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The Commission releases its plan to tackle Foreign Subsidies

Introduction

The European Commission has now **unveiled** its plans to obtain new powers to battle unfair competition from third country companies. The **White Paper on foreign subsidies** equips the European Commission with new tools to restore competition, when unfair subsidising practices of third country companies that operate or aim to penetrate the European market, are detected.

While presenting the White Paper, the European Commission's Executive Vice-President Margrethe Vestager and the Commissioner for internal market Thierry Breton stressed that the proposed framework aims to fill in the existing gap and provide clear guidelines on non-EU companies that are seeking to expand their operation in the EU.



The proposed rules complement the **Regulation on Foreign Direct Investment** (FDI) screening mechanism and EU's trade defence rules, ensuring a level playing field and thus addressing the distortion caused by the foreign subsidies granted by non-EU countries.

New European powers

The White Paper proposes three modules:

- A general instrument to capture **distortive effects of foreign subsidies (Module 1)**.
- An instrument to specifically address distortions caused by **foreign subsidies facilitating the acquisition of EU companies (Module 2)**.
- A mechanism to address foreign subsidies in **EU public procurement** procedures **(Module 3)**.

In addition, it proposes new measures regarding foreign subsidies in the case of applications for **EU funding**.

The first module proposes the establishment of a general market scrutiny instrument to detect any kind of cases in which foreign subsidies cause distortions in the Single Market. If the existence of foreign subsidies is confirmed, the supervisory authority of a Member State or the European Commission would be able to impose remedies (e.g. redressive payments or structural) to balance the caused distortion of competition.

Foreign subsidies to non-EU operators allowing them to either acquire stakes in an EU company, or *de facto* exert a material influence on an undertaking will fall under the scope of **the second module**. Its overall aim is to address distortions of competition caused by foreign subsidies facilitating the acquisition of EU companies. This module adds one more



scrutiny layer in the current merger review process, allowing the competent authority to either ask for remedies or even block the transaction as long as anticompetitive methods are established.

With respect to the enhanced power that non-EU companies have, allowing them to participate in public procurement procedures, under **the third module**, the White Paper proposes a mechanism where bidders would have to notify the contracting authority of financial contributions received from non-EU countries. An assessment will then follow in order to identify whether the procurement procedure was unfair. In this case, the bidder would be excluded from the procurement procedure.

Finally, the White Paper stresses that undertakings should also compete fairly for **EU funding**. The Commission does not propose the creation of a new, autonomous instrument in this area. Instead, it introduces new criteria and notification requirements to take into account foreign subsidies within existing legislation.

Protecting EU's interests: fairness vs protectionism

The White Paper applies to all third country companies but there is no doubt that it mainly targets those coming from China where access to public money is not subject to strict rules. The new rules come at a time when new investments are considered essential to accelerating the post-COVID-19 economic recovery of Europe. However, the health crisis has also placed the protection of **European sovereignty and the efficiency of its supply chain** at the centre of the discussions.

Being the world's largest trading bloc, the EU has been seeking reciprocity in its relations with other international trade partners. **Transparency, openness, and fair competition** are



basic principles that have shaped the bloc's trade and competition regime. Indeed, the EU has regulated the framework under which Member States can grant state aid to their companies.

This however – the Commission argues – has not been the case with the other international trade partners of the bloc. In this context, there have been a number of investments decisions, acquisitions of EU companies, enhanced participation in tenders and discriminatory pricing policies that had a negative impact on the EU's Single Market.

Addressing global competition - particularly from China - has been at the core of debate which emerged following the prohibition of the Siemens/Alstom proposed deal. **Several Member States' governments including Germany, France, Poland and Italy have previously called the Commission to reform its competition rulebook to empower European companies.**

The **White Paper in conjunction with the FDI Framework** should be seen as the Commission's response to the strong criticism. EU's lawmakers have been also advocating for a reform of the competition rulebook, putting additional pressure to the Commission's political leadership. Already in the European Parliament's Plenary session following the presentation of the White Paper, the majority of the political parties welcomed the new initiative, even asking for enhancement of the scope of the FDI mechanism and clear definition of the EU's "strategic sectors" which need to be subject to protection from foreign companies. However, what needs to be ensured is that any new legislative measures will strike **the right balance and will not be perceived as disproportionate or politically aggressive.**



Having said that, it would not be surprising if third countries, particularly, **China denounce the new rules as protectionist**. Indeed the Mission of the Republic of China to the EU has already reacted by stressing that Chinese subsidies are subject to the WTO's transparency rules and called on the EU to "keep clear of protectionist moves, and refrain from creating new trade barriers under the pretext of subsidies".

The public consultation accompanying the White Paper on foreign subsidies will now allow the European Commission to gather feedback both from European and third-country stakeholders. Pending a positive reception but possible diplomatic objections, a reformulated draft legislation based on the White Paper could feasibly be launched in 2021.

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