

*Följande text är författad av ICC:s Global Policy Lead on Competition **Caroline Inthavisay**. Nedan text är en sammanfattning av vår arbetsgrupp ICC Task Force on State Aid:s möte med DG Comp och DG Grow den 15 mars 2023. Önskar ni ingå i vår internationella arbetsgrupp, eller har vidare frågor, vänligen kontakta ICC Sveriges Policykoordinator Alfred på alfred.ram@icc.se.*

General comments:

The meeting was attended by the following European officials:

DG COMP: Christof Schoser, Head of the Third-Country Subsidies Task Force; Joao Azevedo and Simone Ritzek-Seidl, International Relations Officers at the Task Force Third-Country Subsidies

DG GROW: Sandro Čavrak, Legal and Policy Officer, Public Procurement Strategy Unit

The EC addressed, albeit in a cautious and rather predictable manner, the entirety of the questions submitted by ICC, including a few others that were prompted along the exchanges. The Commission provided some clarification on certain issues we raised and noted that others (e.g., the notification obligation for transactions signed between July and October 2023) were currently being discussed internally. The exchange with the Commission is summarized below.

At the end of meeting, the Commission conveyed to ICC that it would welcome examples of “innocent” transactions that could be excluded from the notification requirements under the FSR. ICC will discuss this suggestion and revert to the Commission in due course.

Exchange with the Commission:

The articulation of the WTO rules with the EU Foreign Subsidies Regulation (FSR): The Commission referred to Article 44 of the draft Implementing Regulation and noted that notifications that fall within the scope of the WTO Agreement on Subsidies and Countervailing Measures (SCM) could not be tackled under the FSR. However, as regards the notification threshold, there is no distinction between the two. Therefore, actions falling within the SCM would also be subject to the same notification requirements under the FSR.

Application to private equity: The possibility to look at this issue on a fund-by-fund basis is under study and raises questions such as the delimitation of different funds, the definition, conditions and ways in which they may be looked at separately, including how all of this should be communicated.

Waivers and concentrations: The Commission referred to the 200 000 EUR threshold which aims to cover small non-problematic transactions. There is a double threshold for concentrations: (i) a category for which more detailed information will be needed. The Commission will request documentation and specifications in relation to each of them, and (ii)

as regards subsidies falling outside of the scope of Section 5.1, the Commission will only request general disclosure obligations.

Applicability of the FSR: In light of the significant number of stakeholders who brought this question forward, in particular for the period between 12 July and 12 October 2023, the Commission is trying to clarify this matter as quickly as possible. It will communicate on it soon.

Use of ex officio instruments: These instruments will be used cautiously in the beginning as they have their benchmarks rules. However, the Commission upholds that they will develop some guidance in the coming months but does not see any need for a formal memorandum on ex officio tools.

Public procurement

Distinction between groups of companies: The Commission confirms the view that the “corporate group concept” applied to concentrations is not the same for public procurement procedures. Moreover, regarding the question of sister companies, the Commission noted that if a sister company is on same level of autonomy as the ones participating in the tender, then it is excluded from the concept of “economic operator” for public procurement.

Transactions with a presumption of normal market conditions be included in Table 1 in Annex 1 & Annex 2: The Commission noted that these questions circle back to the distinction between financial contributions and subsidies. It emphasized that the notification form concerns financial contributions and not subsidies. As such, financial contributions have to be notified and the Commission will then assess whether they constitute a subsidy. The Commission added that the notification form is unlikely to change for the time being.

Safe harbours: This may be something that the Commission is aiming for in the medium and longer term with respect to unproblematic contributions. The Commission considers that it does not have sufficient experience at the moment with the new regulation to answer this question.

US CHIP Act and the Inflation Reduction Act (IRA) in the relation to the FSR: The general FSR principles will apply to subsidies granted by the US under CHIP and IRA. If a subsidy is provided with the objective to foster the production of good in a third country and this good is imported in the EU, it will fall under SCM and therefore will not be taken up by the FSR. Anything that can be linked to a concentration and aims to subsidize the export of services into the EU could be treated under the FSR.