



Council of the European Union  
General Secretariat

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**Brussels, 21 December 2021**

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| From: | General Secretariat of the Council |
| To:   | Working Party on Competition       |

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| Subject: | Proposal for a Regulation on Foreign Subsidies distorting the Internal Market -<br>Table for MS comments on document ST 8576/21 - Articles 41-46 and 48 |
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Delegations will find attached the MS comments on Articles 41-46 and 48 of the document ST 8576/21.

**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

| <b>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (Art. 41-46 + 48)</b> | <b>DK – FR – CZ – PL – AT – SE – FI – IT - BE – NL – HU – DE – LU</b><br><br><b>MS Drafting suggestions comments</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| Chapter 7: Transitional and final provisions                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Article 41                                                                                                                                                          | <p>FR</p> <p>(Comments):</p> <p>The French authorities welcome the application of the advisory procedure to the decisions which may be taken by the Commission under this regulation. It will contribute to the transparency of the procedure and, therefore, ensure that the Member States are fully informed.</p> <p>NL</p> <p>(Comments):</p> <p>NL:</p> <p>We would like to stress that whereas we propose the examination procedure for Article 43 in conjunction with Article 42, we <i>do support</i> the examination procedure for Article 41. When it comes to decisions pursuant to Articles 9, 24(3) and 30, we view the advisory procedure as the appropriate procedure.</p> |
|                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Committee procedure for decisions                                                                                                                                   | <p>CZ</p> <p>(Comments):</p> <p>As mentioned in the Explanatory memorandum accompanying EC proposal, distortions caused by foreign subsidies in the internal market</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|                                                                                                                                         | <p>may have a Union dimension, affecting several Member States. Moreover, the proposal falls in shared competence area. Therefore we find the role of Member States in decision making process through advisory procedure as insufficient. Competence of Member States in the area of public procurement and internal market, as well as the role of the Member States in anti-subsidy investigations should be taken into account. In this respect we find examination procedure as more appropriate.</p> <p>DE</p> <p>(Comments):</p> <p>We welcome the proposed mechanism for the participation of the Member States.</p> <p>Besides the participation according to Article 4 of the Regulation (EU) No 182/2011 we see need for further clarification with regard to the mutual exchange of information between the Commission and member state's authorities further clarification is needed as to possible conflicts with legal confidentiality requirements and purpose limitations. Information collected in the application of this regulation should be available to national authorities in related proceedings such as investment screening or merger control.</p> |
| Decisions pursuant to Articles 9, 24(3) and 30 shall be adopted in accordance with the advisory procedure referred to in Article 43(2). | <p>AT</p> <p>(Drafting):</p> <p>Decisions pursuant to Articles 9, <b>10</b>, 24(3) and <b>(6)</b> and <b>Article</b> 30 shall be adopted in accordance with the advisory procedure referred to in Article 43(2).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|  | <p>AT</p> <p>(Comments):</p> <p>AT is wondering why MS are not involved in decisions pursuant to Art. 10 and Art. 24 para 6. These articles should also be added to Art. 41. AT is interested in the reasons of the Commission for proposing an involvement of Member States via “<i>advisory procedure</i>” here? Why did the Commission not suggest an “<i>examination procedure</i>”?</p> <p>SE</p> <p>(Comments):</p> <p>What is the reasoning behind the exclusion of article 24.6 in this section? Shall the committee procedure in article 41 be applicable for separate decisions following article 24.6?</p> <p>IT</p> <p>(Drafting):</p> <p>Decisions pursuant to Articles 9, 24(3) and 30 shall be adopted in accordance with the <del>advisory</del> <b>examination</b> procedure referred to in Article 43(2).</p> <p>IT</p> <p>(Comments):</p> <p>The Italian authorities consider that the most appropriate comitology procedure is the examination procedure rather than the advisory procedure for the same reasons provided in the comments to Article 43 below. Therefore, Art.41 should be modified accordingly.</p> |
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**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|            | <p>In addition, in our understanding, according to Art.41 as it stands, all the decisions that the Commission adopts following the in-depth investigation both in the ex-officio (Article 9), both for concentrations (Article 24.3), and for tenders (Article 30) should be adopted under the comitology procedure. Should this understanding not be correct, then Art.41 should be clarified further.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Article 42 | <p>FR</p> <p>(Comments):</p> <p>For the purpose of predictability and legal certainty, it would be important to extend the scope of the article 42. To this end, the French authorities recommend the possibility for the Commission to take additional implementing acts concerning :</p> <ul style="list-style-type: none"> <li>- some procedural details of the investigations which may be initiated <i>ex officio</i> [for example, <i>seisin of the operators which takes into account the progress of the discussions/signature of contracts</i>] ;</li> </ul> <p>the form, content and procedural details of the alert mechanisms which may be set up between the Commission, the Member States and the undertakings which may be affected by the distortive effects of a subsidy.</p> <p>PL</p> <p>(Comments):</p> <p>Too many issues in this article have been left for regulation by implementing acts. Having regard to the practice of applying the provisions of the Regulation and in order to limit the burdens related to their application, especially in procurement procedures, the number of issues regulated in implementing acts should be limited. They should not establish a content of the obligations. Now it is not known how many</p> |

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|                                           | <p>implementing acts to the Regulation are envisaged by the Commission. It follows from the proposal that there will be an unlimited number of them. Meanwhile, the more implementing acts, the worse for legibility and the greater the burden associated with the application of the notification procedure. Entrepreneurs and contracting authorities will not be sure whether the regulatory element in the Regulation is complete or whether there are still implementing acts. Even if they act in good faith, it is possible to fail to fulfill an obligation and risk unnecessarily running a breach procedure. If there were to be one implementing act, it should be clearly indicated in the Regulation.</p> <p>It will be useful at the stage of the Regulation to present examples of provisions of such implementing acts by the Commission.</p> <p>NL</p> <p>(Comments):</p> |
| Committee procedure for implementing acts | <p>AT</p> <p>(Drafting):</p> <p><del>Committee</del> <b>Advisory</b> procedure for implementing acts</p> <p>AT</p> <p>(Comments):</p> <p>The current title of Art. 42 in conjunction with Art. 42 para 2 suggests that all implementing acts under the DFS proposal would be subject to the “<i>advisory procedure</i>” and the other procedures under Regulation No. 182/2011 could not apply. With the adaption of the title of Art. 42, it</p>                                                                                                                                                                                                                                                                                                                                                                                                                                           |

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|                                                                           | <p>would be clarified that it is only the “<i>implementing acts</i>” listed in Art. 42 para 1 which are subject to the “<i>advisory procedure</i>”, while other committee procedures for other “<i>implementing acts</i>” could still apply.</p> <p>BE</p> <p>(Drafting):</p> <p>The Commission is empowered to adopt implementing acts concerning:</p> <p>[...]</p> <p>(b) the form, content and procedural details of notifications <del>of foreign financial contributions in public procurement procedures</del> pursuant to Article 28;</p> <p>[...]</p> <p>BE</p> <p>(Comments):</p> <p>Notifications should not be limited to those where the economic operator indicates that foreign subsidies have been received.</p> |
| <p>The Commission is empowered to adopt implementing acts concerning:</p> | <p>FR</p> <p>(Drafting):</p> <p>The Commission is empowered to adopt implementing acts, <del>during the two years of application of this Regulation</del>, concerning,</p> <p>FR</p> <p>(Comments):</p> <p>It would be important to set a deadline for the Commission to take the first implementing acts (ideally during the two years of application of the</p>                                                                                                                                                                                                                                                                                                                                                               |

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|                                                                                                     | <p>Regulation).</p> <p>FI</p> <p>(Comments):</p> <p>We would be interested in hearing what kind of implementing acts the Commission is considering.</p> <p>During the Council negotiations we would like to hear what kind of implementing acts the Commission is considering and main features of the planned acts if possible</p> <p>DE</p> <p>(Comments):</p> <p>We would like to draw attention to the need to take into account the data protection rules when adopting these implementing acts where personal data within the meaning of Article 4(1) of Regulation (EU) 2016/679 are collected and processed (Article 4(2) of Regulation (EU) 2016/679) through the respective notifications and declarations.</p> |
| the form, content and procedural details of notifications of concentrations pursuant to Article 19; | <p>PL</p> <p>(Drafting):</p> <p>the form, <del>content and</del> procedural details of notifications of concentrations pursuant to Article 19;</p> <p>PL</p> <p>(Comments):</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |



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|                                                                                                                                                       | <p>The 'content' of the notification should be defined in the Regulation.</p> <p>SE</p> <p>(Comments):</p> <p>We propose that relevant requirements are included in the ESPD (European Single Procurement Document).</p> <p>DE</p> <p>(Drafting):</p> <p>the form, content and procedural details of notifications of concentrations pursuant to Article 19 <b><u>taking into account the goal to align notifications pursuant to Article 19 with notifications pursuant to Regulation (EC) No 139/2004;</u></b></p> <p>DE</p> <p>(Comments):</p> <p>As indicated in the Council Working Group, with a view to reducing unnecessary red tape and bureaucratic burden for companies, would it be desirable to create a one-stop-shop procedure for the application of Chapter 3 and the parallel application of the Merger Regulation to the extent possible.</p> |
| the form, content and procedural details of notifications of foreign financial contributions in public procurement procedures pursuant to Article 28; | <p>PL</p> <p>(Drafting):</p> <p>the form, <del>content and</del> procedural details of notifications of foreign financial contributions in public procurement procedures pursuant to</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

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|                                                                       | <p>Article 28;</p> <p>PL</p> <p>(Comments):</p> <p>The 'content' of the notification should be defined in the Regulation. We are in favor of using standardized forms for notifications.</p>                                                                                                                                                       |
| details of the disclosure pursuant to Article 38;                     | <p>PL</p> <p>(Drafting):</p> <p><u>Procedural</u> details of the disclosure pursuant to Article 38;</p> <p>PL</p> <p>(Comments):</p> <p>This addition is intended to indicate that the subject of implementing acts should be secondary issues, while the rules, rights and obligations of undertakings should be laid down in the Regulation.</p> |
| the form content and procedural details of transparency requirements; | <p>PL</p> <p>(Drafting):</p> <p>the form <del>content</del> and procedural details of transparency requirements;</p> <p>PL</p> <p>(Comments):</p> <p>The content of the transparency requirements should be specified in the</p>                                                                                                                   |

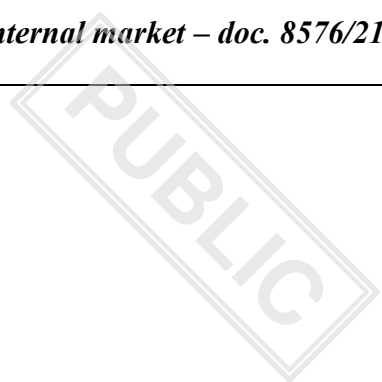
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|                                                                            | provisions of the Regulation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| detailed rules on the calculation of time limits;                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| the conditions and time limits for proposing commitments under Article 30; | <p>PL</p> <p>(Drafting):</p> <p><del>the conditions and</del> time limits for proposing commitments under Article 30;</p> <p>PL</p> <p>(Comments):</p> <p>We would like to request that the word ‘conditions’ regarding ‘commitments under Article 30’ be deleted, and also that it is specified that this provision refers to paragraph 1 of Article 30. In our opinion, it is the Regulation that should define a list, at least generic, of obligations to which economic operators may be obliged. It is necessary for the Commission to develop a list of such obligations, even of generic kind, already in the Regulation in order to ensure legal certainty and facilitate its application and limit its not uniform, discriminatory application to different economic operators in comparable situation.</p> <p>AT</p> <p>(Drafting):</p> <p><del>the conditions and time limits for proposing commitments under Article 30;</del></p> <p>AT</p> |

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|                                                                                                                                                           | <p>(Comments):</p> <p>AT thinks that such conditions and time limits should be foreseen in the Regulation itself, e.g. in Art. 30.</p>                                                                                                                                                                                                                                                                                                                                                                         |
| <p>detailed rules on the procedural steps referred to in Article 28, 29, 30 and 31 concerning investigations regarding public procurement procedures.</p> | <p>PL</p> <p>(Comments):</p> <p>We are of the opinion that where the provisions of the Regulation are to be specified in detail by implementing acts, the information on this should be included in each of these articles (28, 29, 30, 31), in order to ensure legibility of the provisions.</p> <p>SE</p> <p>(Comments):</p> <p>The role of Member states should be clear from reading the regulation. In case this role needs to be clarified it should be taken onboard in the text of the regulation.</p> |
|                                                                                                                                                           | <p>HU</p> <p>(Drafting):</p> <p>detailed rules on setting the appropriate interest rate for the purposes of Article 6(3)(h);</p> <p>the deadline for completing the preliminary review of Article 8;</p>                                                                                                                                                                                                                                                                                                       |

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the detailed deadlines for completing the in-depth investigation of Article 9;

the detailed obligations of the Member States' assistance under Article 12(5);

the time limits for the purposes of Article 15(1)(c)(ii);

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|  | <p>the detailed rules of handling the confidentiality requests under Article 39(2) and (3);</p> <p>HU</p> <p>(Comments):</p> <p>Article 42 (implementing acts) should empower the Commission to regulate the rate of the appropriate interest for the purposes of Article 6(3)(h).</p> <p>The Regulation should include a deadline for conducting the preliminary review. An open-ended review phase with no deadline might be seen as an infringement of legal certainty. For this reason, the Regulation should at least include a rule according to which the Commission must endeavour to complete the review within e.g. one year (cf. Article 9(6) of Council Regulation (EU) 2015/1589). Alternatively, the Regulation could empower the Commission to regulate the deadlines in Article 42. As the Commission is allowed to take a final decision even if the beneficiary or the third state not concerned does not provide information, we feel that having a final deadline is better than not having any deadline at all.</p> <p>The Regulation should include a deadline for conducting the investigation. An open-ended phase with no deadline might be seen as an infringement of legal certainty. For this reason, the Regulation should at least include a rule according to which the Commission must endeavour to complete the in-depth investigation within e.g. two years (cf. Article 9(6) of Council Regulation (EU) 2015/1589). Alternatively, the Regulation could</p> |
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|                                                                                                                                              | <p>empower the Commission to regulate the deadlines in Article 42.</p> <p>The exact expectations from the Member States should be specified in Article 12(5) or in an implementing act adopted by the Commission on the basis of an Article 42 authorisation because “actively assist” is very vague.</p> <p>We propose that Article 42 of the Regulation should empower the Commission to adopt implementing acts in order to regulate such time limits (their general framework, minimum and maximum deadlines, how they can be extended, what factors are to be taken into account when they are set).</p> <p>The Hungarian authorities recommend that the rules on professional secrecy should be more detailed, similarly to State aid cases, where they are regulated by a separate Communication (C(2003) 4582 of 1 December 2003). This would prevent legal debates about the issue of confidentiality, which is in everybody’s interest. Article 42 should empower the Commission to regulate the rules of professional secrecy in detail in an implementing act.</p> |
| <p>Implementing acts referred to in paragraph 1 shall be adopted in accordance with the advisory procedure referred to in Article 43(2).</p> | <p>DK</p> <p>(Drafting):</p> <p>Implementing acts referred to in paragraph 1 shall be adopted in accordance with the <b>examination procedure</b> <del>advisory procedure</del> referred to in Article 43(2) <del>xx</del></p> <p>DK</p> <p>(Comments):</p> <p>DK propose to amend this to the examination procedure.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

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|  | <p>AT</p> <p>(Drafting):</p> <p>Implementing acts referred to in paragraph 1 shall be adopted in accordance with the advisory procedure referred to in <del>in</del> Article 43(2).</p> <p>AT</p> <p>(Comments):</p> <p>Typo.</p> <p>IT</p> <p>(Drafting):</p> <p>Implementing acts referred to in paragraph 1 shall be adopted in accordance with the <del>advisory</del> <b>examination</b> procedure referred to in Article 43(2).</p> <p>IT</p> <p>(Comments):</p> <p>The Italian authorities consider that the most appropriate comitology procedure is the examination procedure rather than the advisory procedure. As a matter of fact, Recital 11 of Regulation 182/2011 provides for the examination procedure in cases that may have a “potentially important impact”.</p> <p>Indeed, some rules to be adopted in the list of Article 42 refer to issues that may have a "potentially important impact", such as the rules referred to in letter g) (detailed rules on the procedural steps concerning investigations regarding public procurement procedures) which have a</p> |
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|  | <p>considerable impact on procurements and on the execution of works or provision of services, having an impact on the suspension of the procurement procedures themselves.</p> <p>Furthermore, Article 2 paragraph 2 of Regulation 182/2011 on the choice of procedure provides for that the examination procedure applies, in particular, for the adoption of: (b) other implementing acts relating to: (iv) the common commercial policy.</p> <p>According to the Commission COM(2021) 223 final (pages 5-6) the proposed regulation on foreign subsidies falls largely within the scope of Article 207 TFEU. Therefore the examination procedure is justified and required according to the Comitology rules.</p> <p>In any case, the list of cases pursuant to Article 2 of Regulation 182/2011 in which the examination procedure is required is not exhaustive and as said, provides for the application of the examination procedure in matters falling within the exclusive competence of Commission, like the common commercial policy, as it will be the case in the matter of foreign subsidies regulation.</p> <p>In conclusion, according to the Comitology regulation 182/2011, the most appropriate committee procedure is the examination procedure and not the advisory procedure. Therefore, Articles 42 and 43 should be amended accordingly.</p> <p>NL</p> <p>(Drafting):</p> <p><b><u>NL:</u></b></p> <p>Implementing acts referred to in paragraph 1 shall be adopted in accordance with the advisory <b><u>examination</u></b> procedure referred to in Article 43(2).</p> <p>NL</p> |
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|                                                                                                                                         | <p>(Comments):</p> <p>NL:</p> <p>See also drafting suggestion for Article 43. NL proposes the examination procedure for implementing acts.</p>                                                                                                                                                                                                                                                                                                                              |
|                                                                                                                                         | <p>AT</p> <p>(Drafting):</p> <p><b>(3) Before the adoption of any measures pursuant to paragraph 1, the Commission shall publish a draft thereof and invite all interested parties to submit their comments within the time limit it lays down, which may not be less than one month.</b></p> <p>AT</p> <p>(Comments):</p> <p>Similar to Art. 33 para 2 of Regulation No. 1/2003 or Art. 36 para 2 of the DMA General Approach, such a para should be added in Art. 42.</p> |
| Article 43                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| Committee                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011. | <p>CZ</p> <p>(Comments):</p> <p>We would like to ask the Commission, if there will be new committee established and which experts should be appointed to this Committee, or whether any existing Committee would be consulted.</p> <p>Moreover, the role of this committee is only advisory body. This raises the</p>                                                                                                                                                       |

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|                                                                                                  | <p>question of whether the role of the Member States is adequately reflected, given that corrective measures affecting individual Member States may also be taken. The Commission should therefore take into account that the proposal for a regulation has a large overlap with trade policy and intervenes also with government procurement procedures in Member States. We would therefore prefer to see a stronger involvement of Member States in the decision-making process, as is the case, for example, in some of the trade policy instruments.</p> <p>FI</p> <p>(Comments):</p> <p>Please see our previous comment on Art 18: “It would be useful to have for example in the recitals a description of possible parallel processes related to Merger control and this regulation. The description could include also the Advisory Committee meetings and the fact stated by the Commission that the processes can end up in different outcomes as they have different aims”</p> |
| Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply. | <p>AT</p> <p>(Drafting):</p> <p>Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply. <b>The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.</b></p> <p>AT</p> <p>(Comments):</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|  | <p>Regarding Art. 43, AT kindly asks for further explanation why only the “<i>advisory procedure</i>” according to Art. 4 of Regulation No. 182/2011 has been chosen. AT would also be interested in the opinion of the Council Legal Service (CLS) on which options for MS’ involvement may be legitimately stipulated in this Article.</p> <p>Furthermore, in order to ensure at least a certain level of involvement of the MS, the Commission should inform the Committee how it has taken its opinion into account (see also Art. 19 para 6 EUMR).</p> <p>SE</p> <p>(Comments):</p> <p>We are open to discuss the procedure to be used. Advisory procedure or examination procedure.</p> <p>IT</p> <p>(Drafting):</p> <p>Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.</p> <p>IT</p> <p>(Comments):</p> <p>As said above for Article 42, the Italian authorities consider that the most appropriate comitology procedure is the examination procedure rather than the advisory procedure. As a matter of fact, Recital 11 of Regulation 182/2011 provides for the examination procedure in cases that may have a “potentially important impact”.</p> <p>Indeed, some rules to be adopted in the list of Article 42 refer to issues that may have a " potentially important impact", such as the rules referred to in letter g) (detailed rules on the procedural steps concerning</p> |
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**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|  | <p>investigations regarding public procurement procedures) which have a considerable impact on procurements and on the execution of works or provision of services, having an impact on the suspension of the procurement procedures themselves.</p> <p>Furthermore, Article 2 paragraph 2 of Regulation 182/2011 on the choice of procedure provides for that the examination procedure applies, in particular, for the adoption of: (b) other implementing acts relating to: (iv) the common commercial policy.</p> <p>According to the Commission COM(2021) 223 final (pages 5-6) the proposed regulation on foreign subsidies falls largely within the scope of Article 207 TFEU. Therefore the examination procedure is justified and required according to the Comitology rules.</p> <p>In any case, the list of cases pursuant to Article 2 of Regulation 182/2011 in which the examination procedure is required is not exhaustive and as said, provides for the application of the examination procedure in matters falling within the exclusive competence of Commission, like the common commercial policy, as it will be the case in the matter of foreign subsidies regulation.</p> <p>In conclusion, according to the Comitology regulation 182/2011, the most appropriate committee procedure is the examination procedure and not the advisory procedure. Therefore, Articles 42 and 43 should be amended accordingly.</p> <p>NL</p> <p>(Drafting):</p> <p><b><u>NL:</u></b><br/> <b><u>For decisions within the meaning of Article 41</u></b> <del>Where reference is made to this paragraph,</del> Article 4 of Regulation (EU) No 182/2011 shall apply.</p> |
|  | NL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|            | <p>(Drafting):</p> <p><b>NL:</b><br/> <b><u>For implementing acts within the meaning of Article 42,</u></b> Where reference is made to this paragraph, <b><u>Article 5</u></b> Article 4 of Regulation (EU) No 182/2011 shall apply.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Article 44 | <p>IT</p> <p>(Drafting):</p> <p><del>Article 44</del></p> <p>IT</p> <p>(Comments):</p> <p><b>Article 44 should be deleted in its entirety for the following reasons.</b></p> <p><b>1.</b> Article 44 provides for delegated acts for: (i) amending the notification thresholds, (ii) exempting certain categories of undertakings and (iii) amending the timelines.</p> <p>Article 44 is not in compliance with Art.290 TFEU because the delegated acts would amend <b>essential elements of the legislative act</b>.</p> <p>The essential nature of notification thresholds and of the exempted categories of undertakings is not questionable. As a matter of fact, the notification thresholds entail for the application or not of the entire Chapters 3 and 4, namely 2/3 of the entire FS Regulation, while to exempt categories of undertakings entail to the non-application of the whole regulation at all. Therefore, it is clear that those elements have essential nature as well as political nature because entail the application or not of the regulation itself and, as such should be reserved for the legislative act.</p> <p><b>2.</b> In any case, the delegation pursuant Article 44 does <b>not respect any of the conditions provided for under Article 290 TFEU</b>. As a matter of fact, objectives, content, scope and duration of the delegation of power are</p> |

*Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)*

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|                | <p>not defined in the legislative acts.</p> <p><b>3. There is no need for delegated powers to the Commission because the regulation already provides for a review in sufficient time.</b> The Italian authorities share the opinion that based on the consolidated experience in the application of the regulation, some changes to the rules could be needed and these changes could be done in the context of the review under Article 46 after 5 years after the entry into force of the regulation. This period is sufficient, but not too long, to gain experience to change essential elements of the regulation such as the notification thresholds and the category of undertakings to exclude from the scope of regulation. In the context of the review the Commission could submit legislative proposals to modify the regulation.</p> <p>Furthermore, an eventual delegation of powers could be only considered in the context of the review, once having gained enough experience on the application of the regulations.</p> |
| Delegated acts | <p>DK</p> <p>(Comments):</p> <p>DK propose that the Commission is empowered to adopt implementing act with examination procedure instead of a delegated act, as not all topics are suitable for a delegated act.</p> <p>PL</p> <p>(Comments):</p> <p>The scope of the issues to be amended by delegated acts is too wide, and in particular those acts should not regulate the level of the notification thresholds set out in Art. 18 and Art. 27, as well as the duration of the review and in-depth investigation procedures. Therefore, we propose</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|  | <p>deleting points (a) and (c) of its paragraph. 1. Decisions on changes on matters indicated in points (a) and (c) should be made on the basis of the ‘Review’ referred to in Art. 46, in the legislative procedure amending the Regulation, as these are too important issues that require agreement at the Council working level. In addition, we propose the use of the comitology procedure (i.e. adopting changes by implementing acts) in the cases specified in paragraph 1 point (b) - the exemption of certain categories of undertakings from the notification obligation.</p> <p>IT</p> <p>(Drafting):</p> <p><del>Delegated acts</del></p> <p>HU</p> <p>(Comments):</p> <p>According to Article 44(1) of the proposal, the Commission is authorised to adopt delegated acts for, among others, “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”. In this regard, recital (48) states that “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</p> |
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***Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)***

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|  | <p>a public procurement procedure.”</p> <p>Article 290(1) TFEU states that “A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.”</p> <p>However, the Hungarian authorities feel that the notification thresholds are essential, core elements of the merger control module of the proposal.</p> <p>Therefore, we have reservations about authorising the Commission to change these thresholds on the basis of a delegated act, without Member State control.</p> <p>The delegated acts are in general regulated by the Annex of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-making (Interinstitutional Agreement), Section II paragraphs 4-8. This requires the Commission to consult with the experts designated by the Member States “in a timely manner” on drafts. Also, if the material content of a draft delegated act is changed in any way, Member States’ experts must be given the given an opportunity to react, including in a written form. Finally, a summary of the consultation must be included in the draft delegated draft.</p> <p>Consequently, the ex-ante Member State control is very limited for delegated acts; it is limited to the rule that under Article 290 TFEU, the objectives, content, scope and duration of the delegation of power must be explicitly defined in the legislative acts.</p> <p>However, under Article 290(2) TFEU, the delegation may be revoked by the European Parliament or the Council, or it may be that the delegated act may only enter into effect if no objection is raised by the European Parliament or the Council.</p> |
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|                                                                                 | <p>According to Article 45(3) of the proposal, the revocation does not affect the act already in effect. Additionally, according to Article 45(6), the delegated act will only enter into effect if there is no objection by the European Parliament or the Council within two months (which may be extended by two months).</p> <p>Consequently, Member State control is very much restrained in the case of delegated acts. At the same time, the terms of delegations are not explicit.</p> <p>The Hungarian authorities believe the notification thresholds are not “non-essential elements”, therefore we feel that it might not be compatible with Article 290.</p> <p>As an alternative, we propose that a solution similar to the Merger Regulation’s (Council Regulation (EC) No 139/2004) Article 1(5) should be followed for setting the notification thresholds. (Article 1(5) of the Merger Regulation states that the thresholds may be reviewed by the Council acting by a qualified majority on the basis of a report and proposal from the Commission.)</p> |
| <p>The Commission is empowered to adopt delegated acts for the purposes of:</p> | <p>IT</p> <p>(Drafting):</p> <p><del>The Commission is empowered to adopt delegated acts for the purposes of:</del></p> <p>BE</p> <p>(Comments):</p> <p><b>We support that the European Commission is empowered to adopt delegated acts.</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

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|                                                                                                                                                                                                                                                     | <p>This will allow for swift reactions and adaptations of the Regulation in light of market developments without having to undergo a long lasting revision of the Regulation.</p> <p>DE</p> <p>(Comments):</p> <p>We share the intention to evaluate and possibly adjust thresholds for notifications as well as timelines for review and in-depth investigations after a certain time of practical experience with the new tool. However, as these are core elements of instrument, we rather see the proposed procedure of Article 46 as appropriate for these questions.</p>                                                                                                                         |
| 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; | <p>DK</p> <p>(Comments):</p> <p>(Comment)</p> <p>The competence to take decisions on important matters such as amending the thresholds for notifications as set out in Articles 18 and 27 should remain with the Member States. Potential discussions on such amendments should therefore, for instance, be reserved for a future review or fitness check of the regulation and not be delegated to the Commission. Alternatively, it should be revised by an implementing act with examination procedure.</p> <p>FR</p> <p>(Drafting):</p> <p>amending the thresholds for notifications as set out in Articles 3, 18 and 27, in the light of the practice of the Commission during the first three</p> |

**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|  | <p><del>five</del> years of application of this Regulation, and taking into account the effectiveness of application;</p> <p>FR</p> <p>(Comments):</p> <p>It would be necessary to reduce the time limit sets in article 44, from five to three years. It will allow the amendment of the Regulation forthwith, in light of the practice of the Commission, and therefore ensure the effectiveness and efficiency of the text.</p> <p>Moreover it would be important to extend the possibility to amend the thresholds to the one sets in Article 3, which concerned the threshold below which a subsidy is unlikely to be distortive.</p> <p>CZ</p> <p>(Comments):</p> <p>Although we understand and take note of the arguments that the Commission presented, we do not consider using delegated acts to adjust the thresholds as an adequate solution, given that adjusting the thresholds may broaden or, conversely, narrow the scope of the Regulation we consider that the involvement of Member States in deciding on changes to the thresholds, as provided for in Article 44(1a), is too weak. In the interest of legal certainty, the thresholds could only be amended when the whole Regulation is revised.</p> <p>Moreover, any potential changes of the thresholds should be preceded by a study or report of the effectiveness and functioning of the instrument and should be properly discussed with Member States. We would join other Member States and in this context, we would appreciate opinion also from CLS.</p> |
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|  | <p>AT</p> <p>(Drafting):</p> <p><del>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;</del></p> <p>AT</p> <p>(Comments):</p> <p>Thresholds for notifications should not be amended with delegated acts. Instead, it should be possible to amend them with new legislative proposals in order to ensure a certain level of MS involvement. See also the AT comment to Art. 46. AT would be in the opinion of the Council Legal Service (CLS) on whether the CLS regards the “<i>thresholds</i>” in this Article as “<i>essential</i>” or “<i>non-essential</i>” elements of the DFS.</p> <p>SE</p> <p>(Drafting):</p> <p>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 <u>threefive</u> years <u>and every three years thereafter</u> of application of this Regulation, and taking into account the effectiveness of application, <u>by adopting higher thresholds</u>;</p> |
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|  | <p>SE</p> <p>(Comments):</p> <p>If the possibility to amend thresholds is to be included under delegated acts it should be a possibility to amend them upwards.</p> <p>FI</p> <p>(Comments):</p> <p>We propose to consider deletion the threshold for notifications (thresholds for financial contribution, turnover and estimated value of public procurement) from Art 44 concerning delegated acts. The thresholds define the scope of the regulation for Chapters 3 and 4 and the thresholds have implications for the predictability and the administrative burden of the companies.</p> <p>IT</p> <p>(Drafting):</p> <p><del>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;</del></p> <p>IT</p> <p>(Comments):</p> |
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|                                                                                                                                                                                                                                                                                                       | <p>Delegated acts cannot change the essential elements of the law (Article 290 TFEU)</p> <p>DE</p> <p>(Drafting):</p> <p><u><del>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;</del></u></p> <p>LU</p> <p>(Drafting):</p> <p><del>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;</del></p> <p>LU</p> <p>(Comments):</p> <p>Modifying the thresholds for notification is an important element of the DFS. We therefore believe that thresholds should be amended via the ordinary legislative procedure.</p> |
| 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 | FR                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

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| <p>subsidies are unlikely to distort the internal market;</p> | <p>(Drafting):</p> <p>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 <del>three</del> <del>five</del> 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;</p> <p>FR</p> <p>(Comments):</p> <p>It would also be necessary to reduce the time limit set in article 44, from five to three years. It will allow the amendment of the Regulation forthwith, in light of the practice of the Commission, and therefore ensure the effectiveness and efficiency of the text.</p> <p>SE</p> <p>(Drafting):</p> <p>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 <del>first five years of</del> application of this Regulation, in case this practice allows to identify economic activities where foreign subsidies are unlikely to distort the internal market;</p> <p>SE</p> <p>(Comments):</p> <p>Exemptions for certain categories of undertakings should be considered earlier. As soon as possible, if the Commission experiences that certain cases can be simplified, and administrative burdens outweigh benefits of the procedures.</p> |
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|  | <p>FI</p> <p>(Comments):</p> <p>In what kinds of questions the exempting could be eligible? This could be elaborated more for example in the recitals.</p> <p>IT</p> <p>(Drafting):</p> <p><del>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;</del></p> <p>IT</p> <p>(Comments):</p> <p>Delegated acts cannot change the essential elements of the law (Article 290 TFEU)</p> <p>LU</p> <p>(Drafting):</p> <p><del>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;</del></p> |
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| <p>amending the timelines for review and in-depth investigations as set out in Articles 24 and 29.</p> | <p>DK</p> <p>(Comments):</p> <p>(Comment)</p> <p>The competence to take decisions on important matters such as amending the timelines for review and in-depth investigations as set out in Articles 24 and should remain with the Member States. Potential discussions on such amendments should therefore, for instance, be reserved for a future review or fitness check of the regulation and not be delegated to the Commission.</p> <p>Alternatively, it should be revised by <b><i>implementing acts with examination procedure.</i></b></p> <p>FR</p> <p>(Drafting):</p> <p>amending the timelines for review and in-depth investigations as set out in Articles 24 and 29, <b>in light of the practice of the Commission in the first three years of application of this Regulation.</b></p> <p>FR</p> <p>(Comments):</p> <p>For the purpose of predictability and legal certainty, it would be important to add a time limit for the timelines' review amendment.</p> <p>AT</p> <p>(Drafting):</p> |
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|  | <p>amending the timelines for <del>preliminary</del> review and in-depth investigations as set out in Articles 24 and 29.</p> <p>AT</p> <p>(Comments):</p> <p>AT has similar concerns regarding the amendment of the timelines for preliminary review and in-depth investigations as set out in Articles 24 and 29. Again, AT would be interested in the opinion of the CLS whether the “<i>timelines for review and in-depth investigations</i>” should be regarded as “<i>essential</i>” or “<i>non-essential</i>” elements of the DFS (see also the AT comments on Art. 46). If the CLS is of the opinion that such timelines are non-essential elements of the DFS, at least, clear criteria should be determined as to when the deadlines in Art. 24 and 29 can be changed with a delegated act.</p> <p>Furthermore, in Art. 8 the term “preliminary review” is used. (This is only relevant if Art. 44 para 1 point c is not deleted.)</p> <p>SE</p> <p>(Drafting):</p> <p>amending the timelines for review and in-depth investigations as set out in Articles 24 and 29 <u>to shorten them</u>.</p> <p>SE</p> <p>(Comments):</p> <p>If the possibility to amend timelines is to be included under delegated acts it should be a possibility to shorten them, to communicate updated procedures to parties concerned by the legislation.</p> |
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**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|                                                                                           | <p>IT</p> <p>(Drafting):</p> <p><del>amending the timelines for review and in-depth investigations as set out in Articles 24 and 29.</del></p> <p>IT</p> <p>(Comments):</p> <p>Delegated acts cannot change the essential elements of the law (Article 290 TFEU)</p> <p>DE</p> <p>(Drafting):</p> <p><b><u><del>amending the timelines for review and in-depth investigations as set out in Articles 24 and 29.</del></u></b></p> |
|                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Delegated acts referred to in paragraph 1 shall be adopted in accordance with Article 45. | <p>IT</p> <p>(Drafting):</p> <p><del>Delegated acts referred to in paragraph 1 shall be adopted in accordance with Article 45.</del></p>                                                                                                                                                                                                                                                                                          |
|                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Article 45                                                                                | <p>AT</p> <p>(Comments):</p> <p>No comments so far.</p>                                                                                                                                                                                                                                                                                                                                                                           |

**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|                            | <p>IT</p> <p>(Drafting):</p> <p><del>Article 45</del></p> <p>IT</p> <p>(Comments):</p> <p>As consequence of the deletion of Article 44, also Article 45 should be deleted.</p> <p>In any case the exercise of delegation as it stands in Article 45 is not compliant with Article 290 TFEU because it lacks of the essential conditions as: objectives, content and scope.</p>                                                                                                                                                                                                                                                                                                                                                |
| Exercise of the delegation | <p>PL</p> <p>(Comments):</p> <p>We have reservations about the proposed form of control of the adoption of delegated acts proposed in Art. 44 (expert consultation and no "ex-post" objections from the Council and the EP), in particular if they were to concern issues such as those referred to in Art. 44 paragraph 1 points (a) and (c). We consider that in cases such as the level of thresholds and timelines, the procedure for amending the Regulation seems appropriate. However, in the case of excluding certain categories of enterprises from the notification obligation (Art. 44 (1) (b)), we propose, as we have already emphasized in relation to Art. 44, use of the comitology procedure.</p> <p>IT</p> |

**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|                                                                                                                                                                                                                | <p>(Drafting):</p> <p><del>Exercise of the delegation</del></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.                                                                                          | <p>IT</p> <p>(Drafting):</p> <p><del>The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.</del></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 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. | <p>FR</p> <p>(Drafting):</p> <p>The power to adopt delegated acts referred to in Article 44 shall be conferred on the Commission for an indeterminate period of time starting <del>two years</del> <b>one year</b> after the date of entry into force of this Regulation.</p> <p>FR</p> <p>(Comments):</p> <p>In accordance with propositions and comments made on article 44, it would be important to grant the possibility to the Commission to adopt delegated acts one year after the entry into force of the text, instead of the two years currently indicated in the proposal.</p> <p>IT</p> <p>(Drafting):</p> <p><del>The power to adopt delegated acts referred to in Article 44 shall be</del></p> |

**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p>conferred on the Commission for an indeterminate period of time starting two years after the date of entry into force of this Regulation.</p> <p>NL</p> <p>(Drafting):</p> <p><b><u>NL:</u></b><br/>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, <b><u>taking into account the outcome of the review within the meaning of Article 46.</u></b></p> <p>NL</p> <p>(Comments):</p> <p>NL:<br/>Since review of the RFS is foreseen within 5 years after the entry into force of the regulation, NL argues that it seem logical to take into account the outcome of the review, which is relevant for the powers laid down in Article 45.</p> |
| <p>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 <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p> | <p>CZ</p> <p>(Comments):</p> <p>It should be taken into consideration whether it would be appropriate to allow for the abolition of certain potentially problematic acts as well.</p> <p>IT</p> <p>(Drafting):</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p>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 <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p> |
| 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.                                                                                                                                                                                                                                                                                                     | <p>IT</p> <p>(Drafting):</p> <p><del>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.</del></p>                                                                                                                                                                                                      |
| As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.                                                                                                                                                                                                                                                                                                                                                                                               | <p>IT</p> <p>(Drafting):</p> <p><del>As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</del></p>                                                                                                                                                                                                                                                                                                |
| 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. | <p>IT</p> <p>(Drafting):</p> <p><del>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</del></p>                                                                                                                           |



**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|                                                                                                                                                                                                                                                                                                       | 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Article 46                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Review                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 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. | <p>FR</p> <p>(Drafting):</p> <p>Within <del>three</del> <b>five</b> 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.</p> <p>FR</p> <p>(Comments):</p> <p>The French authorities welcome the inclusion of a provision allowing the review of the regulation. For this, regular exchanges will have to be initiated with the Member States, which are in direct contact with the operators and will therefore be able to share their practical observations on the implementation of the text and any potential difficulties encountered.</p> <p>In order to ensure the effectiveness of the instrument and its implementation, it would be necessary to reduce the review period of the text from five to three years.</p> <p>AT</p> |

**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|  | <p>(Drafting):</p> <p>(1) 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.</p> <p>AT</p> <p>(Comments):</p> <p>AT welcomes the review clause. It should also be thought of regular reviews.</p> <p>SE</p> <p>(Drafting):</p> <p>Within <del>five</del><u>three</u> years after the entry into force of this Regulation <u>and every three years thereafter</u> at the latest, the Commission shall present a report to the European Parliament and the Council on the <u>application functioning and efficiency</u> of this Regulation, accompanied, where the Commission considers it appropriate, by relevant legislative proposals.</p> <p>SE</p> <p>(Comments):</p> <p>Important that reviews are focused on the functioning and efficiency of the regulation. Reports must be presented on a more frequent basis with three years' frequency.</p> |
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**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|                                                                                                                                                      | <p>AT</p> <p>(Drafting):</p> <p><b>(2) That report shall include in particular an assessment of the thresholds for notifications set out in Articles 18 and 27 and of the timelines for preliminary preview and in-depth investigations 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. When the Commissions considers it appropriate, legislative proposals amending these thresholds as well as the timelines may accompany this report.</b></p> <p>AT</p> <p>(Comments):</p> <p>As already mentioned under Art. 44, threshold should only be amended with new legislative proposals. Therefore, a new para 2 should be added. The same applies to amending the “<i>timelines for review and in-depth investigations</i>” (see AT comments on Art. 44 above), unless the CLS is of the opinion that those timelines are non-essential elements of the DFS.</p> |
| Article 48                                                                                                                                           | <p>AT</p> <p>(Comments):</p> <p>No comments so far.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Entry into force and date of application                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> . | DE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|                                                                | <p>(Comments):</p> <p>As commented in the Council Working Group, six months appear too short. We uphold our scrutiny reserve and will suggest appropriate transition periods shortly.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| It shall apply from [date: six months after entry into force]. | <p>DK</p> <p>(Comments):</p> <p>(Comment)</p> <p>Although the Regulation is directly applicable, certain implementing measures will have to be taken nationally. Relevant examples are, i.a., that the member states must be able to carry out inspections on behalf of the Commission in accordance with Article 12 (7).</p> <p>A period of six months is not sufficient to introduce the necessary national measures. Instead, a period of 18 months is needed - and in any case not less than one year.</p> <p>PL</p> <p>(Comments):</p> <p>Does the Commission expect Member States to designate a competent authority to cooperate in the scope indicated in the Regulation (providing information to the Commission, assisting the Commission in carrying out controls, carrying out controls and other evidence at the request of the Commission), or will the Commission cooperate with relevant officials of the Member States depending on subsidy case/investigation? This issue is important to ensure the enforceability of the Regulation. If it is necessary to designate a competent authority to cooperate with the Commission, we will have to prepare an implementation act. Taking into account the</p> |

**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|  | <p>duration of the legislative process in Poland, we need more than 6 months to ensure the enforceability of this Regulation. Then, from our point of view, it would be necessary to extend the period after which the Regulation would apply from the date after entry into force - from 6 to 12 months after entry into force.</p> <p>SE</p> <p>(Drafting):</p> <p>It shall apply from [date: <del>six</del><u>eighteen</u> months after entry into force].</p> <p>SE</p> <p>(Comments):</p> <p>The time span for the legislative procedures require a longer time for entry into force than 6 months.</p> <p>IT</p> <p>(Comments):</p> <p>The Italian authorities express scrutiny reservation on the adequacy of the 6-month starting period for the application of the regulation, in order to allow for adequate time for the adaptation to the new rules, considering the significant impact on concentrations and public procurements.</p> <p>LU</p> <p>(Comments):</p> <p>The entry into application of this instrument will require legislative changes at national level which cannot be undertaken within 6 months. 24</p> |
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**Table for MS comments on articles 41-46 and 48 of the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market – doc. 8576/21 (94 rows)**

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|                                                                                                | months would be appropriate.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| This Regulation shall be binding in its entirety and directly applicable in all Member States. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| Done at Brussels,                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| For the European Parliament For the Council                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| The President The Presiden                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|                                                                                                | DK<br><br>(Comments):<br><br><b>General comments</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|                                                                                                | AT<br><br>(Comments):<br><br>AT likes to indicate that the comments above are of preliminary nature and AT reserves the right to submit further suggestions and comments at a later stage.<br><br>Regarding the committee procedures, AT kindly asks for further explanation why the examination procedure according to Art. 5 and the examination procedure according to Art. 5 para 4 lit b of Regulation No. 182/2011 have not been taken into consideration. AT would also appreciate the view of the CLS on the merits for MS involvement in the DFS (see in particular AT comments on Art. 43). |

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|            | <p>SE</p> <p>(Comments):</p> <p>The target group for the notification procedures needs to be accurate. Administrative resources need to be targeted to investigate the most distorting foreign subsidies. Possibilities to adjust the target group considering experience gained during the application of the regulation should be focused on reducing the administrative burden imposed on public procurement specifically and the notification procedures generally.</p> |
| <b>END</b> | <b>END</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |