

THE EUROPEAN COMMISSION ADOPTS WHITE PAPER ON HOW TO ADDRESS FOREIGN SUBSIDIES IN THE EU INTERNAL MARKET

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Legal Briefings

On 17 June 2020, the European Commission (“the Commission”) issued a “[White Paper on levelling the playing field as regards foreign subsidies](#)” (“the White Paper”), launching a public consultation on a number of ambitious and far reaching possible options and legal instruments to address distortions in the European Union’s (“EU”) internal market resulting from foreign subsidies. The White Paper underlines that while the EU remains open to global trade and investment, it will pursue a model of “open strategic autonomy” to ensure fair conditions of competition and a “level playing field” for all economic operators in the EU internal market.

The publication of the White Paper follows a series of actions taken at both EU and Member State level to tighten the rules on foreign companies investing and operating in the EU internal market. In March 2020, the Commission launched its new Industrial Strategy for Europe, with one of its objectives being to “uphold a global level playing field” for European industry (see our earlier [blog post](#)). The Commission committed to strengthen its anti-subsidies toolbox to address distortions in the EU internal market created by foreign subsidies. In parallel, there has been growing support from Member States for reform of EU competition rules to take into account potential abusive behaviour by economic operators from outside the EU, including in particular state-subsidised companies, as illustrated by a [letter](#) sent to EU Commissioner Margrethe Vestager by Germany, France, Italy and Poland in February 2020.

The Commission argues that there is a regulatory gap that is not addressed by existing legal tools:

- EU State aid rules apply to public support provided by EU Member States and does not cover subsidies granted by non-EU authorities (with the exceptions of the EEA regime and certain EU trade / association agreements).
- The EU competition rules do not cover conduct that distorts competition in the internal market due to (foreign) subsidies.
- EU merger control only assesses the impact on competition and not whether an economic operator has benefitted from third-country public funds.
- The EU framework for screening foreign direct investment (“FDI”) targets potential threats to security and public order from investments into critical assets, but does address the issue of distorting foreign subsidies.
- EU trade defence tools can only cover subsidised goods imported into the EU and do not extend to trade in services and investment, while EU public procurement legislation does not provide for any specific rules on the participation of economic operators benefiting from foreign subsidies.
- With regard to EU funding, the rules on access to EU financial support are aimed at protecting a “level playing field”, but do not consider the issue of foreign subsidies and its impact on the ability of the companies to apply for EU funding.

The White Paper puts forward for discussion three innovative tools intended to fill this regulatory gap:

- Module 1: A general ex-post tool to investigate and possibly take measures against foreign subsidies provided to beneficiaries established or active in the EU.
- Module 2: A mandatory mechanism for ex-ante notification, investigation and possibly remedial measures on foreign subsidies facilitating the acquisitions of EU companies.
- Module 3: A mandatory mechanism for prior notification of foreign subsidies in the context of public procurement procedures

A mechanism for prior notification similar to Module 3 for public procurement procedures is also proposed to tackle distortions caused by foreign subsidies in the context of EU funding.

All, or a combination of, the three models could be implemented to tackle foreign subsidy related conduct.

The proposals are far reaching and will spawn a major debate. A spokesperson for China's mission to the EU has been reported as saying that China's subsidies are in line with WTO rules and that the EU should refrain from protectionist measures. For more information, see the statement issued by the Chinese Mission to the EU [here](#).

The [consultation](#) on the proposals is open until 23 September 2020.

For more detail on the proposed tools, please see our briefing [here](#).

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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