

SEA EUROPE COMMENTS ON THE “WHITE PAPER ON LEVELLING THE PLAYING FIELD
AS REGARDS FOREIGN SUBSIDIES”

EXECUTIVE SUMMARY¹

15 September 2020

- SEA Europe² welcomes the “[White Paper on levelling the playing field as regards foreign subsidies](#)” (hereafter “*The White Paper*”) issued by the European Commission. The White Paper recognizes the existence of major regulatory gaps in EU legislation in addressing distortions from foreign subsidies in the Internal Market. These gaps relate to EU rules on competition, trade, public procurement and EU funding.
- For Europe’s shipyards and maritime equipment sector (hereafter “*European maritime technology sector*”), distortions from foreign subsidies in the Internal Market are a matter of urgent and serious concern. In the last decades, Europe has gradually lost entire ship market segments as well as technical competences and capabilities to Asia as a result of aggressive Asian (State-led and supported) competitive distortions. However, these distortions have not been addressed by existing trade instruments. For example, contrary to most manufacturing sectors, Trade Defence Instruments (TDIs) under WTO or EU rules are not fit for shipbuilding amongst others because ships are generally not imported into the EU customs territory (in the sense of “released for free circulation”).
- Furthermore, the European Union is regrettably reinforcing the distortions of competition on the internal market by currently allowing heavily subsidized foreign operators to benefit directly or indirectly from EU funding programmes. In some instances, the use of EU funds has *de facto* contributed - and still contributes - to “double subsidization” to the benefit of oversea competitors (already massively subsidised in their home countries) and to the detriment of EU producers.
- To date, Asia is targeting Europe’s remaining global leadership in complex shipbuilding as well as in advanced maritime equipment manufacturing (e.g. “Made in China 2025”), through existing or new distortions and unfair practices resulting from foreign subsidies. However, without effective tailor-made measures for our sector, Europe runs a serious risk of losing its remaining market share to Asia and thus become entirely dependent on Asia’s maritime technology sector.
- The White Paper has recognised the existence of “*Regulation 2016/1035 on protection against injurious pricing of vessels*”. This sectoral regulation was adopted to safeguard fair competition in shipbuilding but – despite being legally in force – was never applied since its applicability had been made conditional upon the entry into force of an OECD Shipbuilding Agreement after ratification by all its Parties. As stated in the White Paper, however, this Agreement has not been ratified by all Parties and consequently has not entered into force. However, **the White Paper regrettably neglects to mention that this OECD agreement,**

¹ The present document is an executive summary of SEA Europe’s detailed comments as submitted in the context of [the European Commission’s public consultation](#) on the White Paper on Foreign Subsidies.

² SEA Europe represents close to 100% of the maritime technology industry in 16 nations, including EU Member States, Norway and Turkey. The maritime technology sector encompasses the building, maintenance, repair, retrofitting and conversion of all types of ships and floating structures –commercial as well as naval – including the full supply chain with the various producers of maritime systems, equipment material, technologies and services.

signed in 1994 and “*scheduled to enter into force on 15 July 1996*”, has no chance of ever being ratified by all Parties and consequently will never enter into force. Just as important, it is nowadays also completely outdated and inadequate to solve present challenges (e.g. China was never a Party to the 1994 OECD Agreement and therefore this agreement would not in any event be able to tackle trade distortions resulting from Chinese subsidies).

- **For SEA Europe, the White Paper offers a perfect opportunity for the EU to finally solve the longstanding regulatory gap for shipbuilding and, in doing so, to achieve a level playing field by means of robust, sector-specific measures, adapted to the specificities of the maritime technology sector. In this respect, SEA Europe suggests that the Commission proposes a complete update of EU Regulation 2016/1035, a sector-specific tool, to address foreign subsidies to operators in the maritime technology sector, possibly inspired by some principles from Module I of the White Paper but adapted to make them fit and effective for the European maritime technology sector (see relevant paragraphs below).**
- Even though the European Commission favours horizontal policies, SEA Europe calls for sector-specific measures to secure the survival of Europe’s maritime technology sector, i.e. because:
 - **The sector cannot wait any longer for (new) horizontal tools as they will take too much time and have been ineffective in the past** (e.g. contrary to other manufacturing sectors, TDIs are ineffective and inadequate for shipbuilding). Moreover, with the economic impacts of Covid-19 and related government measures, the very survival of Europe’s maritime technology sector is at risk.
 - **A sector-specific tool for maritime technology will be a powerful signal towards Europe’s competitors in Asia** (which all consider their local maritime technology sector as strategic and therefore apply sector-specific policies), and create leverage for the EU towards foreign countries.
- At the same time, SEA Europe agrees that the “horizontal” gaps and transversal problems, identified in Module 2 (acquisitions), Module 3 (public procurement) and the section on EU funding, should be addressed by new, comprehensive and robust horizontal tools specific to those situations.
- As regards the individual Modules of the White Paper, SEA Europe has the following comments:

(a) Module 1

This Module may offer a basis **for the development of a sector-specific tool that could effectively create a level playing field for the European maritime technology industry**. To be effective, a new tool based on Module 1 needs to be adapted to fit with the specificities of shipbuilding, based *inter alia* on the following elements:

- It must cover all foreign subsidies insofar as they directly or indirectly cause distortions within the Internal Market, notably foreign subsidies providing benefits to any operator (wherever established) in relation to production, sale and/or operation of ships or maritime equipment used in EU waters
- The definition of subsidies must be broad, e.g. taking into account the lack of third country transparency, lax third country regulations, and the timing of subsidies and their impact.
- Subsidies must be recognised already from the moment an operator is entitled to benefit from it, even if only conditionally. Distortions caused by foreign subsidies similarly may occur long before the delivery of the ship.

- At the same time, because of the extended period over which a given subsidy causes injury, as well as the challenges of identifying and quantifying foreign subsidies, the limitations period for taking action against a given subsidy in our sector should start only from the later of the actual moment of receipt of the subsidy or the moment at which a ship is delivered which is then operated in EU waters. Indeed, in the shipbuilding and maritime equipment sector, while the impact of a subsidy often begins already at the time a contract is concluded, a ship may only be delivered years later and the subsidy may also be paid only at a later date (and may even have been conditional on the signing of the contract and additional conditions to be fulfilled in relation to the ship's production and/or delivery).
- The new tool must equally recognise that distortive impacts can occur even before an operator is fully entitled to a foreign subsidy.
- Certain foreign subsidies should be considered distortive on a *per se* basis, e.g. all those listed in section 4.1.3.1 of the White Paper. As stated in the White Paper, “subsidies in the form of export credits” should be considered distortive unless they are in line with the OECD Arrangement on officially supported export credits. Therefore, **all** export financing subsidies granted by countries which are **not** signatories to this OECD arrangement should, in SEA Europe’s view, be equally considered *per se* “distortive”.
- In the context of an EU interest assessment, the new tool should recognize that a strong maritime technology industrial base in Europe is itself a primary public policy objective, which therefore needs particular safeguards from foreign subsidy distortions.
- Redressive measures need to be effective and dissuasive and include remedies specifically tailored to the needs and specificities of shipbuilding and maritime equipment sector.

(b) Module 2

This Module adequately tackles distortions of the EU Internal Market through **foreign subsidies that facilitate the acquisition of undertakings established in the EU**, provided that the improvements suggested by SEA Europe during the public consultation are taken into account.

For instance, the definition of what is to be considered an “acquisition” should cover acquisition of both direct or indirect control, but also of a certain material influence” in an undertaking e.g. achieved through a certain percentage of the shares or voting rights. In this regard, joint venture arrangements should also be covered by Module 2, at least to the extent they allow joint control of EU activities and/or involve technology or other significant know-how transfers. It is, equally, important to also address smaller transactions of a strategic nature that might affect European companies with important critical assets, high growth or technology development prospects.

For SEA Europe, this Module is relevant in the context of foreign countries with explicit State-led industrial strategies aiming at expanding their stakes in (European) shipyards and maritime technology companies or at accelerating the development of indigenous technologies and innovation in high-tech segments, currently in European hands. The economic impact of Covid-19 has made it crucial for the EU to adopt quickly an instrument that prevents foreign-subsidised companies to exploit (financial) difficulties in European maritime technology companies.

(c) Module 3

This Module addresses **distortions from foreign subsidies in public procurement procedures** and is very important for the European maritime technology. Both European shipbuilders and equipment manufacturers

have experienced *de jure* and/or *de facto* barriers hampering their access to foreign public procurement markets. At the same time, foreign companies have been able to fully benefit from the EU's open public procurement market policy and were awarded with European public procurement contracts even though these companies were state-subsidised, state-backed and/or state-owned and competed with artificial low prices.

SEA Europe believes that Module 3 is vital to assess whether an economic operator has received foreign subsidies and whether these subsidies have distorted the procurement process, leading to potential decisions to exclude the foreign subsidised operator from participating in the ongoing procedure as well as in future public tenders across the EU for a certain period of time. However, since this Module could also have far-reaching implications for public procurement procedures – both for contracting authorities and economic operators – a right balance is necessary between effectiveness and burden so as to achieve the most practical solutions. Besides, it remains important to pursue the adoption of the International Procurement Instrument (IPI) in order to open-up foreign procurement markets. Furthermore, SEA Europe underlines that the promotion of Most Economically Advantageous Tenders (MEAT), in the sense of banning awarded funds based on price only, and EU localisation content safeguards fostering growth and jobs in the EU should be considered.

(d) EU funding

SEA Europe agrees **on the need for additional measures addressing distortions of the Internal Market from subsidies granted by non-EU authorities in the context of EU funding**. For maritime technology, there are several examples of EU funds being directly or indirectly granted to foreign manufacturers, such as the cases highlighted in the White Paper itself but also cases of EU co-funding granted to European companies ordering new ships at foreign (state-supported) shipyards.

For SEA Europe, the EU needs to set-up a robust EU framework to grant EU funds on the basis of the following principles:

- **Reciprocity:** Access to EU funding for foreign companies should be made conditional upon EU companies having access to that foreign market too and considering the public funding possibilities of the foreign country.
- **Conditionality:** EU investments from EU co-funded programmes should be made based on parameters such as a return on investment in e.g. EU job and economic added value creation throughout the full (European) value chain.
- **Due diligence:** EU co-funded grants to projects involving foreign suppliers or providers of goods and services should be made conditional upon the enforcement of a rigorous due diligence assessment, in order to ensure a true level playing field for European maritime technology companies. In this regard, the European Investment Bank (EIB) Transport Lending policy criteria relating to shipbuilding should be extended, *mutatis mutandis*, across all EU public support programmes and financing tools for maritime projects. For Connecting Europe Facility (CEF), moreover, there should be a required commitment on beneficiaries from grants (e.g. in the case of public authorities) not to award contracts to entities that already benefit from distortive foreign subsidies, based on investigations as mentioned in Module 1 or 3.

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