

THE EU FOREIGN SUBSIDIES REGULATION: SUBSTANTIVE ASSESSMENT ISSUES AND OPEN QUESTIONS

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Legal Briefings - By **Morris Schonberg, Senior Associate**

The EU Institutions have now reached agreement in relation to the new Foreign Subsidies Regulation, a potentially far-reaching instrument that effectively creates a new subsidy control regime for non-EU subsidies affecting the EU's internal market.

Morris Schonberg, a subsidy control and State aid specialist in our Brussels office, has recently published his article '*The EU Foreign Subsidies Regulation: Substantive Assessment Issues and Open Questions*' in the *European State Aid Law Quarterly*, where he addresses the key substantive assessments that the European Commission will need to consider when investigating foreign subsidies under the new Regulation, namely: (i) the existence of a 'foreign subsidy'; (ii) whether the subsidy causes a 'distortion' in the EU's internal market; (iii) whether the negative effects in the internal market may be balanced by any positive effects of the subsidy; and (iv) the determination of redressive measures or commitments required to address the distortions.

Morris' article identifies a number of significant open issues and questions that could have a substantial effect on how the Regulation operates and ultimately, its impact in practice on competitive conditions within the internal market. These include, in particular: the extent to which EU State aid law and / or WTO subsidy law concepts are to be drawn upon in defining the notion of a 'subsidy' for these purposes; the analytical approach to assessing distortions as well as exactly what distortions and effects are being assessed in the case of subsidised M&A and public contract tenders; the nature and rigour of the balancing assessment and the identification of precisely what kind of positive effects are to be taken into account in the balancing.

To read Morris' article, click [here](#) (EStAL subscription required).

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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