



## Commission adopts White Paper on foreign subsidies in the Single Market

Brussels, 17 June 2020

The European Commission has adopted a [White Paper](#) dealing with the distortive effects caused by foreign subsidies in the Single Market. The Commission now seeks views and input from all stakeholders on the options set out in the White Paper. The [public consultation](#), which will be open until 23 September 2020, will help the Commission to prepare for appropriate legislative proposals in this area.

Executive Vice-President Margrethe **Vestager**, in charge of competition policy and responsible for the cluster Europe Fit for the Digital Age, said: *"Europe's economy is open and closely interlinked to the rest of the world. If this is to remain a strength, we must stay vigilant. That is why we need the right tools to ensure that foreign subsidies do not distort our market, just as we do with national subsidies. Today's White Paper launches an important discussion on how to address effects caused by foreign subsidies. The Single Market is key to Europe's prosperity and it only works well if there is a level playing field."*

Commissioner for the Internal Market, Thierry **Breton**, said: *"With today's White Paper we deliver a key element for our vision of Europe's New Industrial Strategy based on competition, open markets and a strong Single Market. The level playing field in the Single market is at the heart of this initiative and will help our companies operate and compete globally and thus promote the EU's open strategic autonomy. As part of our Single Market rule book we need to prevent foreign subsidies from distorting procurement procedures and ensure that firms benefit from fair access to public contracts."*

Commissioner for Trade Phil **Hogan** said *"The EU is amongst the most open economies in the world, attracting high levels of investment from our trading partners. However, our openness is increasingly being challenged through foreign trade practices, including subsidies that distort the level playing field for companies in the EU. Along with other tools available at EU level such as foreign direct investment screening and trade defence measures, the White Paper is a welcome addition to the toolbox for our open strategic autonomy."*

EU competition rules, trade defence instruments and public procurement rules play an important role in ensuring fair conditions for companies in the Single Market.

Subsidies by Member States have always been subject to EU State Aid rules to avoid distortions. Subsidies granted by non-EU governments to companies in the EU appear to have an increasing negative impact on competition in the Single Market, but fall outside EU State aid control. There is a growing number of instances in which foreign subsidies seem to have facilitated the acquisition of EU companies or distorted the investment decisions, market operations or pricing policies of their beneficiaries, or distorted bidding in public procurement, to the detriment of non-subsidised companies.

Moreover, the existing trade defence rules relate only to exports of goods from third countries and thus do not address all distortions caused by foreign subsidies granted by non-EU countries. Where foreign subsidies take the form of financial flows facilitating acquisitions of EU companies or where they directly support the operation of a company in the EU, or facilitate bidding in a public procurement procedure, there appears to be a regulatory gap.

The White Paper therefore proposes solutions and calls for new tools to address this regulatory gap. In this context, it puts forward several approaches. The first three options (so-called **"Modules"**) aim at addressing the distortive effects caused by foreign subsidies (i) in the Single market generally (Module 1), (ii) in acquisitions of EU companies (Module 2) and (iii) during EU public procurement procedures (Module 3). These Modules may be complementary to each other, rather than alternatives. The White Paper also sets out a general approach to foreign subsidies in the context of EU funding.

### **General instrument to capture distortive effects of foreign subsidies ("Module 1")**

**Module 1** proposes the establishment of a general market scrutiny instrument to capture all possible market situations in which foreign subsidies may cause distortions in the Single Market.

Under this Module, the supervisory authority, which would be a national authority or the Commission, could act upon any indication or information that a company in the EU benefits from a foreign subsidy.

If the existence of a foreign subsidy is established, the authority would then impose measures to remedy the likely distortive impact, such as redressive payments and structural or behavioural remedies. However, it could also consider that the subsidised activity or investment has a positive impact, which outweighs the distortion and not pursue the investigation further (the “EU Interest Test”).

### **Foreign subsidies facilitating the acquisition of EU companies (“Module 2”)**

The first module could be complemented by **Module 2**, which is intended to specifically address distortions caused by foreign subsidies facilitating the acquisition of EU companies. This module aims at ensuring that foreign subsidies do not confer an unfair benefit on their recipients when acquiring (stakes in) EU companies, either directly by linking a subsidy to a given acquisition or indirectly by *de facto* increasing the financial strength of the acquirer.

Under Module 2, companies benefitting from financial support of a non-EU government would need to notify their acquisitions of EU companies, above a given threshold, to the competent supervisory authority. The White Paper proposes that the Commission is the competent supervisory authority. Transactions could not be closed whilst the Commission's review is pending. Should the supervisory authority find that the acquisition is facilitated by the foreign subsidy and distorts the Single Market, it could either accept commitments by the notifying party that effectively remedy the distortion or, as a last resort, it could prohibit the acquisition. Under this Module, the Commission could also apply the EU Interest Test.

### **Foreign subsidies in EU public procurement procedures (“Module 3”)**

Foreign subsidies could also have a harmful effect on the conduct of EU public procurement procedures. This issue is addressed under **Module 3**. Foreign subsidies may enable bidders to gain an unfair advantage, for example by submitting bids below market price or even below cost, allowing them to obtain public procurement contracts that they would otherwise not have obtained. Under this Module, the White Paper proposes a mechanism where bidders would have to notify the contracting authority of financial contributions received from non-EU countries. The competent contracting and supervisory authorities would then assess whether there is a foreign subsidy and whether it made the procurement procedure unfair. In this case, the bidder would be excluded from the procurement procedure.

### **Foreign subsidies in the context of EU funding**

Finally, the White Paper sets out ways to address the issue of foreign subsidies in the case of applications for EU financial support. All economic operators should compete for EU funding on an equal footing. Foreign subsidies may however distort this process by putting the beneficiaries of such subsidies in a better position to apply. The White Paper proposes options to prevent such unfair advantage. Among others, in case of funding distributed through public tenders or grants, a similar procedure would apply as the one foreseen for EU public procurement procedures. Moreover, the White Paper emphasises the importance of ensuring that international financial institutions that implement projects supported by the EU budget, like EIB or EBRD, mirror the approach to foreign subsidies.

### **Next Steps**

The White Paper is now open for [public consultation](#) until 23 September 2020. In light of the input received, the Commission will present appropriate legislative proposals to tackle the distortive effects of foreign subsidies on the Single Market.

### **Background**

The European Council in its Conclusions of the meeting on 21 and 22 March 2019 tasked the Commission to identify new tools to address the distortive effects of foreign subsidies on the Single Market.

In its Communication “[A New Industrial Strategy for Europe](#)” of 10 March 2020, the Commission confirmed that by mid-2020 it would adopt a White Paper on an Instrument on Foreign Subsidies, to address distortive effects caused by foreign subsidies within the Single Market.

### **For more information**

Factsheet: [White Paper on Foreign Subsidies](#)

DG Competition website on [Foreign Subsidies](#)

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Press contacts:

[Arianna PODESTA](#) (+32 2 298 70 24)

[Giulia ASTUTI](#) (+32 2 295 53 44)

General public inquiries: [Europe Direct](#) by phone [00 800 67 89 10 11](#) or by [email](#)

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