

# Introduction

“Foreign” – third-country – subsidies distorting the internal market are increasingly seen as posing a problem for the EU. This was addressed by the EU Commission in a White Paper in 2020, and its May 2021<sup>1</sup> proposal addressing this matter is currently making its way through the legislative process. On 5/6 May 2022, an academic conference on this topic examined the Commission proposal and its broader context. It is on this conference that the papers constituting this symposium section of ZEuS 3/2022 are based. In June 2022, an agreement on the specific content of the Foreign/Third-country Subsidies Regulation (FSR) was reached. It is scheduled to enter into force before the end of the year.<sup>2</sup>

The FSR regulation is intended to counter possible competition-distorting effects of third-country subsidies on the internal market. It aims to fill a regulatory gap that exists within the internal market. None of the existing trade or competition policy instruments apply to all different kinds of non-EU subsidies that provide an unfair advantage to beneficiaries when acquiring EU businesses, participating in public procurement procedures within the EU, or engaging in other economic activities within the EU. Thus, the granting of subsidies by non-EU states is still largely uncontrolled, while subsidies by EU Member States are subject to strict controls based on Art. 107 f. TFEU. Non-EU subsidies that cause distortions and harm fair competition in the internal market should be placed in a position to be effectively addressed.

The FSR empowers the Commission to examine financial contributions received from authorities of a non-EU state by companies economically active in the EU and, if necessary, to avert the distortive effects of such contributions on competition. To this end, the FSR provides for the introduction of three instruments, two notification-based instruments and one general market investigation instrument:

- a notification-based instrument for merger review in cases where a third-country government provides a financial contribution, the EU sales of the acquired EU-established company (or at least one of the companies involved in the merger) amount to €500 million or more, and the third-country financial contribution is at least €50 million;
- a reporting-based tool for the review of bids in public procurement procedures in cases where a third government provides a financial contribution of at least €4 million and the estimated value of the contract is €250 million or more; and
- a tool for the review of all other market situations, as well as for mergers and lower value procurement procedures, where the Commission may initiate a review on its own initiative (*ex officio*) and request *ad hoc* (notification) reports.

1 <https://www.consilium.europa.eu/en/press/press-releases/2022/06/30/foreign-subsidies-regulation-political-agreement/> (1/8/2022).

2 <https://hsfnotes.com/crt/2022/07/06/eu-reaches-agreement-on-foreign-subsidies-regulation-new-regime-to-enter-into-force-next-year/> (1/8/2022).

Under the two notification-based instruments, the acquirer or bidder must pre-notify any financial contribution meeting the thresholds that it has received from a third-country government in connection with mergers or public procurement procedures. As is the case under merger control and state aid supervision law, the merger in question may not be implemented until the Commission has completed its review, and the bidder, whose bid is subject to review, may not be awarded the contract until the review is completed. Deadlines for the Commission's investigation apply in each case; once the deadline has expired, approval is deemed to have been granted. If a company fails to comply with an obligation to notify a subsidized merger or a financial contribution as part of a public procurement procedure, the Commission may impose fines.

The general market investigation instrument allows the Commission to conduct investigations in additional contexts, such as new investments or mergers and awards of public contracts that remain below the thresholds but where the Commission suspects involvement of a third-party subsidy. In such cases, the Commission may initiate an *ex officio* investigation on its own initiative.

The FSR provides for remedies and commitments, such as divesting certain assets or prohibiting certain market conduct. The Commission also has the authority to prohibit the subsidized acquisition of businesses or the award of public contracts to subsidized bidders. Commission competences to investigate are oriented at merger control law and seem to be a lot more powerful than in anti-subsidies and countervailing duties procedures as well as in state aid law.

The contributions in our symposium section focus on different problems and aspects of the above mentioned issues. We are very thankful to our authors Simone Ritzek-Seidl, François-Charles Lapr vot, Wanjie Lin, Sarah Blazek, Jochen Christoph Hegener, Wolfgang Wei , Tabea Bauermeister, Caspar Ebrecht, Patricia Trapp, Carolina Dack , Charlotta Brodin and Alice Arlebo to have agreed to contribute to one of the first comprehensive studies on the FSR.

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