proposal for a regulation

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

Text proposed by the Commission

Amendment

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

supported export credits.

Amendment 35

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

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

Amendment

(1) The Commission shall, where warranted, balance the negative effects of a foreign subsidy in terms of distortion, on the internal market, *including broader* positive effects *relating to policy objectives such as objectives based on international agreements*.

Amendment 36

Proposal for a regulation Article 5 – paragraph 2

Text proposed by the Commission

(2) The Commission shall take into account the balancing between the negative and positive effects when deciding whether to impose redressive measures or to accept commitments, and the nature and level of those redressive measures or commitments.

Amendment

(2) The Commission shall take into account the balancing between the negative and positive effects when deciding whether to impose redressive measures or to accept commitments, and the nature and level of those redressive measures or commitments *while respecting the international regime on trade, such as WTO law and free trade agreements. In its analysis, the Commission shall take into account the general principles applied when assessing the compatibility of State aid with the internal market.*

Amendment 37

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

Text proposed by the Commission

Amendment

(2a) *The assessment referred to in paragraph 1 shall be disclosed on a dedicated webpage of the Commission. The Commission shall also provide for a justification on the same webpage whenever a balancing test is not carried out pursuant to paragraph 1.*

Amendment 38

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

Amendment

(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.

(1) To remedy the distortion on the internal market actually or potentially caused by a foreign subsidy, the Commission *shall* impose redressive measures *unless the balancing assessment referred to in Article 5 determines that positive effects significantly outweigh negative ones*. The undertaking concerned may also offer commitments. *Commitments and redressive measures may be imposed simultaneously.*

Amendment 39

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

Text proposed by the Commission

Amendment

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

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

Amendment 40

Proposal for a regulation Article 6 – paragraph 3 – point b

Text proposed by the Commission

(b) reducing capacity or market presence;

Amendment

(b) reducing capacity or market presence, ***including by means of a temporary commercial activity restriction on the internal market;***

Amendment 41

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ha) restricting to participate, directly or indirectly, in new public procurement, in particular concession contract procedures in the internal market and the prohibition of the award of a public contract;

Amendment 42

Proposal for a regulation

Article 6 – paragraph 3 – point h b (new)

Text proposed by the Commission

Amendment

(hb) requiring the undertakings concerned to adapt their governance structure.

Amendment 43

Proposal for a regulation

Article 6 – paragraph 5

Text proposed by the Commission

Amendment

(5) If an undertaking offers commitments which fully and effectively remedy the distortion on the internal market, the Commission may accept them and make them binding on the undertaking

(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).

in a decision with commitments according to Article 9(3). ***The Commission shall monitor the compliance of the undertaking with the commitments offered.***

Amendment 44

Proposal for a regulation Article 7 – paragraph 1

Text proposed by the Commission

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

Amendment

The Commission may on its own initiative examine information from any source regarding alleged distortive foreign subsidies. ***The Commission shall examine information submitted by Member States. A Member State that is in possession of evidence of the existence of a potentially distortive subsidy, may provide such evidence to the Commission.***

Amendment 45

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

Text proposed by the Commission

(b) inform the undertaking concerned; and

Amendment

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

Amendment 46

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

Text proposed by the Commission

Amendment

(3a) By ... [the date of application of this Regulation], the Commission shall publish guidance on the criteria to open the procedure set out in this Article.

Amendment 47

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

Text proposed by the Commission

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

Amendment

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

Amendment 48

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

Text proposed by the Commission

Amendment

(2a) Interim measures may be prolonged where the indication of distortive effects or the serious risk of substantial damage to competition on the internal market continue to exist.

Amendment 49

Proposal for a regulation Article 11 – title

Text proposed by the Commission

Amendment

Information requests

Information requests ***and provision***

Amendment 50

Proposal for a regulation Article 11 – paragraph 1

Text proposed by the Commission

Amendment

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

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

duties assigned to it in this Regulation.

Amendment 51

Proposal for a regulation

Article 11 – paragraph 3 – point c a (new)

Text proposed by the Commission

Amendment

(ca) respect the principle of proportionality;

Amendment 52

Proposal for a regulation

Article 11 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3a) An undertaking, which is in possession of evidence of the existence of a potentially distortive subsidy, may provide such evidence to the Commission, by replying to standard questionnaires, published by the Commission in all official languages of the Union.

Amendment 53

Proposal for a regulation

Article 12 – paragraph 1

Text proposed by the Commission

Amendment

(1) The Commission may conduct the necessary inspections of undertakings.

(1) For the purposes of this Regulation, the Commission may conduct the necessary inspections of undertakings.

Amendment 54

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.

Amendment 55

**Proposal for a regulation
Article 17 – paragraph 1**

Text proposed by the Commission

In a concentration, the assessment whether there is a distortion on the internal market within the meaning of Articles 3 or 4 shall be limited to the concentration at stake. Only foreign subsidies granted in the ***three*** calendar years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest shall be considered in the assessment.

Amendment

In a concentration, the assessment whether there is a distortion on the internal market within the meaning of Articles 3 or 4 shall be limited to the concentration at stake. Only foreign subsidies granted in the ***five*** calendar years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest shall be considered in the assessment.

Amendment 56

**Proposal for a regulation
Article 19 – paragraph 1**

Text proposed by the Commission

(1) Notifiable concentrations shall be notified to the Commission prior to their implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

Amendment

(1) Notifiable concentrations ***in line with the thresholds outlined in Article 18*** shall be notified to the Commission prior to their implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

Amendment 57

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.

Amendment 58

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 59

Proposal for a regulation Article 23 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

(8a) Each preliminary review or in-depth investigation shall be notified to the Member States, which may be concerned by the concentration.

Amendment 60

Proposal for a regulation
Article 25 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3a) The fines and periodic penalty payments set out in this Article may be imposed simultaneously.

Amendment 61

Proposal for a regulation
Article 33-a (new)

Text proposed by the Commission

Amendment

Article 33-a

Information and dialogue

(1) The Commission shall establish a structured cooperation and communication network with the relevant Member States authorities to share information and coordinate the application of this Regulation.

(2) A Member State that is in possession of evidence of the existence of a potentially distortive subsidy, may provide such evidence to the Commission. To that end, each Member State and the Commission shall establish a contact point. A secure system shall be provided by the Commission to support direct cooperation and exchange of information between the contact points and the Commission.

(3) 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.

Amendment 62

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, **as well as the relevant national market authorities**, 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 63

Proposal for a regulation
Article 35 – paragraph 2

Text proposed by the Commission

(2) The powers of the Commission to impose fines and periodic penalty payments under Articles 15, 25 and 32 shall be subject to a limitation period of **three** years, starting on the day on which the infringement referred to in Articles 15, 25 or 32 took place. In the case of continuing or repeated infringements, the limitation period shall start on the day on which the infringement ceases. Any action taken by the Commission with respect to an infringement referred to in Articles 15, 25 or 32 shall interrupt the limitation period for the imposition of fines or periodic penalty payments. After each

Amendment

(2) The powers of the Commission to impose fines and periodic penalty payments under Articles 15, 25 and 32 shall be subject to a limitation period of **five** years, starting on the day on which the infringement referred to in Articles 15, 25 or 32 took place. In the case of continuing or repeated infringements, the limitation period shall start on the day on which the infringement ceases. Any action taken by the Commission with respect to an infringement referred to in Articles 15, 25 or 32 shall interrupt the limitation period for the imposition of fines or periodic penalty payments. After each interruption,

interruption, the limitation period shall start to run afresh.

the limitation period shall start to run afresh.

Amendment 64

Proposal for a regulation Article 38 – paragraph 1

Text proposed by the Commission

(1) The Commission shall, before adopting a decision pursuant to Articles 9, 15, 24(3) point (c), 25, 30(2) or 32 give the undertaking concerned the opportunity to submit observations on the grounds on which the Commission intends to adopt its decision.

Amendment

(1) The Commission shall, before adopting a decision pursuant to Articles 9, **10**, 15, **16**, 24(3) point (c), 25, 30(2) or 32 give the undertaking concerned the opportunity to submit observations on the grounds on which the Commission intends to adopt its decision.

Amendment 65

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

Text proposed by the Commission

(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;

Amendment

deleted

Amendment 66

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

Text proposed by the Commission

Amendment

(aa) specifying the methodology underlying the balancing assessment and in particular for the determination of positive effects on the internal market, including broader positive effects relating

to policy objectives such as objectives based on international agreements referred to in Article 5(1) as well as criteria for outweighing effects;

Amendment 67

Proposal for a regulation Article 45 – paragraph 6

Text proposed by the Commission

(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.

Amendment

(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 **three** 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 **three** months at the initiative of the European Parliament or of the Council.

Amendment 68

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 **and every two years**, the Commission shall **review the functioning and effectiveness of this Regulation and** present a report to the European Parliament and the Council on **its** application. **In its report**, the Commission **shall in particular analyse the appropriateness of the thresholds for concentrations laid down in Article 18.**

Amendment 69

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

Text proposed by the Commission

Amendment

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

Amendment 70

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

Text proposed by the Commission

Amendment

The Commission shall publish a separate report on the operation of the notification thresholds as set out in Article 18 to the European Parliament and the Council by...[twelve months after the entry into force of this Regulation] and shall where appropriate propose amendments to change those thresholds taking into account the effectiveness of their application.

Amendment 71

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

Text proposed by the Commission

Amendment

The Commission may also propose to repeal this Regulation if it considers that multilateral rules to address distortive subsidies have rendered this Regulation fully redundant.

Amendment 72

Proposal for a regulation Article 47 – paragraph 3

Text proposed by the Commission

(3) This Regulation shall not apply to concentrations for which the agreement was concluded, the public bid was announced, or a controlling interest was acquired before the date of application of the Regulation.

Amendment

(3) ***Notwithstanding paragraph 1***, this Regulation shall not apply to concentrations for which the agreement was concluded, the public bid was announced, or a controlling interest was acquired before the date of application of the Regulation.

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 | ECON 7.6.2021 |
| Associated committees - date announced in plenary | 25.11.2021 |
| Rapporteur for the opinion Date appointed | Stéphanie Yon-Courtin 1.9.2021 |
| Discussed in committee | 24.1.2022 28.2.2022 |
| Date adopted | 31.3.2022 |
| Result of final vote | +: 41 -: 1 0: 13 |
| Members present for the final vote | Gunnar Beck, Isabel Benjumea Benjumea, Stefan Berger, Gilles Boyer, Carlo Calenda, Engin Eroglu, Markus Ferber, Jonás Fernández, Frances Fitzgerald, José Manuel García-Margallo y Marfíl, Luis Garicano, Valentino Grant, Claude Gruffat, Enikő Győri, Eero Heinäluoma, Michiel Hoogeveen, Danuta Maria Hübner, Stasys Jakeliūnas, France Jamet, Othmar Karas, Billy Kelleher, Ondřej Kovařík, Ioannis Lagos, Aurore Lalucq, Philippe Lamberts, Aušra Maldeikienė, Pedro Marques, Costas Mavrides, Csaba Molnár, Siegfried Mureşan, Luděk Niedermayer, Lefteris Nikolaou-Alavanos, Piernicola Pedicini, Lídia Pereira, Kira Marie Peter-Hansen, Sirpa Pietikäinen, Dragoş Pişlaru, Evelyn Regner, Antonio Maria Rinaldi, Dorien Rookmaker, Alfred Sant, Joachim Schuster, Ralf Seekatz, Pedro Silva Pereira, Paul Tang, Irene Tinagli, Ernest Urtasun, Inese Vaidere, Johan Van Overtveldt, Stéphanie Yon-Courtin, Marco Zanni, Roberts Zīle |
| Substitutes present for the final vote | Manon Aubry, Damien Carême, Roman Haider, Chris MacManus, Jessica Stegrud |

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

| 41 | + |
|-----------|---|
| ECR | Michiel Hoogeveen, Dorien Rookmaker, Jessica Stegrud, Johan Van Overtveldt, Roberts Zile |
| NI | Enikő Győri, Ioannis Lagos |
| PPE | Isabel Benjumea Benjumea, Stefan Berger, Markus Ferber, Frances Fitzgerald, José Manuel García-Margallo y Marfil, Danuta Maria Hübner, Othmar Karas, Aušra Maldeikienė, Siegfried Mureşan, Luděk Niedermayer, Lídia Pereira, Sirpa Pietikäinen, Ralf Seekatz, Inese Vaidere |
| Renew | Gilles Boyer, Carlo Calenda, Engin Eroglu, Luis Garicano, Billy Kelleher, Ondřej Kovařík, Dragoş Pîslaru, Stéphanie Yon-Courtin |
| S&D | Jonás Fernández, Aurore Lalucq, Pedro Marques, Costas Mavrides, Csaba Molnár, Evelyn Regner, Alfred Sant, Joachim Schuster, Pedro Silva Pereira, Paul Tang, Irene Tinagli |
| Verts/ALE | Philippe Lamberts |

| 1 | - |
|----|----------------------------|
| NI | Lefteris Nikolaou-Alavanos |

| 13 | 0 |
|-----------|--|
| ID | Gunnar Beck, Valentino Grant, Roman Haider, France Jamet, Antonio Maria Rinaldi, Marco Zanni |
| The Left | Chris MacManus |
| Verts/ALE | Damien Carême, Claude Gruffat, Stasys Jakeliūnas, Piernicola Pedicini, Kira Marie Peter-Hansen, Ernest Urtasun |

Key to symbols:

+ : in favour

- : against

0 : abstention