



EUROPEAN COMMISSION

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C(2021) 4604 final*

Dear President,

The Commission would like to thank the Senat for its Opinion of 24 March 2021 on the White Paper on levelling the playing field as regards foreign subsidies {COM(2020) 253 final}. The initiative on foreign subsidies is a cornerstone of the Commission's industrial strategy to strengthen the internal market and to enhance its competitiveness and resilience.

On 5 May 2021, the Commission presented its proposal for a Regulation on foreign subsidies distorting the internal market ('the Commission Proposal'). The Commission proposal will now enter the legislative process involving the European Parliament and the Council.

The Commission has carefully considered the issues raised by the Senat in its Opinion and would like to offer the following observations based on the Commission Proposal.

First, the Commission proposal builds on the feedback to multiple consultations carried out between June 2020 and January 2021. The details are provided in Annex 2 to the Impact Assessment report published together with the Commission proposal.

Second, the Commission has swiftly responded to the Covid-19 pandemic by establishing a temporary State Aid Framework¹, using the full flexibility under EU State aid rules. This Framework is temporary, and will be progressively phased out once the economic situation allows it. Once the new Regulation is in force, EU State aid and subsidies granted by third countries and affecting the internal market will be treated in a similar manner.

Third, in response to the concerns expressed by some stakeholders during the consultations, the Commission proposal seeks to minimise the administrative burden on companies. For this purpose, the proposed approach was also subject to a detailed analysis in the Impact Assessment. For instance, the proposal sets relatively high notifications thresholds as regards the ex-ante notification of concentrations and participation in EU public procurement procedures.

*Ms. Anca Dana DRAGU
President of the Senat
Calea 13 Septembrie nr. 1-3, sector 5
RO – 050711 BUCHAREST*

Fourth, the Commission will continue pursuing its ambitious trade policy agenda. As laid down in its recent Communication ‘Trade Policy Review - An Open, Sustainable and Assertive Trade Policy’ {COM(2021) 66 final}, the Commission will prioritise for instance the reform of the World Trade Organization. As the Trade Policy Communication notes, the proposal on foreign subsidies is a tool to confront new challenges and which therefore complements the trade policy instruments.

As regards the specific clarifications requested in the Opinion, the Commission would like to offer the following observations.

On point 5(a), the Commission proposal follows a broader approach by including five categories of measures regarded as most likely to distort the internal market.

On point 5(b), the Commission proposal establishes a threshold below which foreign subsidies would be unlikely to distort the internal market.

On point 5(c), a maximum deadline is introduced which is based on the average duration of evaluations in above-threshold procurements, with a view to minimising delays of the procurement procedure.

On points 5(d) and 5(g), the procedural time limits in the Commission proposal were set on the one hand to ensure having sufficient time for effective enforcement and on the other hand, to be closely aligned with the time limits under related instruments such as EU merger control or EU public procurement procedures.

On point 5(e), the Commission proposal establishes that the suspension of the contract award pertains only to the award to the investigated bidder, whereas the procurement procedure otherwise continues unimpeded.

On point 5(f), the Commission proposal foresees that where a distortive foreign subsidy has been found to exist, all subsequent communication between the contracting authority and the Commission shall be aimed at clarifying the situation of the respective bidder and the options the contracting authority has as regards the contract award.

The Commission hopes that these clarifications address the issues raised by the Senat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Margrethe Vestager
Executive Vice-President*

*Maroš Šefčovič
Vice-President*

ⁱ Temporary Framework for State aid measures to support the economy in the current Covid-19 outbreak, adopted on 19 March 2020 C(2020) 1863 and its amendments C(2020) 2215 of 3 April 2020, C(2020) 3156 of 8 May 2020, C(2020) 4509 of 29 June 2020, C(2020) 7127 of 13 October 2020, and C(2021) 564 of 28 January 2021.