



**European Union Chamber of Commerce in China**  
**Comments on the White Paper on Foreign Subsidies**

**Introduction**

**1. Please introduce yourself and explain your interest and motivation to participate in this public consultation.**

The European Union Chamber of Commerce in China (European Chamber) was founded in 2000 by 51 member companies that shared a goal of establishing a common voice for the various business sectors of the European Union (EU) and European businesses operating in China. It is a members-driven, non-profit, fee-based organisation with a core structure of 26 working groups and eight fora covering both horizontal and sectoral issues within the European business community in China.

The European Chamber now has [more than 1,700 members](#) in seven chapters operating in nine cities: [Beijing](#), [Nanjing](#), [Shanghai](#), [Shenyang](#), [South China \(Guangzhou and Shenzhen\)](#), [Southwest China \(Chengdu, Chongqing\)](#) and [Tianjin](#). Each chapter is managed at the local level by [local boards](#) reporting directly to the [Executive Committee](#). The [Advisory Council](#), which includes the CEOs and presidents of some of the largest EU companies with investments in China, influences the priorities and line of action to be taken by the Chamber by providing advice on its strategic direction. The Chamber is recognised by the European Commission and the Chinese authorities as the official voice of European business in China.

The European Chamber is part of the growing network of [European Business Organisations \(EBO\)](#). This network connects European business associations and chambers of commerce located in more than 30 third markets around the world.

The European Chamber translates the input it receives from members into a series of advocacy actions, including publications (either annual—such as the [Position Paper](#) and the [Business Confidence Survey](#)—or ad hoc reports on emerging issues of importance to its membership), government meetings, events and others. Through these actions, the Chamber presents to European and Chinese authorities the key concerns of its members when it comes to doing business in China, providing constructive recommendations to both governments. Increasing market access, creating a level playing field and achieving reciprocity between the EU and China are issues regularly raised by the Chamber in its advocacy activities.

Given the numerous concerns raised by European businesses in China with regard to unfair competition and market distortions resulting from heavy subsidisation of Chinese enterprises, it is of paramount importance to the European Chamber and its members that the EU is equipped with fair, transparent, strong, balanced and effective mechanisms to address distortive practices in the Single Market. It is expected that the EU will be able to protect its economic interests from unfair practices more effectively, while maintaining an open Single Market, and at the same time creating more leverage when it comes to addressing distortions caused in third countries that affect European companies operating there.

## Questions relating to the three Modules – General questions

- 1. Do you think there is a need for new legal instruments to address distortions of the internal market arising from subsidies granted by non-EU authorities ('foreign subsidies')? Please explain and also add examples of past distortions arising from foreign subsidies.**

Subsidisation is one of the top issues reported by European companies as hampering their ability to compete with Chinese enterprises—particularly state-owned enterprises (SOEs)—both within and outside China.

The take-over of some of Europe's 'crown jewels', or other strategically important assets, has been followed by European businesses in China, which in most cases finds themselves sorely restricted when it comes to similar acquisitions in China due to investment restrictions in certain sectors; administrative red tape and discriminatory practices where investment is not prohibited; and unfair competition from heavily subsidised Chinese actors. Additionally, throughout the years there have been multiple instances of goods and services provided by heavily subsidised Chinese businesses—generally SOEs—being sold at considerably lower prices, often to the point of 'dumping', in the Single Market, a practice that again inhibits competition from European companies.

Unequal access and discriminatory practices are also seen when it comes to public procurement for European companies in China vis-à-vis Chinese companies in Europe. Even in situations in which European companies can fairly participate in public procurement, they often cannot compete with Chinese firms (mostly state-owned) that can put forward non-competitive bids due to their access to subsidies. This can happen through direct subsidisation, but also through indirect methods like access to cheap financing from state-run banks, or by SOEs using their dominant position to abuse suppliers with long payment periods that function as a free loan.

In this regard, China's Belt and Road Initiative (BRI) has added an additional dimension to this issue, both within Europe and in third countries, as heavily subsidised Chinese companies are able to win projects by offering abnormally low prices while European companies have access to projects with a very narrow scope of work that includes, for instance, provision of niche technologies. The COVID-19 pandemic, and the global economic crisis it has precipitated, has only intensified the need for coordinated European action to ensure that the internal market is not negatively affected by actions from competitors playing with an unfair advantage. Even when entering markets like the EU's, in which they fall under competition law and reporting requirements, China's subsidised national champions can leverage their scale and advantages in their home market to accept lower revenues/profits in public procurement, as well offer higher prices in acquisition procedures, in order to seize market share and develop local scale.

The European Chamber believes that, although the EU already has at its disposal several mechanisms that address distortions to the Single Market, there are gaps in these existing instruments that need to be filled. For instance, trade defence instruments (TDIs) on imports do not cover all industrial goods and sectors (an example of such sectors is shipbuilding, since ships are rarely imported into the EU in the sense of "cleared for free circulation", which is a key

requirement for the imposition of TDIs <sup>1</sup>). Yet subsidies related to those goods can result in major distortions on the EU market.

In this respect, and recognising the differences between the Chinese and the European systems, the European Chamber believes it is reasonable that the EU fill in the gaps in EU regulations to mitigate negative externalities, which would include upgrading already existing instruments and developing new ones. This, along with the various initiatives to engage with China, can lead to a more level playing field. The European Chamber thus welcomes initiatives such as the establishment of a [mechanism to screen foreign direct investment \(FDI\)](#) in Europe; the development of an instrument to address imbalances in international procurement – the [International Procurement Instrument \(IPI\)](#); as well as the publication of this White Paper, which lays the foundations for a tool to address competition within the EU from foreign state-owned and subsidised companies that are currently not necessarily subject to the same disciplines as EU SOEs and subsidised companies.

**2. Do you think the framework presented in the White Paper adequately addresses the distortions caused by foreign subsidies in the internal market? Please explain.**

The European Chamber hopes to contribute to the White Paper on Foreign Subsidies' transformation into an operative and effective instrument by providing relevant feedback from its China-based members. In the following sections, the Chamber provides detailed comments on each of the individual modules established in the White Paper. As a general overview, the European Chamber expects that the final product will:

- be a comprehensive document that details how to prevent significant distortions to the European Single Market caused by foreign subsidies in a way that balances the openness of the market against the need to defend it against unfair practices;
- establish transparent and fair processes, allocate responsibilities to relevant authorities, and ensure effective enforcement mechanisms and redressive measures; and
- to the greatest extent possible, limit any potential damage to relevant stakeholders, be it through developing an overall proportionate instrument, through establishing reasonable timelines or through reducing the burden of proof for European players.

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<sup>1</sup> See European Chamber Shipbuilding Working Group Position Paper 2019/20

## Module 1

### **1. Do you consider that Module 1 appropriately addresses distortions of the internal market through foreign subsidies when granted to undertakings in the EU?**

The European Chamber believes that, in broad lines, Module 1 covers distortions of the internal market through foreign subsidies. The European Chamber makes the following points:

- Timelines for the general process—including for redressive measures—should be set so as to reduce uncertainty for all actors involved.
- An adequate reporting system that collects input from relevant market actors should be developed in all EU Member States and within the Commission. Prior to the entry into force of the instrument, the European Commission should be notified of the intended reporting channels by member states and—where necessary—it should make binding recommendations. The Commission should also assess its internal capabilities in terms of reporting channels, and ensure that they are upgraded where necessary.
- Regarding the subsidies potentially covered by Module 1, it is key to ensure that:
  - the definition of subsidy is as broad and all-encompassing as possible, including those factors that can be considered as indicators of financial support; and
  - those subsidies affecting strategic sectors – regardless of the beneficiary or the target – are included.
- More clarity is needed regarding the scope of Module 1 in relation to acquisitions and procurement. Additionally, the European Chamber recommends that the majority of instances of market distortions caused by subsidies in acquisitions and public procurement be covered in Module 2 and 3 respectively.
- The indicators and process for conducting an EU interest test should be further shaped.
- When it comes to subsidies affecting more than one member state, enforcement responsibility should fall to the Commission.

### **2. Do you agree with the procedural set-up presented in the White Paper, i.e., 2-step investigation procedure, the fact-finding tools of the competent authority, etc.? (See section 4.1.5. of the White Paper)**

The European Chamber considers that the procedural set-up in the White Paper as a whole, and in all its steps, can constitute the basis for a transparent and fair process. The Chamber would like to stress the importance of efficiency, transparency and information flows in this process. This would entail, among other things, the following:

- Setting reasonable timelines for each step, in order to reduce uncertainty for all players and thus limit potential economic damage both for the business community and within the Single Market in general.
- Developing an adequate reporting system to notify of potentially distortive practices that takes into account input from all relevant market stakeholders. This reporting system

should guarantee notification through measures like incentives and/or penalties. It is suggested that member states notify the Commission with regard to their reporting mechanisms, with the Commission providing binding recommendations if any changes or additions are required. Potentially, the Commission could also develop guidelines on notification systems for member states in order to establish best practices that can be consistently applied. Finally, the Commission should assess its internal capabilities in terms of reporting channels, and ensure that they are upgraded where necessary.

**3. Do you agree with the substantive assessment criteria (section 4.1.3) and the list of redressive measures (section 4.1.6) presented in the White Paper?**

The European Chamber agrees in general terms with the assessment criteria and the redressive measures, both when it comes to the threshold of the subsidies—which correspond with those set in the EU’s own state aid rules—and with regard to the categories of subsidies covered. The European Chamber would like to make the following remarks on both areas.

On the assessment criteria:

- From the perspective of European businesses in China, it is important to consider the definition of a subsidy – specifically advantages that beneficiaries of the subsidies would gain in their own domestic markets. As an example, with regard to Chinese companies, European businesses have observed that certain state-owned companies receive advantageous treatment and/or access rights that could potentially be considered a subsidy, such as land grants or preferential access to industrial complexes, or legal/regulatory regimes which prevent European businesses in China from operating in particular markets. Another example of indirect subsidisation can be found in practices like interfering with or pressuring participants in the supply chain to alter pricing or capacity, for example in regards to transport services, in order to enhance the competitiveness of domestic companies through a lower than market based cost of bringing goods to overseas markets. Other forms of subsidisation in China can encompass tax breaks, the ability to delay payments to certain players, cheap financing with low interest rates, etc. In that respect, the European Chamber welcomes the establishment of a clear definition of what constitutes a subsidy in Annex I, specifically the section indicating that “the provision of goods or services or the purchase of goods and services”. The European Chamber would like to stress again that the above-mentioned intangible benefits granted to state-owned enterprises in their home markets (preferential regulatory measures, market access, enjoyment of special access rights, measures that result in a lack of reciprocity etc.) may provide an indirect financial benefit that may be considered as a subsidy, and thus they should be covered in the definition provided by the Commission.
- Additionally, when it comes to assessing the potentially distortive effects of a foreign subsidy in acquisitions it is important to not only look at aspects such as size (both of the the beneficiary and the target), but also whether a subsidy to acquire a small or medium-sized target in a strategic sector could have potentially negative effects in the market. In that respect, the European Chamber supports further clarification on the point tackling the “situation on the market(s) concerned”.

With regard to redressive measures, the European Chamber is generally in agreement with the measures outlined in the White Paper, but has some additional remarks:

- More clarity is needed, such as the point related to third-party access to services like mobility apps for providers of transportation services, and the licensing on fair, reasonable and non-discriminatory (FRAND) terms, as well as the publication of R&D results. While the European Chamber is not opposed to such measures in principle, in order to prevent any potential misinterpretation that could lead to a negative backlash from third countries like China, it is key that the fairness and transparency—as well as proportionality—of the process are proved.
- A reasonable timeline should be established for complying with redressive measures, either on a case-by-case basis or through a general rule that could be adapted to individual cases. It is important that subsequent actions in cases of non-compliance—such as fines or penalty payments—are substantial enough that they serve as deterrents.

**4. Do you consider it useful to include an EU interest test for public policy objectives (section 4.1.4) and what should, in your view, be included as criteria in this test?**

The European Chamber in principle supports the inclusion of an EU interest test for public policy objectives. However, more detailed information on the process would be needed in order to ensure clarity and avoid any potential loopholes, specifically on the following points:

- The indicators for the EU interest test—be it job creation, achieving climate neutrality and protecting the environment, digital transformation, security, public order and public safety and resilience—should be, to the maximum extent possible, clear and measurable.
- As mentioned in the White Paper, such a test should be an exclusive competence of the European Commission and should be part of an in-depth investigation taking place, regardless of whether the overall process is led by the Commission or by member states. The European Chamber agrees that the results of the assessment should be taken into consideration by the relevant authority, and suggests that further clarifications are made when it comes to the binding nature of the EU interest test and the subsequent steps therein (“During an in-depth investigation, the acting national supervisory authority has to seek the opinion of the Commission on whether the EU interest test is met. The member state is bound to the Commission’s view”).

**5. Do you think that Module 1 should also cover subsidised acquisitions (e.g. the ones below the threshold set under Module 2)? (section 4.1.2)**

In the interest of clarity and legal certainty, the European Chamber suggests that Module 2 be the main instrument to cover subsidised acquisitions. While Module 1 could potentially capture subsidies in acquisitions that have not followed the notification procedures under Module 2 or are below the thresholds set in that same Module, it is key that the respective scopes for both Modules be clarified.

The Chamber considers that it is of particular importance to ensure that subsidised acquisitions in strategic sectors – no matter the size of the beneficiary or the target – are covered within the

future instrument (either in Module 1 or 2). In that respect, the Commission should ensure there is an EU-wide alignment on what constitutes a strategic sector. The Chamber proposes that, as a starting point, any transaction subject to national security review of any member state under the umbrella of investment screening should automatically be subject to scrutiny under the instrument on foreign subsidies.

**6. Do you think there should be a minimum (*de minimis*) threshold for the investigation of foreign subsidies under Module 1 and if so, do you agree with the way it is presented in the White Paper (section 4.1.3)?**

The European Chamber agrees that there should be a *de minimis* threshold for the investigation of foreign subsidies in order to ensure the efficient functioning of the mechanism. Regarding the proposed number—EUR 200,000 awarded in the past three years—the European Chamber understands that this amount corresponds with that stipulated under the current EU state aid rules, notwithstanding exceptions made during the COVID-19 period ([Commission Regulation \(EU\) No 1407/2013](#)).

The European Chamber recommends that an assessment is made to analyse the potential impact of such a threshold, and that provisions on cumulative aid below the threshold are included. Additionally, exceptions to this *de minimis* threshold in certain sectors—which already exist in EU state aid rules—should also be considered.

**7. Do you agree that the enforcement responsibility under Module 1 should be shared between the Commission and Member States (section 4.1.7)?**

The European Chamber attaches great importance to the efficiency of the processes under the future foreign subsidies instrument. In the interests of resource sharing, the European Chamber considers that in the case of Module 1 it is reasonable to allocate the enforcement responsibility to both the Commission and EU Member States depending on the specific cases (e.g. affecting only one member state or multiple ones), as long as effective coordination mechanisms are established. Taking that into consideration, the Chamber makes the following recommendations:

- In cases of a foreign subsidy affecting economic activities in more than one member state, the responsibility falls directly onto the Commission rather than member state authorities. This should also be clarified in section 4.1.7 (specifically where it is mentioned that a subsidy can be investigated by “several national supervisory authorities acting in parallel (if a foreign subsidy benefits economic activities in more than one Member State)”).
- Sufficient resources should be allocated in order to ensure that the infrastructure needed by the supervisory authorities for the whole process is adequate.

## Module 2

1. **Do you consider that Module 2 appropriately addresses distortions of the internal market through foreign subsidies that facilitate the acquisition of undertakings established in the EU (EU targets)?**

The European Chamber welcomes the inclusion of a Module specially dedicated to addressing the distortions of the internal market through acquisitions. Such a Module constitutes a timely complement to the earlier establishment of an EU-wide mechanism for screening FDI, as this instrument does not necessarily cover all acquisitions by subsidised actors that could lead to distortions in the Single Market.

The Chamber's main comments with regard to the questions under Module 2 are as follows:

- In terms of the procedural set-up, the Chamber supports the general structure and suggests that mechanisms for relevant stakeholders to provide input regarding subsidised acquisitions are made available.
- Generally, timelines should be specified in order to avoid any uncertainty.
- More clarity would be required when it comes to aspects related to the definition of acquisitions, such as the percentages of the shares.
- Both quantitative and qualitative criteria should be used to assess the EU target for acquisitions within the overall set-up of the instrument (either under Module 1 or 2).
- While *ex ante* notifications should be limited to subsidised acquisitions with potentially distortive effects, more clarity would be needed for businesses with regard to the criteria, and penalties that act as effective deterrents for non-compliance should be developed.
- The European Chamber supports the allocation of enforcement responsibility to the Commission.

2. **Do you agree with the procedural set-up for Module 2, i.e. *ex ante* obligatory notification system, 2-step investigation procedure, the fact-finding tools of the competent authority, etc. (See section 4.2.5 of the White Paper)**

The European Chamber supports the proposed procedural set-up for Module 2, including both the *ex ante* compulsory notification and the *ex officio* review, and adds the following comments:

- Given the potential for unreliability when it comes to the disclosure of certain information by interested parties, ensuring that penalties act as a deterrent and that there is the possibility of an *ex officio* review is key.
- As in Module 1, the timelines for this process would need to be further clarified.

3. **Do you agree with the scope of Module 2 (section 4.2.2) in terms of:**

- **definition of acquisition:**



Generally, the definition and scope of an ‘acquisition’ are clear and have good coverage. However, as mentioned in the White Paper, what constitutes ‘material influence’ should be clarified in order to reduce uncertainty, and the percentage of the shares or voting rights should also be specified.

- **definition and thresholds of the EU target (4.2.2.3)**

The European Chamber would like to stress the importance introducing a qualitative element in the overall scrutiny of potentially subsidised acquisitions. In that respect, and as mentioned in Question 5 under Module 1, the Chamber considers that, no matter the quantitative threshold of the target, acquisitions of companies with the potential to generate a high turnover or with a high transactional value (e.g. high tech start-ups or innovative SMEs) should be covered by the future instrument on foreign subsidies, either within Module 1 or Module 2. This should also be the case for acquisitions of companies in strategic sectors.

The European Chamber considers it appropriate to have a quantitative threshold for the target, potentially set at a turnover of EUR 100,000, as long as the possibility of exceptions to this threshold based on qualitative criteria are also set.

- **definition of potentially subsidised acquisition**

**As regards thresholds, please provide your views on appropriate thresholds.**

As with Module 1, the European Chamber considers that the threshold for determining and capturing potentially subsidised acquisitions should be subject to a prior assessment. Additionally, it should have a structure that follows closely the one set for the EU’s state aid rules (e.g. cumulative aid and special sectors). In that respect the European Chamber supports the listed criteria to define what constitutes a distortion, specifically the point on the situation of the market(s) concerned (e.g. ‘subsidies in fast-growing high-tech markets may be more likely to cause distortions’).

#### **4. Do you consider that Module 2 should include a notification obligation for all acquisitions of EU targets or only for potentially subsidised acquisitions (section 4.2.2.2)?**

The European Chamber understands that including a notification obligation for all acquisitions of EU targets would lead to a heavy administrative burden for the relevant authority. The Chamber would like to add the following:

- In order to avoid the possibility of potentially subsidised acquisitions not being notified, more clarity would be needed for enterprises with regard to criteria for notification. In this respect, the European Chamber supports the introduction of the concept of ‘financial contribution’ as an initial step.
- To reduce the space for intentional omissions of the notifications, the penalties for breaches should be such that they serve as a genuine deterrent for potentially non-compliant businesses. Additionally, the possibility of developing a reporting system should be contemplated.
- It is essential to ensure the possibility of an *ex officio* review exists for cases where notifiable subsidised acquisitions are not brought forward.

- Finally, for potentially distortive subsidised acquisitions that are not covered by the notification obligation/criteria under Module 2, the interplay between Module 1 and 2 will be key.

**5. Do you agree with the substantive assessment criteria under Module 2 (section 4.2.3) and the list of redressive measures (section 4.2.6) presented in the White Paper?**

The European Chamber reiterates the comments made in question 3 of Module 1 with regard to the substantive assessment criteria, and stresses the importance of ensuring that various types of financial contributions obtained in the beneficiary's home market be taken into account in the assessment.

The European Chamber considers that the redressive measures outlined in section 4.2.6 are sufficient. As mentioned in question 3 of Module 1, however, more clarity would be needed for aspects like the timeframes for implementation of these redressive measures, as well as penalties for non-compliance.

**6. Do you consider it useful to include an EU interest test for public policy objectives (section 4.2.4) and what should, in your view, be included as criteria in this test?**

As mentioned in question 4 of Module 1, the European Chamber agrees that the interest test should be conducted by the Commission with exclusive powers, and that further clarification would be needed in terms of the assessment criteria.

**7. Do you agree that the enforcement responsibility under Module 2 should be for the Commission (section 4.2.7)?**

The European Chamber understands and agrees with the reasoning and benefits behind the option of having the Commission as the sole authority for enforcement within Module 2. The European Chamber recommends that throughout the process communication channels with member states are established.

### Module 3

#### 1. Do you think there is a need to address specifically distortions caused by foreign subsidies in the specific context of public procurement procedures? Please explain.

The European Chamber agrees that there is a need to address distortions caused by foreign subsidies in the context of public procurement. The European Chamber has in the past repeatedly raised issues regarding the lack of European businesses' access to procurement schemes in China, which contrasts sharply with the ease with which state-owned Chinese companies can access procurement schemes in Europe and elsewhere.

Access to China's procurement market has historically been very limited for foreign companies. Respondents to the European Chamber's [Business Confidence Survey 2020](#) list access to public procurement as one of the main areas in which they see discrimination in favour of SOEs. While this is a general issue, there have also been clear instances of discrimination within tenders or procurement-related regulations for specific sectors. An example of this is the case of medical devices, where in the past few years local governments have instituted a '[Buy China](#)' policy in public procurement, which encourages contracting authorities to favour bids from domestic companies. Another cause of such distortions in public procurement is the so-called vertical integration of SOEs in the supply chain, which means that support to the bid of one company can be hidden upstream.

Although the imbalance between Europe's and China's public procurement structures has existed for a long time, schemes like the BRI have intensified unfair public procurement practices and spilled over to other third countries. For instance, Chinese SOEs are able to put forward abnormally low bids in third-country infrastructure projects, thanks not only to subsidies being granted to them for these specific purposes, but also because of the advantages they enjoy back home. According to a survey conducted by the European Chamber on the participation of European businesses in the BRI, 40 per cent of respondents indicated that they struggled with non-transparent public procurement systems.

The European Chamber has in the past called for the EU to develop tools that can address these issues of unequal access through the development of appropriate tools, aimed at both accessing procurement markets in third countries and protecting the European Single Market. For the former, finalising the IPI and speeding up its implementation will be key. For the latter, as stated in the European Chamber's [Executive Position Paper 2019/2020](#), "Tighter investment screening and potential tools to push back against subsidised Chinese national champions performing a variation on dumping in Europe's public procurement markets are among the first tools the EU is sharpening to address this issue."

In that vein, the European Chamber welcomes both the commitments made with regard to the IPI and the inclusion in the White Paper of a section geared towards addressing distortions caused by foreign subsidies in public procurement.

**2. Do you think the framework proposed for public procurement in the White Paper appropriately addresses the distortions caused by foreign subsidies in public procurement procedures? Please explain.**

The European Chamber considers that the proposed framework for public procurement in the White Paper broadly covers the potential distortions caused by bids from subsidised actors, and makes the following points:

- On point 4.3.3.1 (Initiation of the procedure), the European Chamber agrees both with the notification requirement and the criteria.
- The European Chamber understands the need for thresholds and welcomes the possibility of ensuring that potentially distortive bids under such a threshold can be notified within Module 1. However, in order to ensure that there is no omission of information from the tenderers, establishing penalties that serve as an effective deterrent and developing a reporting mechanism for third parties will be very important.
- Further clarification would be welcome on both the above points.

Regarding responsibility-sharing between the contracting and supervisory authorities, the European Chamber considers that the current set-up—with involvement from the national supervisory authorities and potentially the Commission—is adequate:

- Keeping in mind the importance of information flows—specifically when it comes to initial notifications on potentially distortive bids—the European Chamber recommends that effective mechanisms for communication between the contracting authority and the national authorities/Commission be established, and that clear rules on this matter are set up for contracting authorities.
- Additionally, the role of the Commission regarding its involvement in the whole process needs to be respected. On this point, the European Chamber suggests that—in the event of an extension of the in-depth investigation following a disagreement by the Commission—it is clarified where the final decision power lies.
- As mentioned in the White Paper, ensuring that there are clear deadlines for each of the steps in the process will be essential to guarantee there are no more delays than strictly necessary when it comes to awarding a grant or tender.
- Finally, the European Chamber agrees that in cases where procurement is covered by the procurement directives, the Commission should be the competent supervisory authority.

**3. Do you consider the foreseen interplay between the contracting authorities and the supervisory authorities adequate e.g. as regards determination of whether the foreign subsidy distorts the relevant public procurement procedure?**

The European Chamber considers the foreseen interplay between the contracting and supervisory authorities generally adequate, and would like to add the following remarks:

- It is important that communication between the different authorities is at all times efficient and effective. To that end:

- contracting authorities should be given clear guidelines for notification, including measures to address omissions in notifications both to the national supervisory authorities and the Commission; and
- it is important that the Commission is kept informed throughout the whole process.
- In the event of the Commission disagreeing on the final decision regarding a case, further clarification is needed on how decision-making will be conducted in such situations after the extension of an in-depth investigation (especially with regard to the role of the Commission). It is suggested that the Commission and national supervisory authorities develop a joint decision-making process in these particular cases.
- In order to reduce both uncertainties and the possibility of unnecessary delays (especially when it comes to time-sensitive procurement schemes), the European Chamber recommends that clear strict timelines are established for the whole process. The European Chamber welcomes the suggestions already made in section 4.3.3.2 of the White Paper and encourages further clarifications on the time limits for extensions of the in-depth investigation.

**4. Do you think other issues should be addressed in the context of public procurement and foreign subsidies than those contained in this White Paper?**

As mentioned in question 1 of Module 3, from the perspective of European companies operating in China, there are a number of concerns with regard to a lack of both access to, and a level-playing field in, public procurement, both within China and in third countries. In this respect the European Chamber welcomes actions by the Commission such as its renewed commitment to accelerate the process for establishing the IPI. It will be important to guarantee the interplay between the IPI—which would aim at levelling the playing field and opening procurement markets in third countries through reciprocal measures—and Modules 1 and 3 of the White Paper.

**Interplay between Modules 1, 2 and 3**

**1. Do you consider that**

- a. **Module 1 should operate as stand-alone module;**
- b. **Module 2 should operate as stand-alone module;**
- c. **Module 3 should operate as stand-alone module;**
- d. **Modules 1, 2 and 3 should be combined and operate together?**

The European Chamber considers that Module 2 and 3 should be mainly tasked with addressing distortive practices caused by subsidisation in acquisitions and in public procurement respectively. Module 1 should only address such issues when they fall outside the criteria set in Modules 2 and 3 (e.g. when it comes to thresholds that are lower than those set in the Modules). More clarity would be needed on the interplay between the three modules.

## Questions relating to foreign subsidies in the context of EU funding

- 1. Do you think there is a need for any additional measures to address potential distortions of the internal market arising from subsidies granted by non-EU authorities in the specific context of EU funding? Please explain.**

The European Chamber considers that measures should be put in place to address potential distortions caused by subsidies utilised in the context of EU funding. From the perspective of European businesses in China, foreign enterprises encounter multiple barriers to accessing funding programmes in China, especially in innovation funding. Thus, while the European Chamber believes that access to EU funding should generally remain open, it is important that there is a mechanism that protects *bona fide* bidders from unfair competition from subsidised actors. The European Chamber would like to put forward the following considerations:

- Given that this section covers financial contributions from the EU budget, the Commission should in be the leading supervisory authority in the context of direct management. When it comes to indirect management, the Commission should also ultimately have the decision-making power, although coordination with implementing actors should be provided for.
- The European Chamber understands that the current set-up put forward by the White Paper aims to tackle distortions within the Single Market. However, from the perspective of European companies in China, it is important to consider, in a broader framework, measures such as establishing reciprocal access to national funding in third countries as a condition for accessing funding in the EU.

- 2. Do you think the framework for EU funding presented in the White Paper appropriately addresses the potential distortions caused by foreign subsidies in this context? Please explain.**

The European Chamber considers that multiple aspects of the framework set in Module 3 could be applied to the context of procurement (either under Module 1 or Module 3) for EU funds under direct and shared management. In that respect, comments made in these sections about issues like prior notification and timelines could be considered as equally applicable in the context procurement in EU funding. The European Chamber considers it especially important that for certain markets (e.g. high-tech) a preliminary market consultation requirement be set for contracting authorities, in order prevent distortive practices caused by foreign subsidies.

The European Chamber also concurs in general terms with the framework set for grants. As with the section on procurement, it is important to establish clear and strict timelines, as well as to tailor the procedure for specific types of grants, such as those geared towards research.