Regulation on distortive foreign subsidies

2021/0114(COD) - 04/05/2022 - Text adopted by Parliament, partial vote at 1st reading/single reading

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 undertaking's 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.