Regulation on distortive foreign subsidies

2021/0114(COD) - 23/12/2022 - Final act

PURPOSE: to remedy the distortions created by subsidies granted by non-EU countries to companies operating in the EU's single market.

LEGISLATIVE ACT: Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market.

CONTENT: this Regulation aims 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.

This 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.

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.

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 three tools: (i) **two prior authorisation tools** - 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.

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.

In order to investigate possible foreign subsidies and determine whether they distort the internal market and to remedy such distortions, the Regulation establishes a two-step procedure, namely a **preliminary examination and an in-depth investigation**. The Commission will have to conclude the in-depth investigation by adopting a decision. It should, as far as possible, endeavour to conclude the in-depth investigation within 18 months.

The Commission will have the power to request information from any undertaking or association of undertakings throughout the proceedings. In addition, the Commission may impose fines or periodic penalty payments for failure to provide the requested information in a timely manner or for providing incomplete, inaccurate or misleading information.

Furthermore, where necessary to prevent irreparable damage to competition in the internal market, the Commission will have the power to adopt interim measures.

Governance

In order to ensure uniform application of the regulation throughout the EU, the **Commission will be exclusively competent** to enforce the regulation. During this centralised implementation, Member States will be kept regularly informed and will be involved, through the advisory procedure, in decisions adopted under the regulation.

Notification thresholds

Under the new rules, companies will 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 will 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.

Guidelines

In order to foster the predictability of this Regulation, the Commission will 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.

ENTRY INTO FORCE: 12.1.2023. The Regulation will apply from 12.7.2023.