

Berliner Gesprächskreis zum Europäischen Beihilfenrecht e.V.

Verordnung über Drittstaatensubventionen – Chinas Zählung oder Fallstricke für europäische Unternehmen?

Jörn Eickhoff, Siemens Energy AG
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Need for a level playing field

- Access to procurement markets
- Local content requirements
- Different technical, environmental, human rights etc. standards
- (Lack of) protection of IP
- Access to finance, guarantees, education, R&D, subsidies
- Government support in international projects
- Regulation...



Need for a level playing field

European Parliament

2019-2024



TEXTS ADOPTED

P9_TA(2022)0379

Distortive foreign subsidies

European Parliament legislative resolution of 10 November 2022 on the proposal for a regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market (COM(2021)0223 – C9-0167/2021 – 2021/0114(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0223),
- having regard to Article 294(2) and Articles 207 and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the



Practical considerations regarding the notification tools

Who will have to notify



What must be notified



How do we identify our foreign financial contributions



Who will do the work



Isn't there a simple button to push or a tool for this



(I thought it only concerns Chinese SOEs)



(And who will review all this data???)

Who must notify and what will have to be notified?

- **Undertakings engaging in M&A**
 - EUR 500 million turnover
 - EUR 50 million non-EU foreign financial contributions

- “Notifiable concentrations” (Art. 21)

- “[C]oncentration” (most likely also foreign financial contributions)

- **Economic operator involved in EU public tender**
 - EUR 250 million value (EUR 125 million if bidding for lots)
 - EUR 4 million non-EU foreign financial contributions per third country (granted to economic operator and its main subcontractors and suppliers)

- “[N]otifiable foreign financial contribution” [sic] (Art. 28)
- “notification of foreign financial contributions” (Art. 29)
- “declaration” (Art. 29)

- “[A]ll foreign financial contributions” (granted to economic operator and its main subcontractors and suppliers) in the last three years must be listed in notification (threshold met) or declaration (threshold not met)

How to identify non-EU foreign contributors?

- **Central government** and public authorities at all other levels

- **Foreign public entity** whose actions can be attributed to the third country, taking into account elements such as the characteristics of the entity and the legal and economic environment prevailing in the State in which the entity operates, including the government's role in the economy

- **Private entity** whose actions can be attributed to the third country, taking into account all relevant circumstances

- Compliance data base?
- KYC data base?
- Manual supplier/customer questionnaires?
- Commercial data base vendors?

How to identify financial contributions?

- **Transfer of funds or liabilities**

- Capital injections
- Grants, loans, loan guarantees
- Fiscal incentives
- Setting off of operating losses
- Compensation for financial burdens imposed by public authorities
- Debt forgiveness, debt to equity swaps, rescheduling

- **Foregoing of revenue that is otherwise due**

- Tax exemptions
- Granting of special or exclusive rights without adequate remuneration

- **Provision of goods or services**

- **Purchase of goods or services**

Last three years before the notification

Legal/Compliance? Accounting? Tax? Shareholder Controlling? Treasury? Sales? Purchasing? HQ? Region?

Things to consider on the way forward...

- When drafting the **Implementing Regulation and Notification Forms**:
 - Think of the **purpose and goals** of the Foreign Subsidies Regulation
 - Companies don't like **uncertainty or bureaucracy**
 - **Level the playing field**

“It is necessary to strike a balance between the effective protection of the internal market and the need to limit the administrative burden on undertakings subject to this Regulation.” (Recital 35)



Thank you! Questions?



Jörn Eickhoff, LL.M. (London)

Rechtsanwalt (Syndikusrechtsanwalt)

Head of Legal Competition & Regulatory (SE LC CMA)

Siemens Energy AG

Otto-Hahn-Ring 6, 81739 München, Deutschland

M: +49 (174) 1 531 231

E: joern.eickhoff@siemens-energy.com