



FEPORT reply to the consultation on the proposed Regulation on foreign subsidies distorting the internal market

FEPORT represents 1225 private port companies and terminals performing cargo handling and logistics related operations in European sea ports.

FEPORT welcomes the proposal for a Regulation on foreign subsidies distorting the internal market as it tackles the crucial issue of level playing field for EU companies exposed to unfair competition from third country players.

The proposal clearly recognizes that foreign subsidies have had a distortive impact on EU's internal market, creating an uneven playing field for competition, and facilitating the acquisition of EU undertakings, influencing investment decisions, etc., to the detriment of fair competition.

As also illustrated by the White Paper, the proposal acknowledges the persistence of a fundamental legislative gap in EU competition, trade, and public procurement rules, allowing foreign subsidies to cause distortions in the internal market without the EU being able to take action.

FEPORT subscribes to the above-mentioned findings and is supportive of a proposal aimed at addressing those distortions that fall outside the EU State aid, merger control and antitrust rules, and the detrimental effects of distortive foreign subsidies in the cases of concentrations and public procurement *ex ante*, without limiting the EU's ability to intervene *ex post* in other market situations.

Well-functioning competition rules, state aid control and fair taxation rules play an essential role within the Single Market. They also represent an efficient mechanism to ensure fair globalization. They can limit distortions, protect consumers' rights, and offer the possibility for companies to enter new markets. FEPORT is convinced that, if the legislator wants European companies to remain truly competitive at a global level, Member States must implement EU competition rules in a consistent manner, and coherently apply and control state aid rules. The Commission should also explore how EU competition policy can adapt to developments on global markets and where necessary change relevant notices and guidelines.

FEPORT hopes that the proposed Regulation will fulfil its ambition to better address distortions caused by foreign subsidies in the Single Market. We urge the European Union to arm itself with improved tools to anticipate potential risks from foreign subsidies that may threaten strategic assets and ecosystems.

In this respect, public (port authorities) and private (private port companies and terminals) ports operators are essential to the waterborne sector and play an indispensable role in the maritime logistics chain. Ports are also points of entry to the EU territory and have geopolitical positions with respect to emergency or military operations. They play a strategic role in the supply of goods and services to European consumers and industry. They should therefore be considered as strategic assets in the framework of the proposed Regulation on foreign subsidies.

With COVID-19, many subsectors of Europe's waterborne sector have been severely impacted (e.g., passenger shipping and shipbuilding). This impact has come on top of the sector's challenges with the energy transition and with severe competitive and trade distortions emanating from third countries, often related to unfair subsidies. The effects of such distortions, for sectors which were suffering even before the COVID-19 outbreak, should not be underestimated as third-country actors often directly target or put at risk Europe's strategic sectors.

It will be therefore essential to include them in the scope of the proposed Regulation to avoid any legal loopholes that would weaken or jeopardize its efficiency and effectiveness.

With respect to the maritime sector, the EU Commission suggests clarifying what is the relationship between the proposed Regulation on foreign subsidies and the old Council Regulation (EEC) 4057/86 on unfair pricing practices in maritime transport (OJ L 378, 31.12.1986, p. 14).

FEPORT considers that the market of maritime transport as well as its structure has changed fundamentally since 1986 and that the vertical integration of seaport terminals by shipping companies constitutes an evolution that needs be considered. It is therefore essential to anticipate situations where EU shipping companies would sell terminal assets to subsidized third country companies.

Besides, given the international global nature of shipping, it is crucial, to make sure that both EU and non-EU maritime companies are not receiving subsidies considered illegal state aid in Europe thus distorting competition within the EU market.

For the above two reasons, FEPORT recommends that maritime transport is in the scope of the proposed Regulation.