Basic information

2021/0114(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Regulation on distortive foreign subsidies **Subject** 2 Internal market, single market 6.20.02 Export/import control, trade defence, trade barriers **Legislative priorities** Joint Declaration 2021 Joint Declaration 2022	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
INTA International Trade	HANSEN Christophe (EPP)	14/07/2021
	Shadow rapporteur RODRÍGUEZ-PIÑERO Inma (S&D) RINZEMA Catharina (Renew) BÜTIKOFER Reinhard (Greens/EFA) BOURGEOIS Geert (ECR) MAUREL Emmanuel (The Left)	

Committee for opinion	Rapporteur for opinion	Appointed
DEVE Development	The committee decided not to give an opinion.	
ECON Economic and Monetary Affairs (Associated committee)	YON-COURTIN Stéphanie (Renew)	01/09/2021
EMPL Employment and Social Affairs	The committee decided not to give an opinion.	
IMCO Internal Market and Consumer Protection (Associated committee)	DOLESCHAL Christian (EPP)	15/06/2021

	JURI Legal Affairs	LEBRETON Gilles (ID)	14/06/2021
Council of the European Union			
European Commission			

Commission DG	Commissioner
Competition	-- --
Economic and Financial Affairs	-- --

European Economic and Social Committee

Key events

Date	Event	Reference	Summary
05/05/2021	Legislative proposal published	COM(2021)0223	Summary
07/06/2021	Committee referral announced in Parliament, 1st reading		
25/11/2021	Referral to associated committees announced in Parliament		
25/04/2022	Vote in committee, 1st reading		
28/04/2022	Committee report tabled for plenary, 1st reading	A9-0135/2022	
04/05/2022	Decision by Parliament, 1st reading	T9-0143/2022	Summary
04/05/2022	Results of vote in Parliament		
04/05/2022	Matter referred back to the committee responsible for interinstitutional negotiations		
14/07/2022	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	GEDA/A/(2022)008224	
10/11/2022	Decision by Parliament, 1st reading	T9-0379/2022	Summary
10/11/2022	Results of vote in Parliament		
28/11/2022	Act adopted by Council after Parliament's 1st reading		
14/12/2022	Final act signed		
23/12/2022	Final act published in Official Journal		

Technical information

Procedure reference	2021/0114(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Rules of Procedure EP 57_o

	Treaty on the Functioning of the European Union TFEU 114 Treaty on the Functioning of the European Union TFEU 207
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	INTA/9/05993

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE703.002	18/12/2021	
Amendments tabled in committee		PE719.563	09/02/2022	
Amendments tabled in committee		PE719.564	09/02/2022	
Committee opinion	IMCO	PE703.070	30/03/2022	
Committee opinion	ECON	PE700.661	31/03/2022	
Committee opinion	JURI	PE704.679	22/04/2022	
Committee report tabled for plenary, 1st reading/single reading		A9-0135/2022	28/04/2022	
Text adopted by Parliament, partial vote at 1st reading /single reading		T9-0143/2022	04/05/2022	Summary
Text adopted by Parliament, 1st reading/single reading		T9-0379/2022	10/11/2022	Summary

Council of the EU

Document type	Reference	Date	Summary
Coreper letter confirming interinstitutional agreement	GEDA/A/(2022)008224	13/07/2022	
Draft final act	00046/2022/LEX	14/12/2022	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2021)0223	05/05/2021	Summary
Document attached to the procedure	SEC(2021)0182	06/05/2021	
Document attached to the procedure	SWD(2021)0099	06/05/2021	
Document attached to the procedure	SWD(2021)0100	06/05/2021	
Commission response to text adopted in plenary	SP(2022)688	17/01/2023	
	COM(2026)0368		

Follow-up document		14/07/2026	
Follow-up document	SWD(2026)0183	14/07/2026	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2021)0223	15/07/2021	
Contribution	CZ_SENATE	COM(2021)0223	28/07/2021	
Contribution	FR_SENATE	COM(2021)0223	16/12/2021	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES3401/2021	20/10/2021	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Meetings with interest representatives published in line with the Rules of Procedure

Rapporteurs, Shadow Rapporteurs and Committee Chairs

Transparency

Name	Role	Committee	Date	Interest representatives
RINZEMA Catharina	Shadow rapporteur	INTA	19/10/2022	Canada Embassy to the EU
BÜTIKOFER Reinhard	Shadow rapporteur	INTA	15/08/2022	Bundesministerium für Wirtschaft und Klimaschutz
BÜTIKOFER Reinhard	Shadow rapporteur	INTA	27/06/2022	Progressive Policy Institute
BÜTIKOFER Reinhard	Shadow rapporteur	INTA	06/05/2022	Europa Institut, Saarland Unicersity, International Law School
RINZEMA Catharina	Shadow rapporteur	INTA	04/05/2022	Vereniging VNO-NCW
HANSEN Christophe	Rapporteur	INTA	03/02/2022	ArcelorMittal
HANSEN Christophe	Rapporteur	INTA	02/02/2022	FEDIL - The Voice of Luxembourg's Industry
HANSEN Christophe	Rapporteur	INTA	02/02/2022	Business Europe
HANSEN Christophe	Rapporteur	INTA	14/12/2021	AFEP

HANSEN Christophe	Rapporteur	INTA	08/12/2021	Business Europe
HANSEN Christophe	Rapporteur	INTA	15/11/2021	AEGIS Europe
HANSEN Christophe	Rapporteur	INTA	08/11/2021	Alstom
HANSEN Christophe	Rapporteur	INTA	03/11/2021	BDI
HANSEN Christophe	Rapporteur	INTA	12/10/2021	MEDEF

Other Members

Transparency		
Name	**Date**	**Interest representatives**
VAUTMANS Hilde	22/03/2022	Karel De Gucht

Final act	
Corrigendum to final act 32022R2560R(02) OJ OJ L 17.09.2024	
Regulation 2022/2560 OJ L 330 23.12.2022, p. 0001	Summary

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.

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.

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.

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.