



TEXTS ADOPTED

P9_TA(2022)0143

Distortive foreign subsidies *I**

Amendments adopted by the European Parliament on 4 May 2022 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))¹

(Ordinary legislative procedure: first reading)

Amendment 1

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 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 2

Proposal for a regulation

Recital 2 a (new)

¹ The matter was referred back for interinstitutional negotiations to the committee responsible, pursuant to Rule 59(4), fourth subparagraph (A9-0135/2022).

Text proposed by the Commission

Amendment

(2a) Although this Regulation should cover all economic sectors, the Commission should pay particular attention to sectors that are of strategic interest to the Union and critical infrastructures, such as those mentioned in Article 4(1), point (a), of Regulation (EU) 2019/452 of the European Parliament and of the Council.

Amendment 3

Proposal for a regulation Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) This Regulation should be coherent and coordinated 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}, Regulation (EU) 2019/452 of the European Parliament and of the Council^{1c} or Regulation (EU) 2022/... of the European Parliament and of the Council^{1d}. 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).

1st Regulation (EU) 2022/... of the European Parliament and of the Council on the access of third-country economic operators, goods and services to the Union's public procurement market and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement markets of third countries (International Procurement Instrument - IPI) (OJ L ...).

Amendment 4

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. ***The proper application and enforcement of this Regulation should contribute to the resilience of the internal market against distortions caused by foreign subsidies and thereby strengthen the Union's open strategic autonomy.*** 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 5

Proposal for a regulation Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Given that the relevant Member State authorities are an integral part of the application of this Regulation, Member States should ensure that their authorities cooperate and coordinate effectively with the Commission in the application of this Regulation. For this purpose, the Commission should be able to set up structured cooperation to share information and coordinate.

Amendment 6

Proposal for a regulation Recital 9

Text proposed by the Commission

Amendment

(9) There should be a financial contribution provided, directly or indirectly, by ***the public authorities of*** a third country. The financial contribution may be granted through public or private entities. Whether a public entity provides a financial contribution should be determined on a case-by-case basis with due regard to elements such as the characteristics of the relevant entity and the legal and economic environment prevailing in the country in which the entity operates including the government's role in the economy. Financial contributions may also be granted through a private entity if its actions can be attributed to the third country.

(9) There should be a financial contribution provided, directly or indirectly, by a third country. The financial contribution may be granted through public or private entities. Whether a public entity provides a financial contribution should be determined on a case-by-case basis with due regard to elements such as the characteristics of the relevant entity and the legal and economic environment prevailing in the ***third*** country in which the entity operates including the government's role in the economy ***of that third country***. Financial contributions may also be granted through a private entity if its actions can be attributed to the third country. ***Support measures that are economically equivalent to a financial contribution should also be considered as a financial contribution. Such a financial contribution could include a situation where the beneficiary has privileged access to its domestic market, namely through exclusive or special rights as well***

as selective de jure or de facto exceptions to applicable rules 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 7

Proposal for a regulation Recital 10

Text proposed by the Commission

(10) **Such** a financial contribution should confer a benefit to an undertaking engaging in an economic activity in the internal market. A financial contribution that benefits an entity engaging in non-economic activities does not constitute a foreign subsidy. The existence of a benefit should be determined on the basis of comparative benchmarks, such as the investment practice of private investors, rates for financing obtainable on the market, a comparable tax treatment, or the adequate remuneration for a given good or service.. If no directly comparable benchmarks are available, existing benchmarks could be adjusted or alternative benchmarks could be established based on generally accepted assessment methods.

Amendment

(10) A financial contribution should confer a benefit to an undertaking engaging in an economic activity in the internal market. A financial contribution that benefits an entity engaging in non-economic activities does not constitute a foreign subsidy. The existence of a benefit should be determined on the basis of comparative benchmarks, such as the investment practice of private investors, rates for financing obtainable on the market, a comparable tax treatment, or the adequate remuneration for a given good or service. If no directly comparable benchmarks are available, existing benchmarks could be adjusted or alternative benchmarks could be established based on generally accepted assessment methods. ***Transfer pricing may confer a benefit and be considered as equivalent to a financial contribution if not in line with normal market conditions.***

Amendment 8

Proposal for a regulation Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) A foreign subsidy is considered granted from the moment the beneficiary has an entitlement to receive the subsidy. The actual payment of the subsidy is not a necessary condition for bringing a subsidy within the scope of this Regulation.

Amendment 9

Proposal for a regulation

Recital 14

Text proposed by the Commission

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

(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 ***or bought*** are likely to cause distortions. A foreign subsidy to a beneficiary that shows

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.

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. ***The evolution of the economic activity can also be taken into account to enable the Commission to take action when an undertaking's level of activity is small, but is expected to grow strongly. 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. The Commission should therefore encourage third countries to develop such systems of subsidy control, including by concluding and enforcing bilateral agreements which include substantive level playing field provisions and by encouraging third countries to comply with international subsidy obligations and align with the Union on initiatives with regard to improving international rules on subsidies and competitive neutrality, notably within the WTO.*** Foreign subsidies not exceeding EUR 4 million should be deemed, as a general rule, unlikely to distort the internal market within the meaning of this Regulation. ***The Commission should draft and publish 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.***

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 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.

Amendment

(16) The Commission should ***be able to*** take into account the positive effects of the foreign subsidy on the development of the relevant subsidised economic activity ***on the internal market and its contribution to the achievement of public policy objectives, including social and environmental objectives.*** 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 ***should take account of both short- and long-term effects and follow the general objective of tackling distortions created by foreign subsidies. In its analysis, the Commission should take into account the general principles applied when assessing the compatibility of state aid with the single market. 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. ***The Commission should also take into account the positive effects of subsidies granted to remedy serious national or global disturbances of the economy, such as those caused by global health crises. The Commission should develop guidelines on the application of the balancing test, including on the criteria to be used.***

Amendment 11

Proposal for a regulation
Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) The undertaking under investigation could offer or the Commission could require the undertakings concerned to notify the Commission of their participation in future public procurement procedures in the Union for an appropriate period of time. The submission of such notification, or the response or absence of a response from the Commission cannot give rise to legitimate expectations on the part of the undertaking that the Commission may not later start an investigation of possible foreign subsidies to the undertaking participating in the public procurement procedure.

Amendment 12

Proposal for a regulation Recital 21

Text proposed by the Commission

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.

(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 for opening such a procedure. The Commission should be able to act upon information received from any relevant source, including Member States and undertakings or EU-wide social partners. The Commission should establish a contact point to that end.***

Amendment 13

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 **appropriate** investigative powers **and resources** 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. **In order to reinforce the dissuasive character of this Regulation, there should be the possibility to apply redressive measures, commitments, 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 by 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 14

Proposal for a regulation

Recital 26

Text proposed by the Commission

(26) The Commission should have appropriate instruments to ensure the effectiveness of commitments and redressive measures. If the undertaking concerned does not comply with a decision with commitments, a decision imposing redressive measures, or a decision ordering interim measures, the Commission should

Amendment

(26) The Commission should have appropriate instruments to ensure the effectiveness of commitments and redressive measures. If the undertaking concerned does not comply with a decision with commitments, a decision imposing redressive measures, or a decision ordering interim measures, the Commission should

have the power to impose fines and periodic penalty payments.

have the power to impose fines and periodic penalty payments *of a sufficiently dissuasive nature. The Commission should take into account cases of repeated non-compliance when imposing such fines and periodic penalty payments. The Commission should review the effectiveness of the measures.*

Amendment 15

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) Below the notification thresholds, the Commission *should* 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 16

Proposal for a regulation Recital 32 a (new)

Text proposed by the Commission

Amendment

(32a) In the context of the ex ante review mechanism for concentrations, concerned undertakings should be able to request pre-notification consultations with the Commission based on good faith, with the exclusive aim of receiving guidance on whether or not the formal thresholds for notification are met.

Amendment 17

Proposal for a regulation
Recital 35

Text proposed by the Commission

(35) It should be ensured that the principles governing public procurement, notably proportionality, non-discrimination, equal treatment, and transparency, are respected as regards all undertakings involved in the public procurement procedure, regardless of investigations initiated and pending pursuant to this Regulation.

Amendment

(35) It should be ensured that the principles governing public procurement, notably proportionality, non-discrimination, equal treatment, and transparency, are respected as regards all undertakings involved in the public procurement procedure, regardless of investigations initiated and pending pursuant to this Regulation. ***This Regulation is without prejudice to Directives 2014/23/EU, 2014/24/EU and 2014/25/EU of the European Parliament and of the Council as regards the applicable obligations in the fields of environmental, social and labour law.***

Amendment 18

Proposal for a regulation
Recital 36

Text proposed by the Commission

(36) Foreign subsidies that enable an undertaking to submit a tender which is unduly advantageous in relation to the works, supplies or services concerned should be deemed to actually or potentially create a distortion in a public procurement procedure. Those distortions should therefore be assessed on the basis of the non-exhaustive set of indicators described in recitals 13 and 14 as well as the notion of unduly advantageous tender. The indicators should allow to determine how the foreign subsidy distorts competition by improving the competitive position of an undertaking and enabling it to submit an unduly advantageous tender. The opportunity should be given to undertakings to justify that the tender is not unduly advantageous, including by adducing the elements referred to in Article

Amendment

(36) Foreign subsidies that enable an undertaking to submit a tender which is unduly advantageous in relation to the works, supplies or services concerned should be deemed to actually or potentially create a distortion in a public procurement procedure. Those distortions should therefore be assessed on the basis of the non-exhaustive set of indicators described in recitals 13 and 14 as well as the notion of unduly advantageous tender. The indicators should allow to determine how the foreign subsidy distorts competition by improving the competitive position of an undertaking and enabling it to submit an unduly advantageous tender. The opportunity should be given to undertakings to justify that the tender is not unduly advantageous, including by adducing the elements referred to in Article

69(2) of Directive 2014/24/EU. The prohibition of the award should only apply where the advantageous nature of the tender benefiting from foreign subsidies cannot be justified, the tender would be awarded the contract and the undertaking submitting the tender did not offer commitments considered appropriate and sufficient to fully and effectively remove the distortion.

69(2) of Directive 2014/24/EU. The prohibition of the award should only apply where the advantageous nature of the tender benefiting from foreign subsidies cannot be justified, the tender would be awarded the contract and the undertaking submitting the tender did not offer commitments considered appropriate and sufficient to fully and effectively remove the distortion. ***The adoption of a decision prohibiting the award of the contract results in the exclusion of the undertaking concerned from participation in the public procurement procedure.***

Amendment 19

Proposal for a regulation Recital 37

Text proposed by the Commission

(37) Taking into account the nature of the ex ante review mechanism for concentrations and public procurement awards, and the need for legal certainty regarding these specific transactions, a concentration or public procurement tender notified and assessed under the respective procedures cannot be reviewed again by the Commission on its own initiative. Financial contributions of which the Commission was informed through the notification procedure may however also be relevant outside the concentration or procurement procedure. In order to gather information on foreign subsidies, the Commission should have the possibility to launch investigations regarding specific sectors of the economy, particular types of economic activity or the use of particular foreign subsidy instruments.

Amendment

(37) Taking into account the nature of the ex ante review mechanism for concentrations and public procurement awards, and the need for legal certainty regarding these specific transactions, a concentration or public procurement tender notified and assessed under the respective procedures cannot be reviewed again by the Commission on its own initiative. Financial contributions of which the Commission was informed through the notification procedure may however also be relevant outside the concentration or procurement procedure. In order to gather information on foreign subsidies, the Commission should have the possibility to launch investigations regarding specific sectors of the economy, particular types of economic activity or the use of particular foreign subsidy instruments. ***The Commission should be able to use the information obtained from such market investigations to review certain transactions in the framework of the procedures under this Regulation.***

Amendment 20

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 the development of multilateral rules to address distortive subsidies.***

Amendment 21

Proposal for a regulation Recital 43 a (new)

Text proposed by the Commission

Amendment

(43a) In order to encourage the development of multilateral rules to address distortive subsidies and their root causes, it is necessary to set up a third-country dialogue. When the Commission discovers or suspects the existence of systemic distortive foreign subsidies, it should be able to engage in a dialogue with the third country in question to explore options aimed at obtaining the cessation or modification of the distortive subsidies with a view to eliminating their distortive effects in the internal market. Where a bilateral agreement between the Union and a third country provides for a consultation mechanism that covers systemic distortive foreign subsidies falling within the scope of this Regulation, this mechanism should be used to facilitate the third-country dialogue. The Commission should also be able to endeavour to obtain the cessation or modification of the distortive foreign subsidies by raising the matter in any

relevant international forum or through cooperation with any other third country affected by the same systemic distortive subsidies, or with any interested third country. This dialogue should not preclude the Commission from opening or continuing investigations under this Regulation, nor should it constitute an alternative to redressive measures. The Commission should, without undue delay, inform the European Parliament and the Council of relevant developments.

Amendment 22

Proposal for a regulation

Recital 47

Text proposed by the Commission

(47) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission *in accordance with Article 291 of the Treaty*. Those powers should be exercised to set out the form and content of notifications of concentrations as well as of financial contributions in the context of public procurement procedures, details of disclosure, form and content of transparency requirements, calculation of time-limits, conditions and time-limits for commitments and detailed rules on the procedural steps concerning investigations regarding public procurement procedures. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

Amendment

(47) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised to set out the form and content of notifications of concentrations as well as of financial contributions in the context of public procurement procedures, details of disclosure, form and content of transparency requirements, calculation of time-limits, conditions and time-limits for commitments and detailed rules on the procedural steps concerning investigations regarding public procurement procedures. Those powers should be exercised in accordance with Regulation (EU) No 182/2011. *The Commission should exercise those implementing powers for the first time no later than one year after the entry into force of this Regulation.*

Amendment 23

Proposal for a regulation

Recital 47 a (new)

Text proposed by the Commission

Amendment

(47a) The Commission should have the possibility to establish a simplified procedure under which it treats certain concentrations or public procurement procedures on the basis that they appear less likely to give rise to distortions of competition on the internal market due to foreign subsidies.

Amendment 24

Proposal for a regulation Recital 48

Text proposed by the Commission

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 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***

(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 ***Commission should evaluate the functioning and effectiveness of this Regulation, including of the notification thresholds set out in Articles 18 and 27, at the latest two years after its entry into force, and every three years thereafter, and present that evaluation by means of a report to the European Parliament and the Council. That report should include an assessment of whether this Regulation should be amended. Where the report proposes amending the Regulation, it may be accompanied by a legislative proposal, in particular*** 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, ***introducing lower notification thresholds specific to certain economic sectors or differentiated thresholds for different types of public procurement contracts***, as well as amending the time limits for the preliminary review and the in-depth

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 acts.

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 *evaluation* should be *conducted* in a way that takes into account the interests of SMEs. **The Commission should also make use of quantified cost-benefit analysis and ex-ante analysis on the impact on investments and consumer welfare. During its evaluation, the Commission should consider to abrogate the present Regulation, if it considers that the development of multilateral rules to address distortive subsidies has rendered this Regulation fully redundant.**

Amendment 25

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

(1) This Regulation lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions. Such distortions may arise with respect to any economic activity, and in particular in concentrations and public procurement procedures.

Amendment

(1) This 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.** 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 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 27

Proposal for a regulation

Article 2 – paragraph 2 – point a – point i

Text proposed by the Commission

(i) the transfer of funds or liabilities, such as capital injections, grants, loans, loan guarantees, fiscal incentives, setting off of operating losses, compensation for financial burdens imposed by public authorities, debt forgiveness, debt to equity swaps or rescheduling;

Amendment

(i) the transfer of **funds or** liabilities, such as capital injections, grants, loans, loan guarantees, fiscal incentives, **tax exemptions**, setting off of operating losses, compensation for financial burdens imposed by public authorities, debt forgiveness, debt to equity swaps or rescheduling;

Amendment 28

Proposal for a regulation

Article 2 – paragraph 2 – point a – point ii

Text proposed by the Commission

(ii) the foregoing of revenue that is otherwise due; **or**

Amendment

(ii) the foregoing of revenue that is otherwise due;

Amendment 29

Proposal for a regulation

Article 2 – paragraph 2 – point a – point ii a (new)

Text proposed by the Commission

Amendment

(iia) inadequately remunerated special or exclusive rights; or

Amendment 30

Proposal for a regulation

Article 2 – paragraph 2 – point a – point iii

Text proposed by the Commission

(iii) the provision of goods or services or the purchase of goods **and** services;

Amendment

(iii) the provision of goods or services or the purchase of goods **or** services, **unless such provision or purchase is carried out following a competitive, transparent, non-discriminatory and unconditional tender**

procedure;

Amendment 31

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 *shall* include, *inter alia*, the following:

Amendment 32

Proposal for a regulation

Article 3 – paragraph 1 – point c

Text proposed by the Commission

(c) the situation of the undertaking and the markets concerned;

Amendment

(c) the situation of the undertaking, *including its size*, and the markets concerned *and in particular an assessment whether the undertaking concerned operates under the ownership, control or policy supervision or guidance of the authorities of the third country*;

Amendment 33

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

Amendment

(d) the level *and evolution* of economic activity of the undertaking concerned on the internal market *and on its domestic*

market;

market;

Amendment 34

Proposal for a regulation Article 3 – paragraph 2

Text proposed by the Commission

(2) A foreign subsidy is unlikely to distort the internal market if its total amount is below EUR 5 million over any consecutive period of three fiscal years.

Amendment

(2) A foreign subsidy is unlikely to distort the internal market if its total amount is below EUR 4 million over any consecutive period of three fiscal years.

Amendment 35

Proposal for a regulation Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) The Commission may consider whether the third country has a system for the review of subsidies in place, which the Commission has found to provide guarantees, in law and in practice, that the level of protection against undue state intervention into market forces and unfair competition is at least equivalent to the level of protection within the Union, whether the subsidy has been cleared under that system and whether that clearance appears relevant also for the effects on the internal market.

Amendment 36

Proposal for a regulation Article 3 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

(2b) In order to ensure efficiency and transparency, the Commission shall publish guidelines on the application of this Article at the latest 24 months after

the entry into force of this Regulation, including explanations and examples of how each indicator shall be applied. The Commission shall, in close cooperation with Member States, regularly update those guidelines and keep the European Parliament and the Council informed.

Amendment 37

Proposal for a regulation

Article 4 – paragraph 1 – point 2 a (new)

Text proposed by the Commission

Amendment

(2a) an export financing subsidy granted by a third country which is not a signatory to the OECD Arrangement on officially supported export credits;

Amendment 38

Proposal for a regulation

Article 4 – paragraph 1 – point 2 b (new)

Text proposed by the Commission

Amendment

(2b) a foreign subsidy to an undertaking active in a sector characterised by structural excess capacity;

Amendment 39

Proposal for a regulation

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

(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.

(1) The Commission **may**, 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 **on the internal market**.

Amendment 40

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

Text proposed by the Commission

Amendment

(2a) At the latest 24 months after the entry into force of this Regulation, the Commission shall publish guidelines on the application of this Article, including on the criteria that are used in the balancing. The Commission shall, in close cooperation with Member States, regularly update those guidelines and keep the European Parliament and the Council informed.

Amendment 41

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) ***Without prejudice to Article 5, the Commission shall impose redressive measures in order*** to remedy the distortion on the internal market actually or potentially caused by a foreign subsidy, ***unless it has accepted commitments offered by the undertaking concerned pursuant to paragraph 1a.***

Amendment 42

Proposal for a regulation Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) The Commission may 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 shall make them binding on the undertaking in a

decision with commitments in accordance with Article 9(3). The Commission shall monitor the undertaking's compliance with the commitments agreed upon.

Amendment 43

Proposal for a regulation Article 6 – paragraph 2

Text proposed by the Commission

(2) Commitments or redressive measures shall fully and effectively remedy the distortion caused by the foreign subsidy in the internal market.

Amendment

(2) Commitments or redressive measures shall fully and effectively remedy the distortion ***actually or potentially*** caused by the foreign subsidy in the internal market.

Amendment 44

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

Text proposed by the Commission

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

Amendment

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

Amendment 45

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

Text proposed by the Commission

(a) offering access under fair and non-discriminatory conditions to an infrastructure that was acquired or supported by the distortive foreign subsidies unless such fair and non-discriminatory access is already provided for by legislation in force in the Union;

Amendment

(a) offering access under fair and non-discriminatory conditions to an infrastructure ***or facility*** that was acquired or supported by the distortive foreign subsidies unless such fair and non-discriminatory access is already provided for by legislation in force in the Union;

Amendment 46

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 47

Proposal for a regulation
Article 6 – paragraph 3 – point h a (new)

Text proposed by the Commission

Amendment

(ha) requiring 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 the thresholds set out in Article 27.

Amendment 48

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 49

Proposal for a regulation
Article 6 – paragraph 4

Text proposed by the Commission

Amendment

(4) The Commission ***may*** impose reporting and transparency requirements.

(4) The Commission ***shall*** impose reporting and transparency requirements.

Amendment 50

Proposal for a regulation Article 6 – paragraph 5

Text proposed by the Commission

(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).

Amendment

deleted

Amendment 51

Proposal for a regulation Article 6 – paragraph 6

Text proposed by the Commission

(6) Where the undertaking concerned proposes to repay the foreign subsidy including an appropriate interest rate, the Commission shall accept such repayment as commitment **if** it can ascertain that the repayment is transparent and **effective**, while taking into account the risk of circumvention.

Amendment

(6) Where the undertaking concerned proposes to repay the foreign subsidy including an appropriate interest rate, the Commission shall accept such repayment as commitment **only where** it can ascertain that the repayment is transparent and **effectively and adequately remedies the distortive effects**, while taking into account the risk of circumvention.

Amendment 52

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, **including from Member States and undertakings or from Union-wide social partners**, regarding alleged distortive foreign subsidies.

The Commission shall establish a contact point through which this information can

be confidentially reported.

The Commission shall inform the public authority of any follow-up taken.

Competent public authorities shall collect and exchange data with the Commission.

The Commission shall publish guidelines on the criteria for opening an ex officio review by 24 months after the entry into force of this Regulation.

Amendment 53

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 54

Proposal for a regulation

Article 8 – paragraph 3

Text proposed by the Commission

(3) Where the Commission, after a preliminary assessment, concludes that there are no sufficient grounds to initiate the in-depth investigation, either because there is no foreign subsidy or because there are no indications of an actual or potential distortion on the internal market, it shall close the preliminary review and inform the undertaking concerned.

Amendment

(3) Where the Commission, after a preliminary assessment, concludes that there are no sufficient grounds to initiate the in-depth investigation, either because there is no foreign subsidy or because there are no indications of an actual or potential distortion on the internal market, it shall close the preliminary review and inform the undertaking *and Member States* concerned, *and the European Parliament*.

Amendment 55

Proposal for a regulation

Article 9 – paragraph 2

Text proposed by the Commission

(2) Where the Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 **to 5**, **it may** impose redressive measures ('decision with redressive measures').

Amendment

(2) Where the Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 **and 4 and without prejudice to Article 5**, **it shall** impose redressive measures ('decision with redressive measures'), **unless it accepts commitments pursuant to paragraph 3**.

Amendment 56

Proposal for a regulation

Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

The Commission may take interim measures, where:

Amendment

The Commission may take interim measures, **including during the preliminary review period**, where:

Amendment 57

Proposal for a regulation

Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Interim measures shall be limited in time and may 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.

Amendment 58

Proposal for a regulation

Article 12 – paragraph 1

Text proposed by the Commission

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

Amendment

(1) ***In order to carry out the duties assigned to it by this Regulation***, the Commission **shall, where** necessary,

conduct inspections of undertakings.

Amendment 59

Proposal for a regulation

Article 12 – paragraph 2 – point a

Text proposed by the Commission

(a) to enter any premises **and** land of the undertaking concerned;

Amendment

(a) to enter any premises, land **and means of transport** of the undertaking concerned;

Amendment 60

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 61

Proposal for a regulation

Article 15 – paragraph 1 – introductory part

Text proposed by the Commission

(1) The Commission may impose by decision fines and periodic penalty payments where an undertaking **concerned** or an association of undertakings, intentionally or negligently:

Amendment

1. The Commission **shall** impose by decision fines and periodic penalty payments where an undertaking or an association of undertakings **concerned**, intentionally or negligently:

Amendment 62

Proposal for a regulation

Article 15 – paragraph 5 – introductory part

Text proposed by the Commission

(5) Where an undertaking concerned does not comply with a decision with commitments pursuant to Article 9(3), a decision ordering interim measures pursuant to Article 10 or a decision imposing redressive measures pursuant to Article 9(2), the Commission may impose by decision:

Amendment

5. Where an undertaking ***or association of undertakings*** concerned does not comply with a decision with commitments pursuant to Article 9(3), a decision ordering interim measures pursuant to Article 10 or a decision imposing redressive measures pursuant to Article 9(2), the Commission may impose by decision:

Amendment 63

Proposal for a regulation

Article 18 – paragraph 3 – point a

Text proposed by the Commission

(a) the acquired undertaking or at least one of the merging undertakings is established in the Union and generates an aggregate turnover in the Union of at least EUR **500** million; and

Amendment

(a) the acquired undertaking or at least one of the merging undertakings is established in the Union and generates an aggregate turnover in the Union of at least EUR **400** million; and

Amendment 64

Proposal for a regulation

Article 18 – paragraph 3 – point b

Text proposed by the Commission

(b) the undertakings concerned ***received from*** third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR 50 million.

Amendment

(b) ***all*** the undertakings concerned ***have been granted by*** third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR 50 million.

Amendment 65

Proposal for a regulation

Article 18 – paragraph 4 – point a

Text proposed by the Commission

(a) the joint venture itself *or one of its parent undertakings* is established in the Union and generates an aggregate turnover in the Union of at least EUR **500** million; and

Amendment

(a) the joint venture itself is established in the Union and generates an aggregate turnover in the Union of at least EUR **400** million; and

Amendment 66

Proposal for a regulation

Article 18 – paragraph 4 – point b

Text proposed by the Commission

(b) the joint venture itself and its parent undertakings *received from* third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR 50 million.

Amendment

(b) the joint venture itself and its parent undertakings *have been granted by* third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR 50 million.

Amendment 67

Proposal for a regulation

Article 19 – paragraph 4

Text proposed by the Commission

(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).

Amendment

(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 68

Proposal for a regulation

Article 19 – paragraph 5

Text proposed by the Commission

(5) The Commission may request the

Amendment

(5) The Commission may request the

prior notification of any concentration which is not a notifiable concentration within the meaning of Article 18 at any time prior to its implementation where the Commission suspects that the undertakings concerned may have *benefitted from* foreign subsidies in the three years prior to the concentration. That concentration shall be deemed to be a notifiable concentration for the purposes of this Regulation.

prior notification of any concentration which is not a notifiable concentration within the meaning of Article 18 at any time prior to its implementation where the Commission suspects that the undertakings concerned may have *been granted* foreign subsidies in the three years prior to the concentration. That concentration shall be deemed to be a notifiable concentration for the purposes of this Regulation.

Amendment 69

Proposal for a regulation Article 27 – paragraph 2

Text proposed by the Commission

(2) For the purpose of Article 28, a notifiable foreign financial contribution in an EU public procurement procedure shall be deemed to arise where the estimated value of that public procurement is equal or greater than EUR **250** million.

Amendment

(2) For the purpose of Article 28 *of this Regulation*, a notifiable foreign financial contribution in an EU public procurement procedure shall be deemed to arise where the estimated **total** value of that public procurement, **calculated in accordance with the provisions laid down in Article 5 of Directive 2014/24/EU and Article 16 of Directive 2014/25/EU**, is equal **to** or greater than EUR **200** million.

Amendment 70

Proposal for a regulation Article 28 – paragraph 2

Text proposed by the Commission

(2) The obligation to notify foreign financial contributions under this paragraph shall extend to economic operators, groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU, Article 19(2) of Directive 2014/24/EU and Article 37(2) of Directive 2014/25/EU, main subcontractors and main suppliers. A subcontractor or supplier shall be deemed to be main where **their participation ensures key elements of the contract performance and in any case**

Amendment

(2) The obligation to notify foreign financial contributions under this paragraph shall extend to economic operators, groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU, Article 19(2) of Directive 2014/24/EU and Article 37(2) of Directive 2014/25/EU, main subcontractors and main suppliers. A subcontractor or supplier shall be deemed to be main where the economic share of their contribution exceeds **20 %** of

where the economic share of their contribution exceeds **30%** of the estimated value of the contract.

the estimated value of the contract.

Amendment 71

Proposal for a regulation Article 28 – paragraph 3

Text proposed by the Commission

(3) For groups of economic operators, main subcontractors and main suppliers, the lead economic operator shall ensure notification.

Amendment

(3) For groups of economic operators, main subcontractors and main suppliers, the lead economic operator shall ensure notification. ***The lead economic operator shall not be liable for information provided by their main subcontractors or main suppliers.***

Amendment 72

Proposal for a regulation Article 28 – paragraph 6

Text proposed by the Commission

(6) Where the Commission suspects that an undertaking may have ***benefitted from*** foreign subsidies in the three years prior to the submission of the tender or request to participate in the public procurement procedure, it may request the notification of the foreign financial contributions received by that undertaking in any public procurement procedure which are not notifiable under Article 27(2) or fall within the scope of paragraph 5 of this Article, at any time before the award of the contract. Once the Commission has requested the notification of such a financial contribution, it is deemed to be a notifiable foreign financial contribution in a public procurement procedure.

Amendment

(6) Where the Commission suspects that an undertaking may have ***been granted*** foreign subsidies in the three years prior to the submission of the tender or request to participate in the public procurement procedure, it may request the notification of the foreign financial contributions received by that undertaking in any public procurement procedure which are not notifiable under Article 27(2) or fall within the scope of paragraph 5 of this Article, at any time before the award of the contract. Once the Commission has requested the notification of such a financial contribution, it is deemed to be a notifiable foreign financial contribution in a public procurement procedure.

Amendment 73

Proposal for a regulation
Article 29 – paragraph 2

Text proposed by the Commission

(2) The Commission shall **carry out** a preliminary review no later than **60** days after it received the notification.

Amendment

(2) The Commission shall **complete** a preliminary review no later than **40** days after it received the notification.

Amendment 74

Proposal for a regulation
Article 29 – paragraph 4

Text proposed by the Commission

(4) The Commission may adopt a decision closing the in-depth investigation no later than **200** days after it received the notification. In exceptional circumstances, this time limit may be extended after consultation with the concerned contracting authority or contracting entity.

Amendment

(4) The Commission may adopt a decision closing the in-depth investigation no later than **120** days after it received the notification. In exceptional circumstances, this time limit may be extended **by 20 days** after consultation with the concerned contracting authority or contracting entity.

Amendment 75

Proposal for a regulation
Article 31 – paragraph 3

Text proposed by the Commission

(3) The contract may be awarded to an undertaking submitting a declaration under Article 28 before the Commission takes any of the decisions referred to in Article 30 or before the time limit laid down in Article 29(4) elapses only if the tender evaluation has established that the undertaking in question has in any case submitted the most economically advantageous tender.

Amendment

(3) The contract may be awarded to an undertaking submitting a declaration under Article 28 before the Commission takes any of the decisions referred to in Article 30 or before the time limit laid down in Article 29(4) **of this Regulation** elapses only if the tender evaluation has established that the undertaking in question has in any case submitted the most economically advantageous tender, **as defined in Article 67(2) of Directive 2014/24/EU and Article 82(2) of Directive 2014/25/EU. Information relating to distortive foreign subsidies, including any suspicion that a false declaration has been made, may be reported to the Commission.**

Amendment 76

Proposal for a regulation Article 31 – paragraph 6

Text proposed by the Commission

(6) In all cases, the contracting authority or the contracting entity shall inform the Commission of any decision relating to the outcome of the public procurement procedure.

Amendment

(6) In all cases, the contracting authority or the contracting entity shall inform the Commission ***without undue delay*** of any decision relating to the outcome of the public procurement procedure.

Amendment 77

Proposal for a regulation Article 31 – paragraph 7

Text proposed by the Commission

(7) The principles governing public procurement, including proportionality, non-discrimination, equal treatment, and transparency, shall be observed as regards all undertakings involved in the public procurement procedure. The investigation of foreign subsidies pursuant to this Regulation shall not result in the contracting authority or the contracting entity treating the undertaking concerned in a way that is contrary to those principles.

Amendment

(7) The principles governing public procurement ***procedures***, including proportionality, non-discrimination, equal treatment and transparency ***as well as compliance with obligations relating to applicable environmental, social and labour law and standards in the performance of the contract***, shall be observed as regards all undertakings involved in the public procurement procedure. The investigation of foreign subsidies pursuant to this Regulation shall not result in the contracting authority or the contracting entity treating the undertaking concerned in a way that is contrary to those principles.

Amendment 78

Proposal for a regulation Article 32 – paragraph 2

Text proposed by the Commission

(2) In addition, the Commission may impose by decision on the undertakings

Amendment

2. In addition, the Commission may impose by decision on the undertakings

concerned fines not exceeding 1 % of their aggregate turnover in the preceding business year, where they intentionally or negligently supply incorrect or misleading information in a notification pursuant to Article 28 or supplement thereto;

concerned fines not exceeding 1 % of their aggregate turnover in the preceding business year, where they intentionally or negligently supply incorrect or misleading information in a notification **and declarations** pursuant to Article 28 or supplement thereto;

Amendment 79

Proposal for a regulation

Article 33 – paragraph 1

Text proposed by the Commission

(1) A financial contribution notified in the context of a concentration under Article 19 may be relevant and assessed again in relation to another economic activity.

Amendment

1. A financial contribution notified in the context of a concentration under Article 19 may be relevant and assessed again **under this Regulation** in relation to another economic activity.

Amendment 80

Proposal for a regulation

Article 33 – paragraph 2

Text proposed by the Commission

(2) A financial contribution notified in the context of a public procurement procedure under Article 28 may be relevant and assessed again in relation to another economic activity.

Amendment

2. A financial contribution notified in the context of a public procurement procedure under Article 28 may be relevant and assessed again **under this Regulation** in relation to another economic activity.

Amendment 81

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

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 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.

Commission **shall** 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 **shall** 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 82

Proposal for a regulation Article 34 – paragraph 2

Text proposed by the Commission

(2) The Commission **may** publish a report on the results of its market investigation into particular sectors, particular types of economic activity or particular subsidy instruments and invite comments from interested parties.

Amendment

(2) The Commission **shall, where relevant**, publish a report on the results of its market investigation into particular sectors, particular types of economic activity or particular subsidy instruments and invite comments from interested parties.

Amendment 83

Proposal for a regulation Article 34 a (new)

Text proposed by the Commission

Amendment

Article 34a

Third-country dialogue

1. Where, following a market investigation pursuant to Article 34, 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.

2. That dialogue shall not prevent the Commission from taking further action under this Regulation, including the opening or continuation of investigations or the application of interim or redressive measures.

3. The Commission may seek to obtain the cessation or modification of the systemic distortive subsidies also by raising the matter in any relevant international forum.

4. The Commission may enter into consultations or cooperation, on behalf of the Union, with any other third country affected by the same systemic distortive subsidies or with any interested third country, with a view to obtaining the cessation or modification of the subsidies. This may involve, where appropriate, coordination in relevant international fora and coordination in response to the systemic distortive subsidies.

5. The Commission shall, without undue delay, inform the European Parliament and the Council of relevant developments.

Amendment 84

Proposal for a regulation Article 35 – paragraph 1

Text proposed by the Commission

(1) The powers of the Commission under Article 9 shall be subject to a limitation period of ten years, starting on the day on which a foreign subsidy is granted to the undertaking concerned. Any action taken by the Commission under Articles 8, 11, 12 **or 13** with respect to a foreign subsidy shall interrupt the limitation period. After each interruption, the limitation period

Amendment

(1) The powers of the Commission under Article 9 shall be subject to a limitation period of ten years, starting on the day on which a foreign subsidy is granted to the undertaking concerned. Any action taken by the Commission under Articles 8, 11, 12, **13 or 34** with respect to a foreign subsidy shall interrupt the limitation period. After each interruption, the

shall start to run afresh.

limitation period shall start to run afresh.

Amendment 85

Proposal for a regulation

Article 40 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3a) This Regulation is without prejudice to the application of Regulation (EU) 2022/... of the European Parliament and of the Council^{1a}.

^{1a} Regulation (EU) 2022/... of the European Parliament and of the Council on the access of third-country economic operators, goods and services to the Union's public procurement market and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement markets of third countries (International Procurement Instrument - IPI) (OJ L ...).

Amendment 86

Proposal for a regulation

Article 40 – paragraph 7

Text proposed by the Commission

Amendment

(7) An investigation pursuant to this Regulation shall not be carried out and measures shall not be imposed or maintained where such investigation or measures would be contrary to the Union's obligations emanating from any relevant international agreement it has entered into. In particular, no action shall be taken under this Regulation which would amount to a specific action against a subsidy within the meaning of Article 32.1 of the Agreement on Subsidies and Countervailing Measures.

(7) An investigation pursuant to this Regulation shall not be carried out and measures shall not be imposed or maintained where such investigation or measures would be contrary to the Union's obligations emanating from any relevant international agreement it has entered into. In particular, no action shall be taken under this Regulation which would amount to a specific action against a subsidy within the meaning of Article 32.1 of the Agreement on Subsidies and Countervailing Measures

This Regulation shall not prevent the Union from exercising its rights or fulfilling its obligations under international agreements.

and granted by a third country which is a member of the World Trade Organisation.
This Regulation shall not prevent the Union from exercising its rights or fulfilling its obligations under international agreements.

Amendment 87

Proposal for a regulation Article 42 – paragraph 1 – point a

Text proposed by the Commission

(a) the form, content and procedural details of notifications of concentrations pursuant to Article 19;

Amendment

(a) the form, content and procedural details of notifications of concentrations pursuant to Article 19, ***including a possible simplified procedure;***

Amendment 88

Proposal for a regulation Article 42 – paragraph 1 – point b

Text proposed by the Commission

(b) the form, content and procedural details of notifications of foreign financial contributions in public procurement procedures pursuant to Article 28;

Amendment

(b) the form, content and procedural details of notifications of foreign financial contributions in public procurement procedures pursuant to Article 28, ***including a possible simplified procedure;***

Amendment 89

Proposal for a regulation Article 42 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) The first implementing act or acts, covering all of the elements mentioned in paragraph 1, shall be adopted no later than one year after the entry into force of

this Regulation.

Amendment 90

Proposal for a regulation

Article 44

Text proposed by the Commission

Amendment

Article 44

deleted

Delegated acts

(1) The Commission is empowered to adopt delegated acts for the purposes of:

(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;

(b) exempting certain categories of undertakings concerned from the obligation to notify pursuant to Articles 19 and 28, in light of the practice of the Commission in the first five years of application of this Regulation, in case this practice allows to identify economic activities where foreign subsidies are unlikely to distort the internal market;

(c) amending the timelines for review and in-depth investigations as set out in Articles 24 and 29.

(2) Delegated acts referred to in paragraph 1 shall be adopted in accordance with Article 45.

Amendment 91

Proposal for a regulation

Article 45

Text proposed by the Commission

Amendment

Article 45

deleted

Exercise of the delegation

- (1) The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*
- (2) The power to adopt delegated acts referred to in Article 44 shall be conferred on the Commission for an indeterminate period of time starting two years after the date of entry into force of this Regulation.*
- (3) The delegation of power referred to in Article 44 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*
- (4) Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.*
- (5) As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*
- (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.*

**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

1. Within **two** years after the entry into force of this Regulation at the latest, **and every three years thereafter**, the Commission shall **review and evaluate the functioning and effectiveness of this Regulation and** present a report to the European Parliament and the Council on its application. **This review shall include an assessment of the notification thresholds set out in Articles 18 and 27 and their effects on the Commission’s capacity to implement this Regulation in an effective manner.**

Amendment 93

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

Text proposed by the Commission

Amendment

1a. **Where the report 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, including:**

(a) to amend the thresholds for notifications as set out in Articles 18 and 27;

(b) to exempt certain categories of undertakings concerned, such as good-faith sovereign wealth or pension funds, from the obligation to notify pursuant to Articles 19 and 28, especially where the practice of the Commission enables the identification of economic activities where foreign subsidies are unlikely to distort the internal market;

(c) to establish specific thresholds for notifications for certain economic sectors or differentiated thresholds for different types of public procurement contracts, especially where the practice of the Commission enables the identification of economic activities where foreign subsidies are more likely to distort the internal market, including as regards strategic sectors and critical infrastructure;

(d) to amend the timelines for review and in-depth investigations as set out in Articles 24 and 29;

(e) to abrogate the present Regulation, if the Commission considers that multilateral rules to address distortive subsidies have rendered this Regulation fully redundant.

Amendment 94

Proposal for a regulation Article 47 – paragraph 1

Text proposed by the Commission

(1) This Regulation shall apply to foreign subsidies granted in the **ten** years prior to the date of application of this Regulation where such foreign subsidies distort the internal market after the start of application of this Regulation.

Amendment

(1) This Regulation shall apply to foreign subsidies granted in the **seven** years prior to the date of application of this Regulation where such foreign subsidies distort the internal market after the start of application of this Regulation.