



EUROPEAN COMMISSION

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The White Paper on an Instrument on Foreign Subsidies

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

European Competition Day
Berlin, 7 Septembre 2020

Competition

The European economy is entering into its recovery phase. In line with the proposed European recovery package, in the coming years there will be a lot of demand for business to contribute to the de-carbonisation and digitalisation agendas. In this process, it is particularly important for all the numerous economic operators who engage in these much-needed transformations and investments to know that everyone will be playing by the same rules.

To do so, the Commission is in the process of substantially reforming EU State aid rules. The aim is to ensure that there is a predictable regulatory framework for the years to come, adapted to the new challenges and providing a level playing field across the EU.

But this is not enough: we also need a level playing field globally.

A level playing field encompasses various aspects and requires developing initiatives at different levels. Action is particularly necessary in the area of subsidies: The EU has a unique and comprehensive mechanism of control of State aid granted by Member States. Beyond WTO disciplines, however, there is no screening of subsidies from third country governments that may have an impact on the EU internal market. We need to make sure that this does not put EU businesses at a disadvantage.

In this phase of recovery, our Internal market, and the economies of scale and synergies that it brings to businesses, is a crucial asset that we need to protect. Unchecked foreign subsidies to support investments or operations in the EU have the potential to distort the integrity and proper functioning of the internal market in several ways. Subsidies to businesses that are already active in Europe may give them an unfair advantage compared to others. Similarly, foreign subsidies may help companies to buy EU businesses, thus out-competing non-subsidised bidders. In public procurement, foreign subsidies may help their beneficiaries to outbid rivals in public tenders. Finally, subsidised companies may find it easier to obtain EU funding, depriving non-subsidised companies of access to these financial resources.

We are well aware that foreign investment is an **important source of jobs and growth**. Europe needs to continue to attract foreign investment, in today's post-crisis situation even more so. Levelling the playing field is not about creating additional barriers to foreign investment, it is simply about ensuring that everyone that invests and operates in the EU plays by the same rules. Investment, and the economic recovery, should be based on transparent, predictable and fair terms for all economic operators.

On 17 June 2020, the **Commission adopted a White Paper** on levelling the playing field as regards foreign subsidies. The White Paper has launched a public consultation on ideas for future rules to make sure that foreign subsidies do not undermine the level playing field in Europe's internal market.

The White Paper builds on the finding that today, **foreign subsidies influence economic activity in the internal market** and are **not systematically scrutinised**. Financial support granted by Member States has been subject to **EU State aid rules for decades**. However, there appears to be a **regulatory gap** to monitor and assess subsidies granted by non-EU governments that distort the internal market.

- As regards competition rules, the current **merger and antitrust rules** do not specifically take into account whether an economic operator may benefit from foreign subsidies and, *a fortiori*, they do not allow the Commission (or Member States) to intervene and decide on this basis.

- **State aid rules** deal with subsidies from Member States, not with subsidies from non-EU authorities.
- As regards trade policy, the existing **trade defence instruments** focus mostly on subsidies to imported goods and have their limitations, in particular with regard to trade in services and financial flows.
- The recent EU **FDI Screening Regulation** is about security and public order. Economic distortion of the internal market due to foreign subsidies are therefore not considered.
- Finally, the proposal for an **International Procurement Instrument** (IPI) is about reciprocity to foster market opening abroad, not only about the level playing field within the EU.

This White Paper therefore proposes to fill the regulatory gap. It sets out possible features of new legal instruments to address the existing regulatory gap and to ensure a level playing field in the internal market. Such instruments should complement the existing EU and international legal framework.

The White Paper proposes three approaches /“Modules” to deal with different situations:

Module 1 is a general market scrutiny instrument. It aims to capture all situations in which foreign subsidies may distort the internal market. The foreign subsidies may for example support a particular activity or investment of a company active in the EU. The enforcement powers would be shared between Member States and the Commission. If the assessment concludes that a subsidy distorts the internal market, the competent authorities could impose “redressive measures”. The precise nature of such redressive measures would depend on the precise nature of the subsidy and the subsidised activity.

In case the subsidised investment or economic activity has a positive impact that outweighs the distortion, the Commission could take this into account and decide not to intervene. This is what the White Paper calls the “EU interest test”.

Module 2 addresses distortions caused by foreign subsidies specifically facilitating acquisitions of EU undertakings. Subsidised acquisitions would need to be notified and cleared before they could go ahead. The parties would have the possibility to offer suitable commitments to remedy possible distortions, though ultimately an acquisition may have to be prohibited if the harm cannot be remedied otherwise. Also here the EU interest test could be applied. The White paper proposes that, for this module, a one stop shop system across the EU is established and that the Commission would be the competent supervisory authority.

Module 3 addresses distortions that foreign subsidies may cause in public procurement procedures. It sets out a mechanism where bidders would have to notify any financial contribution received from third countries. The competent authorities would then assess whether there is a foreign subsidy and whether it distorts the procurement procedure. The bidder could then be excluded from the procurement procedure on this basis.

The public consultation on the White Paper is open until 23 September.

We are already receiving **feedback from stakeholders** and we are happy to see great interest and support around the White Paper. There are, naturally, many questions, sometimes even doubts whether the proposals in the White Paper will adequately address the issues at stake.

Let me point out **four areas**, that we have identified already in discussions with stakeholders, where we need to develop solutions which make the possible future legislation fit for purpose.

First, the **problem of information gathering**. We are well aware of the **fundamental challenge to gain access to the necessary information** and expertise to detect foreign subsidies.

This being said, similar problems arise for instance in antitrust, merger control and anti-dumping procedures, which have nevertheless been applied effectively for decades. The White Paper proposes deterrent sanctions in case businesses refuse to provide complete and accurate information. Such arrangements have enabled us to gather the necessary information in mergers and in antitrust. If however it is not possible to gather all necessary information, the White Paper proposes to decide on the basis on the facts available. One thing should also not be forgotten: Although the subsidies would originate from third country authorities, the beneficiaries would typically be established or active in the EU. It would therefore usually be the case that the relevant information on the parties, transactions or subsidies can be obtained from within the EU.

Second, we have had feedback about the **possible scope of the instrument**. Some worry about a **possible chilling effect on foreign investment**. Or, on the contrary, fear that the proposals do **not go far enough** to prevent harm to the EU internal market. In this context, also, the **administrative burden for businesses** has been quoted as a potential concern.

Taking these concerns very seriously, the Commission is committed **to making any future legal instrument targeted, proportionate and effective**. It will be key to use stakeholders' feedback from the public consultation to target the possible legal instruments specifically to the regulatory gap in order to capture only relevant, distortive cases, and to make the instruments quick and efficient. For module 2, for instance, it will be key to define appropriate notification criteria and thresholds. Indeed, we do not want to burden businesses with unnecessary red tape, nor do we want to over-burden public authorities with enforcing the rules. On the contrary, we want to help business by guaranteeing a **truly level playing field within the EU** through a highly effective tool.

The design of the overall scheme – a less intrusive ex post module 1 completed by more targeted and ex ante modules 2 and 3 for situations where we see more potential for distortions – is precisely about achieving a good balance between achieving effectiveness and avoiding red tape.

Third, the **institutional set-up**. How should competences, expertise and work be shared between the Commission and Member States? Which authorities should implement which modules?

The White Paper tries to strike the right balance between the EU level and the national level. Under modules 1 and 3, enforcement would be shared between the Commission and Member States in order to address as many distortions as possible, with appropriate coordination tools to ensure consistency and effectiveness. Module 2, by contrast, would be fully entrusted to the Commission: It would be too difficult to effectively share the ex-ante review of complex, often EU-wide transactions between the Commission and Member States while keeping short timelines.

Fourth, **international obligations**.

We know that any new instrument will need **to comply with the EU's international obligations**. We have received questions in this respect relating to the interplay of the White Paper proposals with existing trade instruments and commitments.

Let me state clearly that we consider that the ideas in the White Paper are WTO compatible; it is a defensive instrument to address cases where international rules do not apply or do not deliver. It will

not apply, for instance, to subsidies to imported goods. And, while some enforcement aspects may be specific to the instrument, it does not create an additional burden on foreign businesses compared to the one existing for EU based ones as all businesses would be equally subject to both EU State aid control and foreign subsidy control.

In any event, at this occasion, **let me reaffirm our commitment and preference for multilateral solutions.** The White Paper is not a signal that Europe wants to go it alone. We continue to be fully committed to multilateral discussions to build a global level playing field, also with regard to subsidies. In that regard, we continue to engage with our trading partners to improve the multilateral framework to tackle the distortions created by subsidies globally, in the WTO generally, but also in the Trilateral setting together with the United States and Japan.

The public consultation is ongoing. The next steps will be to analyse the input from all stakeholders and to carry out a more detailed assessment of the impact of the various options. I am looking forward to a continued exchange with you on this initiative.