



White Paper on Foreign Subsidies: legal basis

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Introduction

- Legal basis left open in **Section 6 of White Paper**: *“the legal basis of any proposal for legal instruments on foreign subsidies will depend on their purpose and specific content”*
- Early draft published in *Politico* referred to Article 207 TFEU
- Possible **combination of legal basis** if acts pursue various objectives or have different components if they follow same procedure: common in practice
- Similar instrument to control subsidies granted to third-country *air carriers* (Regulation 2019/712) was based on Article 100 TFEU (specific to transport)

Potential legal basis

Common commercial policy - Article 207 TFEU

"1. The common commercial policy shall be based on uniform principles, particularly with regard to (...) foreign direct investment, (...) and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.

2. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy."

- Exclusive competence
- Ordinary legislative procedure
- Limited to foreign direct investments
- Dumping and subsidies rather to products and services

Potential legal basis

- **State aid (Article 109 TFEU):**
 - consultation procedure
 - no rigid parallelism between legal basis for internal and external action
- **Internal market (Article 114 TFEU):**
 - to regulate intra-EU transactions under ordinary legislative procedure
- Additional sectorial and specific legal basis depending on scope of instruments adopted

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