

European Commission proposal to address distortions caused by foreign subsidies

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In brief

The European Commission proposed a new regulation on 5 May to address foreign subsidies, which in certain cases are seen to be distorting the internal market.

This proposal aims to ensure a level playing field in the internal market. This proposal is an important next step which follows the EC's publication of a White Paper on distortive subsidies in June 2020. The White Paper set out several approaches to address distortive effects caused by foreign subsidies. The proposal is part of the broader EU 2020 industrial strategy driven by the principle of 'enhancing strategic autonomy.'

In detail

The proposed regulation grants the Commission the power to investigate financial contributions granted by non-EU governments to undertakings active in the European Union. Where the Commission believes that a financial contribution has a distortive effect on the internal market, the proposed regulation provides several redressive measures (or commitments by the undertaking concerned), such as a repayment of the subsidy by the undertaking to rectify the distortion, reduction of market presence, or divestment of certain assets.

The definition of 'foreign subsidy' in the regulation seems close to the definition of State aid. It requires a financial contribution, originating directly or indirectly from the government of a non-EU country, that confers a benefit to an undertaking engaged in an economic activity in the internal market, the latter benefit being conferred, in law or in fact. In addition, the foreign subsidy should distort competition. These subsidies can take different forms including tax advantages, setting off of operating losses, unlimited State guarantees, tax exemptions or reductions in respect of foreign investments or dedicated State funding.

The draft regulation introduces three tools: a notification-based tool for mergers, a notification-based tool for public tenders, and a general market investigation tool. Undertakings entering into a merger, acquisition, or a public tender process will have to notify the Commission of financial contributions received from non-EU governments in the last three years. In the case of mergers and acquisitions the notification requirement arises if the aggregate EU turnover of the undertaking to be acquired, or of at least one of the merging parties, is equal or higher than €500 million, and the aggregate foreign financial contribution is at least €50 million. The notification requirement for bids

to public tenders applies where the value of the public tender is equal to or greater than €250m, with a similar three-year lookback period.

The takeaway

The proposal will be open for public [feedback](#) until 8 July 2021. Once the trilogue negotiations are complete (discussions between the European Commission, European Parliament and European Council, where they will seek agreed regulation text), and the final regulation is adopted on the basis of a qualified majority vote in Council and simple majority in Parliament, the regulation will directly apply across the European Union six months from the date of entry into force.

This proposal may result in an increased regulatory burden for businesses outside the European Union that wish to invest in or otherwise enter the EU internal market. Furthermore, it could result in increased scrutiny for mergers and acquisitions, and a prolonged public tender process, to name just some of the potential impacts. Potentially impacted businesses should monitor the proposal. If adopted, it could constitute a major development.

Let's talk

For a deeper discussion of how EC proposal might affect your business, please contact your usual PwC contact or one of the following:

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