

CCIA Europe Assessment of the Draft Implementing Regulation for the Regulation on foreign subsidies distorting the internal market (‘The Regulation’)

CCIA Europe supports the European Commission’s efforts to tackle distortive foreign subsidies. We hope the following recommendations can help better calibrate the implementation of the Regulation, minimise administrative burdens and avoid unintended consequences.

General Recommendations:

CCIA supports the use of the Commission’s taxonomy of most likely distortive subsidies, outlined in Article 5(1), as a threshold for triggering notification obligations in both concentrations and public procurement procedures. As a further step towards regulatory harmonisation, we also support extending the individual (€200,000) and combined (€4 million) de minimis thresholds to any notification obligation under the Regulation. Thirdly, CCIA recommends that the sale of goods or services to/from third-country governments in competitive, transparent and non-discriminatory procedures be exempted from notification obligations. Collectively, these measures would simplify the administrative efforts for undertakings concerned while allowing the Commission to focus on contributions most likely to cause a distortion. In addition, CCIA asks the Commission to clarify how undertakings are to attribute public and private entities’ financial contributions to third countries, particularly when third-country governments are unwilling to provide information regarding their ownership or control of non-public granting bodies. In this respect, the Commission could provide a list of entities whose actions would be attributable to a third country, updating the list as appropriate. Finally, and most critically, we urge the Commission to exempt undertakings from having to disclose classified information, thus aligning the Regulation with existing bilateral agreements regulating the categorisation and transfer of classified information between the EU and third-country governments.

Annex 1 – Concentrations:

CCIA Europe notes that a requirement to disclose ordinary business transactions such as utilities payments and social security contributions would require disproportionate compliance efforts from notifying parties, thus undermining the Regulation’s goal of limiting administrative burdens. Therefore, if our first general recommendation above is not accepted, we recommend that the Commission supplements the de minimis thresholds in Section 5.1 of Annex 1 with additional provisions limiting the need to notify ordinary course of business transactions. We also recommend that, in the case of an acquisition, the only financial contributions notifiable by the target are those granted in connection with the acquisition. In addition, CCIA requests clarification regarding the Commission’s approach when proceedings launched under the Regulation overlap with national- or EU-level proceedings targeting the same transaction.

Annex 2 – Procurement:

For further clarity on bidders' reporting obligations, CCIA asks the Commission to establish that the need to declare financial contributions pursuant to Article 29(1) of the Regulation only applies to public tenders that meet either the overall threshold of €250M or the threshold of €125M per lot. Moreover, we request additional details regarding the methodology to be used by the Commission in its assessment of the participation of subcontractors and suppliers in public tenders. As it stands, there is little clarity as to whether this will be assessed in purely monetary terms, and there is no guidance for cases where the remuneration of subcontractors/suppliers depends on contracting authorities' consumption. Finally, CCIA urges the Commission to establish a direct channel for subcontractors and suppliers to disclose contributions to the Commission, thereby shielding the sensitive business information of all parties involved in a tender. In order to provide further safeguards for business secrets, CCIA also asks for confidentiality obligations on contracting authorities, bringing them in line with the Commission's own standards.