

Regulation on distortive foreign subsidies

2021/0114(COD) - 05/05/2021 - Legislative proposal

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.