Navigating Regulatory Intersections: A Case Study on the EU Regulation 2022/2560 and the 2011 Timor-Leste's Private Investment Law in the Context of Foreign Subsidies

George Barbosa da Silva[1]

Abstract:[2] The present paper conducts an analysis of Regulation (EU) 2022/2560, adopted on December 14, 2022, by the European Parliament and the Council, in conjunction with Timor-Leste's Private Investment Law applicable in 2011 (Law n. 14/2011, dated September 28). The primary focus is to explore the implications of the EU Regulation, addressing distortions in the European market caused by foreign subsidies, by comparing it with the potential granting of

[1] George Barbosa da Silva is a Senior Legal Counsellor with extensive experience in Timor-Leste, including roles as Senior Legal Advisor to the Cabinet of the Minister of the Presidency of the Council of Ministers, legal advisor at the Ministry of Tourism, Commerce, and Industries, and a legal consultant and private sector specialist to the World Bank Group. He holds an LLM in Global Competition and Consumer Law from Melbourne Law School, University of Melbourne, Australia, and a Postgraduate Diploma in Global Business from Saïd Business School, University of Oxford, U.K. Currently, he is a candidate in the Master of Leadership for Development program, jointly offered by the University of Manchester, U.K., and University of Melbourne, Australia.

[2] The present paper was prepared in August of 2023 for the 7th edition of the e-BLJ, 2023.

Ano 6 (2023), n.º 7

pp. 8 - 31

subsidies in Timor-Leste to European companies under the Law No. 14/2011.

Prior to this assessment, a brief overview highlights the advantages of Foreign Direct Investments in supporting the economic growth of developing countries. It underscores key elements suggesting that technology spill overs, assistance in human capital formation, contribution to international trade integration, promotion of a competitive business environment, and enhancement of enterprise development are achievable when coupled with suitable host-country policies and a foundational level of development. The consequences of neglecting tailored policies are also concisely explored.

The analysis then examines foreign subsidies granted, specifically, to Heineken in alignment with Timor-Leste's 2011 Private Investment Law, revealing the intersection of these legal frameworks and their potential impacts on investment practices in this emerging nation. The paper further provides a concise review and analysis of a significant agreement between the Democratic Republic of Timor-Leste and Heineken Asia Pacific PTE. LTD., exploring its potential scrutiny, including financial benefits, under the newly enacted Regulation (EU) 2022/2560. Although the Timor-Leste-Heineken agreement operates in a distinct context from the EU market, this chapter evaluates its possible examination or review within the framework of Regulation (EU) 2022/2560.

For the case study presented in this paper, the Private Investment Law 15/2017, dated August 23, was not considered.

Key Words: (1) Policies (2) Regulations (3) Foreign Subsidies (4) Foreign Direct Investment (5) Private Investment (6) Timor-Leste.

I. Foreign Direct Investment (FDI): Catalyst for Development and the Imperative of Tailored Policies

Developing countries, emerging economies, and nations in transition are progressively recognizing Foreign Direct Investment (FDI) as a key driver of economic development, modernization, income growth, and employment, leading them to liberalize FDI regimes, implement policies to attract investments, and optimize domestic strategies to maximize the benefits of foreign presence in their economies (OECD, 2002: 5).

In the context of Timor-Leste, it is noteworthy that Southeast Asia has evolved into a major hub for Foreign Direct Investment (FDI) in emerging regions, especially focusing on export-led development. In fact, over the past two decades, FDI inflows to the region have witnessed a ninefold increase, where well-developed Singapore plays a pivotal role as a central hub for numerous investors (Mantovani & de Crombrugghe, 2022).

In this regard, it is important to note that the ability of FDI to remain resilient during financial crises might cause many developing nations to view it as the preferred source of private capital inflow. However, despite considerable evidence supporting the benefits of such investment for host countries, a thorough and realistic assessment of its potential impact is essential (IMF, 2001).

Absolutely, scholars and numerous reports indicate that FDI yields benefits for developed and developing country economies, including technology spillovers, assistance in human capital formation, contribution to international trade integration, promotion of a competitive business environment, and enhancement of enterprise development when coupled with suitable host-country policies and a foundational level of development (OECD, 2008: 1).

In line with this, the World Bank's Investment Policy and Promotion Diagnostics & Tools (2017:6) also emphasize FDI as a key element in bridging global economic disparities, fostering growth, and enhancing diversification. Aligned with OECD recommendations (2008), the World Bank's Investment Policy and Promotion Diagnostics & Tools underscore in a practical way that FDI promotes innovation, job creation, knowledge transfer, and increased productivity, though evaluating its quality and local impact can be challenging.

Of course: to take the most of FDI, tailored and dynamic investment policies are crucial. Investment policies shall link international rulemaking, domestic reforms, and development objectives to optimize FDI benefits. Also, emphasizing the differentiation of FDI types acknowledges their diverse effects on development, requiring specific policy responses. However, numerous developing countries face challenges in navigating these nuances due to a lack of expertise. For instance, natural resource-seeking FDI may yield low-skilled jobs, while efficiency-seeking and strategic asset-seeking investments offer high-skilled opportunities (WBG, 2017:6). For instance, an OECD report suggests that multinational enterprises' foreign activities have sparked controversy and social concerns, with accusations of unfair competition through exploiting low wages, violating labour rights, and inadequate enforcement in developing countries. In response, civil society in many OECD countries urges MNEs to uphold internationally recognized labour norms across their foreign operations (OECD, 2008: 1).

As these issues arise, meticulous attention to investment policy formulation becomes critical. The focus of investment policies should be on attracting investors who positively contribute to the domestic economy, considering the challenges and impacts associated with different types of investment (WBG, 2017:6).

Neglecting tailored policies poses significant challenges for developing countries. Inefficient resource management, compromised competitiveness, missed opportunities for holistic development, and barriers to efficiency-seeking are noteworthy examples of these challenges. They will be explored in more detail below.

II. The Consequences of Neglecting Tailored Policies

A critical challenge arises from the failure to enact tailored policies for FDI, leading to missed opportunities in maximizing its potential benefits. As previously mentioned, various types of FDI entail diverse economic, social, and environmental impacts. In the absence of customized policies, nations may struggle to fully leverage these potential advantages, thereby limiting overall developmental gains (WBG, 2017: 33).

Inefficient resource allocation becomes a consequential challenge when tailored fit policies are absent. Countries, devoid of a customized framework, encounter difficulties in attracting, retaining, and seamlessly integrating FDI with the domestic economy. Such inefficiencies hinder the developmental impacts of foreign investment, undermining the potential benefits for societal and economic growth (WBG, 2017:33).

For instance, the competitiveness of a nation in attracting investments can be jeopardized when tailored fit policies are overlooked. Governments lacking crucial information and capacity to manage the quantity, quality, and type of investments received find their ability to compete on the global stage compromised. In this regard, a nuanced policy framework becomes imperative to bolster a nation's competitive edge (WBG, 2017:33).

Nevertheless, a dearth of tailored policies for FDI results in missed opportunities for holistic development. The potential benefits of FDI, including capital infusion, technological advancements, knowledge spillovers, and job creation, remain unrealized without appropriate policies. This missed potential becomes a significant setback for nations aspiring to harness the full spectrum of benefits associated with foreign investment (WBG, 2017:33).

Finally: efficiency-seeking FDI, particularly in crucial sectors like telecommunications and electricity, faces barriers when tailored policies are neglected. As a fact, restrictions imposed on foreign competitors impede the entry of efficiency-seeking investments, hindering not only sector-specific development but also the overall progress of the local economy (WBG, 2017:33).

In summary, the failure to implement tailored policies for FDI has wide-ranging consequences, impacting resource allocation, national competitiveness, overall development, and the entry of efficiency-seeking investments. These issues underscore the critical need for customized frameworks to fully realize the potential benefits and foster comprehensive socio-economic growth, especially crucial in the context of Timor-Leste.

III. Regulation (EU) 2022/2560: A Case Study on Tackling Distortions Caused by Foreign Subsidies in the EU Internal Market

A. Analytical Framework: Key Documents Reviewed

In the preparation of this analysis, the following documents and regulations were considered:

a) Regulation (EU) 2022/2560, addressing Foreign Subsidies Distorting the EU Internal Market

b) The Special Investment Agreement between Timor-Leste and Heineken Asia Pacific PTE. LTD

c) Law n.º 14/2011 (Private Investment Law)

B. Regulation (EU) 2022/2560: main considerations

Regulation (EU) 2022/2560, adopted on December 14, 2022, by the European Parliament and the Council, signifies a transformative shift in addressing distortions within the European Union's internal market caused by foreign subsidies. This analysis examines the key facets and implications of this pivotal regulation.

a) Background:

In the EU, competition adheres to a core principle: member states must refrain from providing financial advantages to companies using their own government funds if such support jeopardizes fair competition within the internal market. However, prior to the enactment of Regulation (EU) 2022/2560, this regulatory framework did not encompass subsidies originating from foreign nations, leading to various challenges.

b) The Regulation's Genesis:

Recognizing the adverse impact of foreign subsidies on the EU market, especially when they bolster companies involved in mergers or government contracts, Regulation (EU) 2022/2560 was meticulously crafted and promulgated.

c) Recognizing the Issue:

This Regulation acknowledges that companies in the EU, whether public or private, frequently receive financial support from third countries. This external funding often fuels business activities within the EU's internal market, thereby causing distortions.

d) Objective of the Regulation:

The primary objective of this regulation is to enhance existing state aid rules as delineated in Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU). It achieves this by endowing the European Commission with the legal authority to forestall distortions arising from subsidies provided by non-EU states, thus preserving a level playing field for all companies operating within the EU.

e) Scope:

The regulation's ambit encompasses all foreign subsidies, categorized as any financial contributions from third countries capable of distorting or likely to distort competition within the internal market. This expansive scope impacts all sectors and companies within the European Union, irrespective of their EU or foreign origin.

f) Understanding "Foreign Subsidy":

A "foreign subsidy" is constituted when a third country directly or indirectly provides financial assistance benefiting a company conducting business within the EU. These subsidies are typically limited by law or practice to specific companies or industries (Article 3).

In general lines, a foreign subsidy, as defined in Regulation (EU) 2022/2560, refers to financial contributions provided by non-EU governments or public bodies that distort the internal market of the European Union. These subsidies can take various forms, such as grants, loans, guarantees, tax breaks, or other financial benefits. The regulation aims to investigate and address the distortions caused by these subsidies to ensure fair competition within the EU market.

g) Defining Market Distortion by Foreign Subsidies:

Foreign subsidies distort the internal market when they engender competition and trade distortions within the European Union. This can materialize when such subsidies confer an unfair advantage upon certain enterprises, thereby impeding the proper functioning of the internal market. The regulation is designed to scrutinize and rectify such distortions engendered by foreign subsidies.

h) Empowering the European Commission:

This law bestows significant authority upon the European Commission. It equips the Commission to evaluate both the beneficial and detrimental impacts of subsidies on the internal market and empowers it to rectify any distortions. According to this Regulation, if a foreign subsidy enhances a company's position in the EU market but simultaneously harms competition, it is categorized as distortion.

i) Comprehensive Application:

This Regulation extends to all economic activities within the EU, encompassing mergers, public procurement, and other market scenarios. The Commission employs three primary tools to enforce these provisions:

- For mergers: Companies involved with a minimum EU turnover of €500 million and at least €50 million in foreign financial contributions over the three years preceding the merger must notify the Commission in advance.
- In public procurement: Companies participating in contracts exceeding €250 million and involving at least €4 million in foreign financial contributions must also notify the Commission before submitting bids.
- In other situations: The Commission can initiate investigations if it suspects that foreign subsidies are causing issues. It may even request information for smaller mergers or procurement cases.

j) Enforcement and Penalties:

Similar to what is stated in the competition law, the Commission can levy fines and penalties. These penalties can amount to as much as 10% of a company's annual earnings if they provide incomplete, incorrect, or misleading information or fail to submit requested information on time. Additionally, the Commission is authorized to conduct on-site inspections, even in other EU countries, with the consent of the respective nations.

k) Effective Commencement:

This law officially takes effect on July 12, 2023, albeit with certain exceptions. It is now incumbent upon the Commission to ensure the clarity of the rules and consistent implementation across the EU.

l) Assessing Internal Market Distortion:

The Commission assesses whether a foreign subsidy distorts the internal market on a case-by-case basis, a departure from the automatic prohibition characteristic of State aid. For corrective measures to be implemented, two conditions must be met:

1. The foreign subsidy should have the potential to "enhance an undertaking's competitive position in the internal market."
2. It should either "actually or potentially harm competition within the internal market."

To guide this assessment, the Regulation furnishes indicators, thresholds, and presumptions:

1. Indicators include factors such as the subsidy amount, the company's situation, and the subsidy's intended purpose.
2. Two thresholds are specified:
   a) Subsidies under €4 million over three consecutive years are presumed "unlikely to distort the internal market."
   b) Subsidies not exceeding de minimis aid levels (€200,000) per third country over three years are not considered to "distort the internal market."
3. A list of foreign subsidy categories likely to distort the internal market, including subsidies to struggling companies, unlimited guarantees, and those facilitating mergers or favorable tender submissions in public contracts. In these categories, the Commission is absolved from conducting a detailed assessment, with the burden of proof shifted to the undertaking to demonstrate the absence of market distortion.

m) Obligations Outlined in Regulation (EU) 2022/2560:

The regulation delineates several obligations aimed at addressing distortions attributable to foreign subsidies:

1. Investigation of foreign subsidies: The regulation authorizes investigations into foreign subsidies distorting the internal market and prescribes measures to rectify such distortions.
2. Notification of large concentrations: Persons and undertakings are mandated to notify specific large concentrations characterized by substantial foreign financial contributions before their implementation.
3. Notification of foreign financial contributions in public procurement: Foreign financial contributions within public procurement procedures exceeding predefined thresholds must be reported prior to the awarding of contracts.
4. Submission of commitments: Undertakings under investigation are obligated to submit commitments aimed at mitigating the distorting effects of foreign subsidies.
5. Disclosure and rights of defense: The regulation provides specific provisions regarding disclosure and the rights of defense for undertakings undergoing investigation.
6. In-depth investigation procedure: When there are adequate indications of a foreign subsidy distorting the internal market, the Commission initiates an in-depth investigation to gather additional information and evaluate the subsidy's effects.
7. Conduct of interviews: The Commission reserves the right to interview any natural or legal person willing to provide information relevant to the investigation, ensuring legal fairness and transparency.
8. Inspections within or outside the Union: The Commission is empowered to conduct inspections and seek explanations from representatives or staff of undertakings pertaining to facts or documents relevant to the investigation.
9. Justification for absence of unduly advantageous tender: The regulation necessitates the justification of the absence of unduly advantageous tenders based on foreign financial contributions.

10. Impact on the internal market: The regulation mandates an assessment of the impact of foreign financial contributions on the internal market, encompassing a description of the bidding process, business lines or activities, and potential positive effects. These obligations are designed to redress the distorting effects of foreign subsidies and foster fair competition within the internal market.

n) Implementation Timeline:

The bulk of the Foreign Subsidies Regulation became operational on July 12, 2023. It encompasses foreign subsidies granted within the five years preceding July 12, 2023, provided they cause distortion in the Union market after that date. Notification obligations for mergers and public tenders will apply starting from October 12, 2023. Companies receiving foreign subsidies outside the EU and operating within the Union market should exercise vigilance regarding this new legal framework. It is advisable for companies to compile and maintain records of all foreign financial contributions, not only in anticipation of mergers and participation in EU tenders but also in preparation for potential information requests from the Commission through the ex-officio procedure envisioned by the Foreign Subsidies Regulation.

o) Investigation of European Companies for Foreign Subsidies Received Before Regulation:

As per Regulation (EU) 2022/2560, investigations into foreign subsidies causing distortion within the internal market can be initiated at any time.

p) Lodging a Complaint:

To file a complaint, the party must adhere to the procedures outlined in the Resolution. Notifications should be submitted in one of the official languages of the Union, with the names of the notifying parties provided in their original language. Information required for the complaint should be structured according to the sections and sub-sections specified in the document. The notification must bear the signature of individuals authorized by law to act on behalf of each notifying party or one or more authorized representatives of the notifying party. Corresponding power(s) of attorney must be attached to the notification. Technical specifications and instructions for notifications can be found on DG Competition's website.

C. Analysis of the Special Investment Agreement between Timor-Leste and Heineken Asia Pacific PTE. LTD. Against the eventual applicability of the Regulation (EU) 2022/2560.

a) Introduction:

This chapter delivers an overview and analysis of a substantial agreement forged between the Democratic Republic of Timor-Leste and Heineken Asia Pacific PTE. LTD. It explores the potential scrutiny of this agreement, which includes financial benefits, under the recently enacted Regulation (EU) 2022/2560. This regulation, which came into effect on July 12, 2023, addresses the evaluation and possible regulation of foreign subsidies within the European Union (EU). While the Timor-Leste-Heineken agreement operates in a different context than the EU market, this chapter assesses whether it might be subject to examination or review within the framework of Regulation (EU) 2022/2560.

This agreement, referred to as the "Special Investment Agreement," was established in accordance with Article 29 of the Law No. 14/2011 (the Private Investment Law in force of that time), which granted the State the authority to engage in such agreements with private investors.

b) Background:

On September 28, 2011, the Private Investment Law (Law No. 14/2011) came into effect in Timor-Leste. Under this law, the State was empowered to engage in Special Investment Agreements with private investors. These agreements aimed to promote and incentivize private investments that were considered strategically significant for the national economy. One such investment project was proposed by Heineken, a well-known multinational beverage company.

c) Investment Project Overview:

As per Timor-Leste Government view, the investment project proposed by Heineken was of considerable importance to the national economy. It sought to address various key objectives, including:

1. Import Substitution: The project aimed to reduce reliance on imported goods, particularly by promoting domestic production.
2. Employment Generation: Heineken's investment was expected to create job opportunities within the country, contributing to economic growth and improved livelihoods for the local population.
3. Capacity Building: Through this project, efforts were made to enhance the skills and capabilities of the local workforce.
4. Economic Diversification: The project had the potential to stimulate, initiate, and promote various economic activities related to beverage production and distribution.
5. Attracting International Investment: By partnering with a renowned multinational corporation like Heineken, Timor-Leste aimed to attract other international investors to the region.

d) Agreement Signing:

The Council of Ministers, in a meeting held on November 21, 2014, approved the Heineken investment project and the draft Special Investment Agreement. The agreement was subsequently signed on January 8, 2015, by Ms. Veneranda Lemos, Secretary of State at that time, representing the State of Timor-Leste, and Dr. Roland Pirmez, CEO of Heineken Asia Pacific PTE. LTD.

e) Financial Aspects:

The investment project had a substantial budget, estimated to be between 30 and 45 million US dollars. This budget encompassed various elements, including working capital and potential investment losses.

f) Fiscal Benefits:

One of the notable aspects of this agreement was the fiscal benefits extended to Heineken. These benefits included:

1. Immediate Benefits: Heineken was granted all the benefits and exemptions provided for in the Private Investment Law for a period of 5 years from the start of commercial production. However, certain benefits, outlined in Articles 21(2), 21(3)(a), and 22(1)(a), were set to take effect on a specific date, referred to as the "Effective Date."
2. Long-Term Tax Regime: For a duration of 20 years following the commencement of commercial production, Heineken would be subject to specific taxes and fees concerning the production and sale of alcoholic beverages. These included, primarily, excise taxes, sales taxes and import customs duties. These taxes were set at varying rates depending on the alcohol content of the beverages produced.

g) Analysis and Opinion on the Timor-Leste-Heineken Special Investment Agreement:

The Special Investment Agreement between the State of Timor-Leste and Heineken Asia Pacific PTE. LTD. appears to be an attempt to foster economic growth, job creation, and capacity building within the country. By providing fiscal benefits and a very favourable tax regime, the State aimed to attract and retain a major player in the global beverage industry, potentially leading to further investment from international corporations.

In general lines, when an international company applies for a Special Investment Agreement in a developing country, there are several financial impacts and other factors that the developing nation should consider. These considerations go beyond purely financial aspects and include broader economic, social, and environmental factors. Here are some financial impacts and other factors to consider not only for a short run, but, very importantly, for a medium and long term:

1. Revenue Generation: Consider the potential for revenue generation through taxes, royalties, and fees associated with the investment. Evaluate the expected contribution to the country's fiscal revenues.

2. Employment and Income Generation: Analyse the impact on job creation and income generation. Evaluate the number and quality of jobs that the investment is expected to create, as well as the wages and benefits provided to employees.

3. Balance of Payments: Examine the effect on the country's balance of payments. Assess whether the investment will contribute to reducing trade deficits or enhancing export capabilities.

4. Economic Growth: Evaluate the potential contribution of the investment to overall economic growth, including its impact on the country's GDP and economic diversification.

Other factors, including the Human Development Index (HDI), should be taken into account, as illustrated in the following list:

1. Human Development: Assess how the investment may impact human development indicators such as education, healthcare, and access to basic services. A rising Human Development Index (HDI) can indicate improvements in the overall well-being of the population over a short, middle, and long term.
2. Social Inclusion: Consider the investment's potential to promote social inclusion and reduce income inequality. Evaluate whether it provides opportunities for marginalized communities and vulnerable groups.
3. Local Content and Supply Chains: Encourage the use of local goods and services in the investment's operations. This can stimulate local industries and support economic development.
4. Technology Transfer and Skills Development: Examine whether the investment involves technology transfer and skills development that can enhance the country's capacity for innovation and competitiveness.
5. Infrastructure Development: Assess whether the investment includes infrastructure development that benefits the broader economy, such as transportation, energy, or telecommunications infrastructure.
6. Community Engagement: Involve local communities in the decision-making process and assess the investment's potential social benefits and challenges for the surrounding communities.
7. Long-Term Sustainability: Consider the long-term sustainability of the investment and its ability to create enduring economic and social benefits rather than short-term gains.
8. Compliance with International Agreements: Ensure that the investment aligns with international agreements and

commitments to uphold the country's international reputation and avoid disputes.

9. Social and Cultural Impact: Examine the investment's social and cultural impact, including its effects on local traditions, heritage, and cultural identity.

Incorporating these factors, including the Human Development Index (HDI), into the assessment process is of paramount importance. This holistic approach allows for a deeper and more comprehensive analysis of the investment's multifaceted impact on the country beyond the short term. By considering these broader factors, developing nations like Timor-Leste can make informed decisions that prioritize sustainable development, economic growth, and improved well-being for their citizens while mitigating potential negative consequences.

As a fact, investments in human capital play a pivotal role in shaping Timor-Leste's future growth, enhancing productivity, and bolstering its competitiveness. As of 2020, Timor-Leste's Human Capital Index registered at 0.45, notably lower than the regional average of 0.59 for East Asia and the Pacific (WBG: 2020). Also worth to be mentioned is the fact that poverty levels in Timor-Leste have remained expressive. While there has been some progress in improving living standards, the pace of improvement has been relatively modest. For instance, the proportion of Timorese living below the national poverty line decreased from 50% in 2007 to an estimated 42% in 2014 (WBG).

Without a doubt, attracting foreign direct investors is important and necessary for developing countries like Timor-Leste, which has a small-scale economy. However, considering the prevailing circumstances marked by a moderate level of social development, restricted human capital growth, and relatively restrained economic development, which in turn has implications for private sector progress, it prompts inquiries into whether a comprehensive evaluation to approve Special Investment Agreements encompassed all these vital factors when determining the eligibility for the Long-Term Tax benefit, as, for example, the one awarded to Heineken.

While some of these impacts appear to have been presented and justified in the Special Investment Agreement, there is some uncertainty regarding whether a comprehensive evaluation of their long-term consequences has been conducted and whether the intended objectives have been effectively advanced. The absence of sufficient data prevents a more thorough assessment in this regard. Additionally, there is a suggestion that further refinement may be needed in the government's strategy for measuring the attainment of these goals.

D. Balancing Act: Navigating the Special Investment Agreement entered into by the Democratic Republic of Timor-Leste, with Heineken Asia Pacific PTE. LTD. and the EU's Foreign Subsidies Regulation

As previously mentioned, the Special Investment Agreement between Timor-Leste and Heineken aimed to stimulate economic growth and employment by offering fiscal incentives to attract international investment. Nevertheless, it has been suggested that these benefits may have led to disparities within the domestic market.

In light of this situation, wherein Heineken, as a European company, was granted extended preferential fiscal advantages and a favourable tax regime lasting for 20 years from 2015, there arises a significant concern presented by Timorese Private Sector representatives regarding potential market imbalances in Timor-Leste. These suggested imbalances could result from reduced competition and, in some instances, could even compel the government to impose higher taxes on alcoholic product imported by other players. This situation prompts a critical question: Is it possible for an alleged affected party to submit a complaint before the EU Commission, invoking market distortion under the EU's Foreign Subsidies Regulation?

To answer that, it is necessary to first consider that the Regulation (EU) 2022/2560, effective from July 12, 2023, primarily addresses distortions in the European market caused by foreign subsidies.

In this aspect, is a fiscal benefit provided under a special agreement considered a foreign subsidy according to Regulation (EU) 2022/2560?

As a fact, Article 20(3)(b) of Regulation (EU) 2022/2560 includes exemptions from regular tax regulations by foreign countries as "foreign financial contributions." These exemptions play a role in determining whether the notification threshold for concentration procedures, as outlined in this article, is met. However, certain tax measures don't need to be reported unless they fall into categories listed in Article 5 of Regulation (EU) 2022/2560, which are likely to distort the market. These include deferring tax payments, tax amnesties, and other standard tax rules. Additionally, using tax reliefs to avoid double taxation in line with bilateral or multilateral agreements or national laws may also be exempt. In any case, the Commission can always request more details on these transactions and this on a case-by-case basis.

Nevertheless, if foreign financial contributions benefit specific businesses in the internal market and are limited by law or practice to certain businesses or industries, they may be considered "foreign subsidies" as per Article 3(1) of Regulation (EU) 2022/2560.

As evident, the main objective of the Regulation (EU) 2022/2560 is to scrutinize and rectify any imbalances caused by such subsidies, thus promoting fair competition within the EU market. However, due to its specific focus, this regulation may not be suitable for addressing situations outside the European Union. Therefore, if any disruptions or distortions occurred in Timor-Leste due to the Heineken investment project, but they did not impact the European Union market, it is unlikely that the Foreign Subsidies Regulation could be invoked for claims related to these non-EU market distortions, even if the fiscal benefit provided under the agreement is understandable as a foreign subside under the Regulation (EU) 2022/2560.

Moreover, the Regulation has specific timeframes, with its provisions covering foreign subsidies granted within five years preceding July 12, 2023, provided they cause distortion in the

Union market after that date. Therefore, claims related to distortions occurring prior to or beyond this timeframe may not fall under the purview of this Regulation.

As stated above, while the Special Investment Agreement with Heineken may represent a significant opportunity for economic development in Timor-Leste, its potential implications in light of the Foreign Subsidies Regulation should be carefully considered, especially regarding the scope and timing of its applicability.

IV. Conclusion

Foreign Direct Investments play a crucial role in fostering economic growth in developing countries. However, to maximize their benefits, it is imperative to implement tailored investment policies. The challenges associated with neglecting such policies, including inefficient resource allocation, compromised competitiveness, and missed opportunities for holistic development, emphasize the urgent necessity for customized frameworks. These tailored approaches are vital for unlocking the full potential of foreign investment, thereby promoting comprehensive socio-economic growth in developing nations like Timor-Leste.

In light of these considerations, an analysis was undertaken on the Special Investment Agreement granted under Law No. 14/2011, dated September 28 (Private Investment Law), with Heineken, alongside the Regulation (EU) 2022/2560. The first part to the analysis emphasizes that while a Special Investment Agreement holds significant potential for economic development in Timor-Leste, a thorough evaluation of its potential implications is crucial, considering, in particular, internal competition policies. Particular attention should be given to assessing the scope and timing of its applicability. With almost nine years passed since the approval of the Heineken investment project, the Timor-Leste Government now has an opportunity to review the gains achieved since the agreement's celebration and to evaluate the effectiveness of current policies - including the new Private

Investment Law enacted in 2017. Ensuring these policies promote technology spill-overs, assist in human capital formation, contribute to international trade integration, foster a competitive business environment, and enhance enterprise development is vital.

The second part of the analysis, centred on the Foreign Subsidies Regulation (EU) 2022/2560, effective from July 12, 2023, illustrates its primary focus on addressing distortions in the European market arising from foreign subsidies. However, its suitability for handling issues beyond the EU, such as those potentially arising in Timor-Leste, is questioned. The Regulation's stringent time constraints, applicable to subsidies granted within five years before July 12, 2023, contribute to potential distortions within the EU market afterward. Claims outside this timeframe may not fall under this Regulation's purview. While the Special Investment Agreement with Heineken holds promise for Timor-Leste's economic development, it demands thorough scrutiny. It is crucial to acknowledge that the Regulation's applicability is confined by geographical and temporal limitations, a consideration that applies to parties contemplating lodging complaints with the EU Commission against an EU enterprise that may have received foreign subsidies.

In summary, the imperative for tailored investment policies, as underscored through the analysis of the Special Investment Agreement and the EU Regulation, highlights the critical need for customized frameworks to unlock the full potential of foreign investment and foster comprehensive socio-economic growth in developing nations like Timor-Leste.

Bibliography

A. Articles/Books/Reports

Loungani, Prakash; & Razin, Assaf (2001); in: "How Beneficial Is Foreign Direct Investment for Developing Countries?", Finance & Development, IMF, Volume 38, Number 2. <https://www.imf.org/external/pubs/ft/fandd/2001/06/loungani.htm>. Accessed on [29 July 2023].

Mantovani, Iris; & de Crombrugghe, Alexandre (2022): "Foreign investment has helped to deliver growth in Southeast Asia – can it also deliver sustainable development?". Hinrich Foundation. <https://www.hinrichfoundation.com/research/article/fdi/foreign-investment-deliver-growth-in-southeast-asia/>. Accessed on [15 July 2023].

OECDC (2002). Foreign Direct Investment for Development – Maximizing Benefits, Minimising Costs. Overview. pp. 32

OECDC (2008). The Social Impact of Foreign Direct Investment, in: Policy Brief, July 2008. Paris. pp. 8

WBG (2017). Investment Policy and Promotion Diagnostics & Tools, Maximizing the Potential Benefits of Foreign Direct Investment (FDI) for Competitiveness & Development. pp. 34

WBG (2020). The Human Capital Index 2020. Available at: <https://www.worldbank.org/en/publication/human-capital#Index>. Accessed on [22 July 2023].

WBG (2023). Country data: Timor-Leste. Available at: <https://data.worldbank.org/country/timor-leste?display=graph>. Accessed on [15 July 2023].

B. Legislation

Law n.° 14/2011, from September 28 (Private Investment Law of Timor-Leste)

Regulation (EU) 2022/2560, addressing Foreign Subsidies Distorting the EU Internal Market

Government Resolution n. 37/2014, from 17 December (which approved the investment project of Heineken and the Special Investment Agreement draft)