

Consultation on the White Paper on Foreign Subsidies

Fields marked with * are mandatory.

Introduction

The questionnaire is available in [English](#), [French](#) and [German](#).

The White Paper is available in the following languages:

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White Paper on levelling the playing field as regards foreign subsidies

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 on Foreign Subsidies](#), adopted by the European Commission on 17 June 2020, therefore proposes solutions and calls for new tools to address this regulatory gap. In this context, it puts forward several approaches.

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.

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

Module 2 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.

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.

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.

Public consultation

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.

Respondents can provide their opinion by choosing the most appropriate answer among the ones suggested for each question or suggesting their own ideas in dedicated text boxes.

Written feedback provided in other document formats, can be uploaded through the button made available at the end of the questionnaire.

The questionnaire is available in [English](#), [French](#) and [German](#). You can submit your responses in any official EU language.

The survey will remain open until 23 September 2020.

About you

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- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Sharon

* Surname

Candela

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candela@eurometaux.be

* Organisation name

255 character(s) maximum

Eurometaux

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

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- Togo

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- Tonga

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- Tunisia

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Anonymous

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

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Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

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Public

Your contribution may be published in full.

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All parts of your contribution will remain confidential and will not be published.

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QUESTIONNAIRE - Introduction

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

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Eurometaux is a trade association representing the collective European non-ferrous metals industry, including smelters, refiners, transformers and recyclers of all non-ferrous metals produced industrially in Europe. In total the industry employs 500,000 people across over 900 facilities, with an annual turnover of €120bn.

Eurometaux welcomes the White Paper on foreign subsidies and its measures for addressing the negative impacts of foreign subsidies on the EU internal market.

There are two main reasons for our interest in participating in this public consultation:

- 1) China's state-subsidisation of its metals industry has led to unfair global competition in our sector, with major overcapacities leading to artificially depressed global prices and rising imports
- 2) A strong EU response is required in the absence of a reformed World Trade Organisation to tackle the impacts of these subsidies safeguard European industry as it recovers economically from COVID-19.

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')?

Yes No Other

Please explain and also add examples of past distortions arising from foreign subsidies.

1000 character(s) maximum

China's industrial program of government pricing interventions has led to overcapacities in several metals sectors since the 2008 financial crisis, negatively impacting the EU market. China has invested heavily in its strategic metals industry through a program of industrial support & state subsidisation. It is now the dominant producer of almost all metals, producing around 50% of global base metals and over 90% of critical metals like rare earths. We also see wider issues from EU companies being acquired by foreign subsidised entities, sales below production costs, abnormally low tenders in public procurement. In addition, EU's metals industry is grappling with economic impacts from the COVID-19 pandemic. Its revival will only be possible with the guarantee of a global level playing field. As world regions now begin their recovery, EU metals producers will be vulnerable to further distortions. We support the EC priority to strengthen its toolbox and create new legal instruments.

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

Yes No Other

Please explain.

1000 character(s) maximum

We welcome the White Paper and call for an ambitious instrument that will effectively tackle distortions in the EU market and ensure a level playing field for all economic operators.

An effective Foreign Subsidies instrument must include the following features:

- In our view, it should cover the gap of existing EU's Trade Defence Instruments, Public procurement, Foreign Direct Investment mechanism and other rules, that tackle different aspects of foreign subsidies, but do not address the effect of those subsidies in the internal market.
- Some operational aspects and competences for each Module should be clarified and strengthened, like for example, definition of foreign subsidies, redressive measures, questions related to burden of proof
- Methodologies on how to calculate the distortive impact of foreign subsidies in a comprehensive, but transparent way should be well-defined
- Stronger trade dimension needed, including reciprocity principles on the question of EU funding.

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?

Yes No Other

Please explain.

1000 character(s) maximum

This new EU instrument will help tackle the issue of foreign subsidies without relying on global response within the WTO. The proposed definition of foreign subsidy based on the EU anti-subsidy regulation should be strengthened:

- It should be clarified who is the provider of the subsidy: a government, any public body of a non-EU state, any private body with functions normally vested in the gov. or directed by a non-EU gov.?
- The concept of subsidies should be expanded in line with Joint Statement of the Trilateral Meeting of Trade Ministers of Japan-US-EU, to cover fundamental trade & competition distortions, incl. all subsidies to a sector benefiting from systemic State support
- The definition of distortion in the internal market should recognise cases of per se distortive effects and cover any subsidies distorting EU market, regardless of sector, granted to any undertaking active in the EU
- There should be no limit for the cases under investigation to any financial threshold.

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)

Yes No Other

Please explain.

1000 character(s) maximum

We agree with the 2-step procedure. In our view:

- the EC should have exclusive competence for investigations under Mod.1&2, whether acting ex officio, at the request of a MS or EU operators
- it would be desirable that EU stakeholders incl. trade associations could launch a complaint that can be later reviewed by EU authorities
- we welcome the EC's proposal to use ex officio powers by the competent supervisory authority to launch investigations even if there is no direct complaint from stakeholders. This option is important to avoid risk of retaliation
- the EC's team should be able to visit companies under investigation and those that are affected by foreign subsidies in the internal market
- interested stakeholders should be informed about the EC's investigation process in a transparent manner & able to provide comments
- the burden of proof should lie on third countries company which is under investigation
- it is still unclear who in the EC will be a competent authority.

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?

Yes No Other

Please explain.

1000 character(s) maximum

We believe that the Commission's proposal should be as ambitious as possible in its scope and in the redressive measures it proposes. In particular, the redressive measures should include a range of effective options, e.g. prohibition on investments, financial payments to the EU, prohibition on EU acquisitions. This said, structural remedies should be the most appropriate base when major subsidies, strategic and/or sensitive sectors, and/or State-owned or directed companies are involved. The redressive measures would need to be sufficiently effective and dissuasive, therefore, financial and other penalties should also be considered.

Compliance with transparency obligations must be ensured: redressive measures should be imposed in case of false information/lack of transparency. In this regard, a 'de facto reversal of the burden of proof' could address the lack of transparency, which is one of the most problematic obstacles to tackling foreign subsidies.

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?

Yes No Other

Please explain.

1000 character(s) maximum

EU interest test must start from presumption of interest in removing distortions.

It would be critical for the effectiveness of a new Module 1 tool that there be:

1. a baseline premise that there is a fundamental and strong EU interest in favour of removing the distortions caused by foreign subsidies;
2. a recognition that even when the supported economic activity or investment appears to be furthering EU public policy objectives in the very short term, the impact of the distortions may easily be such that in the medium term those public policy objectives would be less likely to be realised if measures are not taken. Preferably, the EU Test should be limited to a closed catalogue of EU interest to avoid politicization.

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)

Yes No Other

Please explain.

1000 character(s) maximum

In our view, it is important NOT to limit the cases under investigation to any financial threshold (at the moment, the threshold under Module 2 : foreign subsidy directly or indirectly facilitating acquisition of a significant share in an EU company with a turnover of more than e.g. EUR 100 million).

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)?

Yes No Other

Please explain.

1000 character(s) maximum

The proposed threshold (any foreign financial contribution of EUR 200.000 over a period of three years) is very low.

As stated above, we think it is important NOT to limit the cases under investigation to any financial threshold, as in some cases a foreign subsidy can have a devastating effect on a niche market, that can have negative consequences on many segments of EU supply chain.

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

Yes No Other

Please explain.

1000 character(s) maximum

In our opinion, the enforcement responsibility under Module 1 should fall under the remits of the EU institutions (as for Module 2). This would ensure the consistent application of the measures.

The competent authorities should be able to launch investigations at their own initiative, as defined under the EU regulation on investment screening, if they have reasonable concerns.

In case of responsibilities to be shared between the European Commission and Member States, it would be of great benefit to prepare EC guidelines, which will enable them to properly assess some risks related to investment or acquisition of enterprises. Nevertheless, we would like to make sure that solely the Commission can apply the Community Interest's Test.

Furthermore, the well-balanced procedure of the Commission's investigation shall be created, in line with EU Trade Defence Instruments investigation. In this way, the Commission could perform an in-depth analysis of the facts available.

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)?

Yes No Other

Please explain.

1000 character(s) maximum

While we believe that Module 2 addresses distortions appropriately, we would like to stress some issues that might be problematic (some of which have been already mentioned for Module 1):

- Some operational aspects, methodologies and competences for Module 2 should be clarified and strengthened, like for example, redressive measures, questions related to burden of proof;
- The instrument should be targeted, avoiding the creation of heavy mechanism that do not capture relevant cases;
- Need to clarify potential overlapping with other existing procedures (e.g. FDI screening, trade defence, state aid);
- The instrument should not add additional administrative burden for companies or impact the time for the different decision-making processes by public authorities.

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)

Yes No Other

Please explain.

1000 character(s) maximum

We agree with the two-step investigation procedure for Module 2: notification based on thresholds/qualitative criteria, followed by an in-depth investigation if concerns are confirmed. However, the ex-ante obligatory notification system should not add further administrative burden for companies or impact the time for the different decision-making processes by public authorities (see answer to question 4). Moreover, to avoid circumvention, it is crucial for the competent supervisory authority to be able to review ex officio an acquisition which should have been notified by the acquirer but was not, including after it is completed.

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

	Yes	No	Other
definition of acquisition	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
definition and thresholds of the EU target (4.2.2.3)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
definition of potentially subsidised acquisition	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Please explain. As regards thresholds, please provide your views on appropriate thresholds.

1000 character(s) maximum

We think acquisitions should be ambitious and broad, including material influence in the target company. Moreover, the subsidy received by companies should be useful for the acquisition in order to be considered relevant.

According to Module 2: Foreign subsidy directly or indirectly facilitating acquisition of a significant share in an EU company with a turnover of more than e.g. EUR 100 million

- Received three years prior to or one year following the acquisition
- Additional and alternative national thresholds possible

As mentioned above, we think it is important NOT to limit the cases under investigation to any financial threshold, as in some cases a foreign subsidy can have a devastating effect on a niche market, that can have negative consequences on many segments of EU supply chain.

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)?

Yes No Other

Please explain.

1000 character(s) maximum

The notification obligation should be considered only for potentially subsidised acquisitions, in order to avoid adding further administrative burden for companies or impact the time for the different decision-making processes by public authorities.

In addition, an impact assessment could identify the degree of subsidization, the number of companies that will be targeted and what the impact in terms of administrative burden would be (e.g. notifications triggered by different thresholds and criteria).

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?

Yes No Other

Please explain.

1000 character(s) maximum

We agree with the redressive measures presented under Module 2 including:

- Binding commitments offered by acquirer or
- Redressive payments if effective
- Structural or behavioural remedies or
- Full prohibition of acquisition

We agree that the burden of proof should lie on economic operator and a lack of transparency or false information should be met by redressive measures. In this regard, we believe that a 'de facto reversal of the burden of proof' could address the lack of transparency, which has hitherto been one of the most problematic obstacles to tackling foreign subsidies. In addition, sanctions for non-notification of subsidies should be more severe than in case of distortions caused by notified subsidies. Otherwise companies would be incentivized not to notify subsidies.

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?

Yes No Other

Please explain.

1000 character(s) maximum

As a general matter, the EU interest test in this Module should be limited to specific cases. We propose, it can be only limited to the case of a firm failing and the only way of having a reasonable chance of its survival is if the acquisition were to go through.

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

Yes No Other

Please explain.

1000 character(s) maximum

Yes, we believe that the Commission's exclusive power of enforcement responsibility under Module 2 will ensure the consistent application of the measures.
Furthermore, the well-balanced procedure of the Commission's investigation shall be created, for example, in line with EU Trade Defence Instruments investigation. In this way, the Commission can perform an in-depth analysis of the facts available.

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?

Yes No Other

Please explain.

1000 character(s) maximum

Yes, distortions caused by foreign subsidies in the context of public procurement procedures should be addressed by a dedicated instrument. The main reasons are:

- the absence of disciplines on foreign subsidies, and their subsequent treatment in specific tendering procedures, in the EU public procurement framework.
- the importance of public procurement in Europe and its specific nature compared to traditional flows of goods or services: project-based approach through procedures for which public authorities are responsible

As such, if a subsidy is confirmed and the competent authority finds that it distorts the procurement procedure, we believe, that subsidised operator should be immediately excluded from ongoing procurement procedure and also from future procurement procedures for a sufficient period of time.

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?

Yes No Other

Please explain.

1000 character(s) maximum

Module 3 is important to assessing whether foreign subsidies have been received by an economic operator and if these subsidies have distorted the specific procurement process.
At the same time, this Module could have an impact on public procurement procedures (e.g. adding burden for companies and/or hindering investigations). Therefore, a right balance between effectiveness and burden is essential.

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?

Yes No Other

Please explain.

1000 character(s) maximum

A shared management of responsibilities between the Commission and Member States, but we believe that the operational aspects and competences should be clarified and strengthened. A guidance would be useful for national competent authorities to guarantee a uniform practice of assessment of distortion across the EU, but the Commission should also bring in its expertise and knowledge in the investigation.
The Commission should always have the power to intervene if it finds that the procedure is not followed by national authorities (e.g. in case of diverging interests).

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?

Yes No Other

Please explain.

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Interplay between Modules 1, 2 and 3

1. Do you consider that

	Yes	No	Other
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a. Module 1 should operate as stand-alone module	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
b. Module 2 should operate as stand-alone module	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
c. Module 3 should operate as stand-alone module	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
d. Modules 1, 2 and 3 should be combined and operate together?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain.

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We believe that the Modules should operate in parallel in a coordinated manner to address foreign subsidies and circumvention most effectively. As such:

We agree that Mod 1 should be a “safety net” for Mod 2: if something cannot be addressed under Mod 2, it could still be done under Mod 1. However, the legislation should make clear that if a decision has been notified under Mod 2, it cannot be re-opened under Mod 1.

Moreover, Mod 1 should be also a “safety net” for Mod 3, if something cannot be addressed under Mod 3, it could still be done under Mod 1. In addition, a Mod 1 tool could tackle distortions caused by foreign subsidies in relation to private procurement.

We think the White Paper should be more focused on the accumulated impact of subsidies from the same source distorting the EU market though different economic operators. Redressive measures must take into account the situation where a single country repeatedly subsidises different enterprises in different market segments.

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?

Yes No Other

Please explain.

1000 character(s) maximum

There is an acceleration of a trend to award contracts to foreign entities benefiting from subsidies and proposing significantly lower prices. On top of the fact that these distortions are not addressed, non-EU companies benefit from EU funds while EU manufacturers cannot always equally access these third countries' markets and thus benefit from local funding. Hence, additional measures in this specific context are needed.

In the current crisis recovery context and debate on strategic autonomy, EU funds and EU-supported International Financial Institutions should play a greater role in supporting EU companies who want to do business in the EU or abroad.

Furthermore, a stronger trade dimension and the introduction of reciprocity principles on the question of EU funding would be strongly supported.

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?

Yes No Other

Please explain

1000 character(s) maximum

The White Paper identifies two main areas where foreign subsidies could cause distortions in the context of EU funding: Procurement & Grant award procedures.

We believe that the proposed framework should be reinforced and the EC's powers in particular should be strengthened as there is EU funds involved.

It will also be important to strengthen the role of the EU's Anti-Fraud Office (OLAF) to protect the Union's financial interests when EU funds are involved. The main objective would be to conduct in full independence investigations to fight fraud affecting the EU budget and to avoid circumvention of measures, as it has been seen in previous trade defence cases.

We also suggest to include additional requirements related to the receipt of foreign subsidies to the EU funds implemented under indirect management. This relatively new approach is now becoming increasingly widespread with the increase in funding for post-COVID recovery, strategic autonomy and EU Green Deal objectives.

Thank you for your contribution to this questionnaire. In case you want to share further ideas on these topics, you can upload a document below.

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Contact

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