

BRUSSELS REGULATORY BRIEF: NOVEMBER/DECEMBER 2025–JANUARY 2026

Date: 2 March 2026

EU Policy and Regulatory Newsletter

By: Francesco Carloni, Nikolaos Peristerakis, Mélanie Bruneau, Giovanni Campi, Dr. Michael Hofmann, LL.M., Antoine de Rohan Chabot, Petr Bartoš, Edoardo Crosetto

ANTITRUST AND COMPETITION

European Commission Publishes Guidelines on the Application of Certain Provisions of the Foreign Subsidies Regulation

On 9 January 2026, the European Commission (Commission) published the long-awaited Guidelines on certain key substantive aspects of the European Union (EU)'s Foreign Subsidies Regulation (FSR) (Guidelines), including presumptions for certain high-risk subsidies and a case-by-case analysis for others. The Guidelines also explain the balancing test for weighing negative effects against subsidy-specific benefits and set out the conditions under which the Commission may call in below-threshold transactions or tenders.

European Commission Imposes €72 Million Cartel Fine on Battery Manufacturers and Trade Association

On 15 December 2025, the Commission has imposed combined fines of approximately €72 million on several automotive starter battery manufacturers and their trade association for participating in a long-running cartel in the European Economic Area (EEA). The conduct involved coordination of surcharges linked to the price of lead, a key raw material, affecting sales to automotive original equipment manufacturers (OEMs) and potentially raising costs for vehicle producers across Europe.

European Commission's First Digital Services Act Noncompliance Decision: A Turning Point for Platform Accountability

On 5 December 2025, following a two-year investigation, the Commission imposed a €120 million fine on a microblogging platform for violating its transparency obligations under the Digital Services Act (DSA). This marks the first time the Commission exercised its powers under the DSA to bring action against a major tech company since the DSA came into effect in 2023.

European Commission Imposes Fines of €157 Million for Illegal Pricing Practices

On 14 October 2025, the Commission imposed fines totalling approx. €157 million on three European fashion houses for engaging in resale price maintenance (RPM) across the EEA. The Commission found that each company restricted the ability of its independent retail partners to determine their own resale prices for nearly all

products, in breach of Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA Agreement. This case sends a stark reminder to companies on the importance of designing antitrust compliance programs to effectively manage the enforcement risk in the EU.

ANTITRUST AND COMPETITION

European Commission Publishes Guidelines on the Application of Certain Provisions of the Foreign Subsidies Regulation

On 9 January 2026, the Commission published the long-awaited Guidelines on certain key substantive aspects of the EU's FSR, including:

- The criteria for the assessment of distortive foreign subsidies;
- The balancing test, for assessing the distortive effects versus the positive effects of the foreign subsidy; and
- The Commission's power to request a prior notification of below-threshold cases.

Framework of Assessment for Distortive Foreign Subsidies

The Guidelines clarify that for a subsidy to be deemed distortive, it must (i) be liable to improve the competitive position of the company in the EU; and (ii) in doing so, the foreign subsidy actually or potentially negatively affects competition in the EU.

In connection with the first test—whether the subsidy improved the competitive position of the company in the EU—the Guidelines distinguish between: (i) targeted foreign subsidies, where the improvement of the competitive position is presumed without any further assessment; and (ii) nontargeted foreign subsidies, where the Commission will assess further whether there is cross-subsidization of the company's economic activities in the EU.

- Targeted foreign subsidies are broadly defined all subsidies that support—directly or indirectly—the company's competitive position in the EU. These include, for example, subsidies for manufacturing or distribution activities in the EU, subsidies for acquisitions or investments in the EU, subsidies for R&D that might indirectly benefit the company's products or service offerings in the EU, or subsidies such as financial guarantees that lower the cost of capital of the company's EU activities.
- Nontargeted foreign subsidies are subsidies that do not support, directly or indirectly the company's EU activities, and there is no indication on how the company plans to use these subsidies. The Commission will carry a detailed case-by-case assessment of factors that would prevent cross-subsidization, such as the company's shareholding structure, intra-group links, and laws and regulations that might prohibit cross subsidization.

Second, the Commission will assess whether, as a result of the improvement of the competitive position, the subsidy *actually* or *potentially* negatively affects the level playing field in the internal market. At the outset, the “Article 5” type subsidies are presumed to distort competition in the EU. These Article 5 subsidies include: (i) subsidies granted to a company likely to go out of business without a restructuring plan; (ii) unlimited guarantees;

(iii) export financing; (iv) subsidies financing M&A in the EU; and (v) subsidies enabling the submission of a tender at a very low price.

For the other subsidies, the Guidelines will carry out a detailed case-by-case assessment on two key parameters:

- First, whether the subsidy affects the behaviour of the undertaking in the EU. The Guidelines will look at the scope, nature, purpose, and mechanics of the foreign subsidy to make this assessment.
- Second, the Commission will assess whether the subsidy will actually or potentially affect competitive dynamics to the detriment of other economic operators in the EU.

The vagueness of the above-referenced tests leaves significant leeway to the Commission to find that any particular foreign subsidy constitutes a distortive foreign subsidy.

Balancing Test

Where a distortion is established, the Commission, at the recipient undertaking's request, can carry out a balancing test, consisting in assessing the negative effects of the distortive foreign subsidy against any positive effects of the subsidy to assess whether to accept commitments or to impose remedial measures. The Guidelines provide details about this balancing test and clarify that any positive effects invoked to offset distortion must be specific to the foreign subsidy under assessment. The Commission will weigh the severity of the distortion and whether the claimed benefits could be achieved without it. The Guidelines also provide examples of supporting evidence. The Commission will not object in case the positive effects outweigh the negative effects. Otherwise, the Commission may accept commitments or impose redressive measures.

Power to Request a Prior Notification

Under the FSR, the Commission has the power to “call in” transactions and tenders falling below the FSR thresholds where it suspects distortive foreign subsidies. In this respect, the Guidelines provide clarifications on the conditions for the Commission to request a prior notification. The Commission will focus on cases involving, among others, acquisitions, where the target's turnover does not reflect its actual or future economic significance, and strategic assets such as critical infrastructure or innovative technologies.

If the Commission decides to call in a case, it must provide details of the evidence showing there is a suspicion of foreign subsidies. The Guidelines also provide new safe harbours, including subsidies with respect to low-value public procurement procedures and subsidies below €4 million over a consecutive period of three years.

European Commission Imposes €72 Million Cartel Fine on Battery Manufacturers and Trade Association

On 15 December 2025, the Commission imposed a fine on three automotive starter battery manufacturers and a trade association of approx. €72 million for participating in a cartel that illegally coordinated pricing mechanisms over more than 12 years in breach of Article 101 TFEU. A fourth automotive starter battery manufacturer was not fined as it revealed the cartel to the Commission under the leniency programme. The Commission's leniency programme gives companies the opportunity to disclose their participation in a cartel and cooperate with the Commission during an investigation. A successful leniency applicant will either completely avoid a potentially high fine or receive a substantial reduction from it.

The Commission found that the manufacturers, supported by the trade association, coordinated to create and publish industry-wide lead price premiums, which they used in negotiations with car and truck manufacturers, ensuring surcharges remained artificially high. The Commission concluded that this conduct restricted competition and likely led to inflated costs for OEMs in the EEA. Teresa Ribera, Executive Vice-President for Clean, Just, and Competitive Transition stated that:

"We have zero tolerance for price fixing or any type of cartel. It is our duty to ensure that our citizens and businesses, including European auto manufacturers can depend on suppliers that play fair and respect competition rules."

The trade association was fined for its role in facilitating the infringement with a lump-sum of €125,000. The Commission stated that fining a trade association in addition to its members sends an important signal that trade associations need to make sure they do not facilitate collusion among their members. This decision reflects the principles established by the Court of Justice of the European Union in *AC Treuhand* of 22 October 2015 (Case C 194/14 P), where the court upheld that an entity that is not active on a market may nonetheless be held liable if it could reasonably foresee the anticompetitive conduct and intentionally contributed to achieving the common anticompetitive objective. It also emphasises the growing scrutiny that competition authorities place on trade associations that act as facilitators of anticompetitive conduct.

The Commission's decision against automotive starter battery manufacturers demonstrates that cartel enforcement remains a clear priority of the Commission. The decision is one out of four cartel decisions in 2025 for which the Commission imposed total fines of approximately €859 million. This upward trend contrasts with 2024 where the Commission has issued one cartel decision with total fines of approximately €49 million.

European Commission's First Digital Services Act Noncompliance Decision: A Turning Point for Platform Accountability

On 5 December 2025, the Commission imposed a €120 million fine on a microblogging platform for violating its transparency obligations under the DSA. This decision is the first noncompliance decision under the DSA and constitutes an important step in giving concrete effect to the DSA's enforcement regime. The infringements include deceptive platform design practices, deficiencies in advertising transparency, and restrictions on access to data for independent research.

The Commission found that the microblogging platform's use of the "blue checkmark" constituted a deceptive design practice. Once a symbol of verified identity, the Commission stated that the blue checkmark has been transformed into a paid feature, obtainable without meaningful verification of the account holder. While the DSA does not impose user-verification obligations, it prohibits misleading representation of verification. The infringement therefore arose from the checkmark's signalling effect rather than from the lack of verification itself.

The decision also addresses shortcomings in the microblogging platform's advertising transparency obligations. The DSA requires very large platforms to maintain a publicly accessible, searchable repository of displayed ads containing specified information. The Commission found that the advertising repository lacked key information on ads and advertisers, as well as access barriers that hinder effective scrutiny. The Commission further found that

the platform failed to provide researchers with access to the platform's public data. The Commission noted that limitations on scraping and the imposition of unnecessary barriers undermined independent research into systemic risks in the EU.

Henna Virkkunen, Executive Vice-President for Tech Sovereignty, Security, and Democracy stated that:

“Deceiving users with blue checkmarks, obscuring information on ads and shutting out researchers have no place online in the EU. The DSA protects users. The DSA gives researchers the way to uncover potential threats. The DSA restores trust in the online environment.”

From an enforcement perspective, the decision is notable not only for its substantive findings but also for the remedial framework accompanying the financial penalty. The Commission has paired the fine with detailed remedial obligations and strict timelines, backed by the threat of periodic penalty payments. This reflects an enforcement approach centred on corrective action and sustained compliance rather than punishment alone. The fine marks the DSA's first noncompliance decision and sets a precedent in the industry.

European Commission Imposes Fines of €157 Million for Illegal Pricing Practices

On 14 October 2025, the Commission imposed fines totalling approximately €157 million on three European fashion houses for engaging in RPM across the EEA. The Commission found that each company restricted the ability of its independent retail partners to determine their own resale prices for nearly all products, in breach of Article 101 TFEU and Article 53 EEA Agreement.

The Commission carried out unannounced inspections at the companies' premises in April 2023 and opened formal proceedings against the three fashion houses in July 2024. According to the Commission, the companies engaged in RPM by imposing pricing constraints through: (i) adherence to recommended retail prices; (ii) restrictions on maximum discount rates; and (iii) limitations on sales periods. In certain cases, the fashion houses also prohibited retailers from offering any discounts. The three fashion houses monitored the retailers' prices and followed up with deviating retailers. Retailers generally complied with these practices, either from the start or after being asked to do so.

The Commission concluded that each company acted independently of each other and engaged in a single and continuous infringement of Article 101 TFEU. The Commission imposed fines on the three companies totalling approximately €157 million, taking into account their respective turnover, the duration of the infringement, and their cooperation during the investigation. Two of the companies provided evidence with significant added value at an early stage, and all three expressly acknowledged the facts and their participation in the infringement, which allowed the Commission to conclude the cases under the antitrust cooperation procedure. This procedure is inspired by the well-established cartel settlements procedure and can be used in other situations where companies are willing to acknowledge their liability for an infringement of the EU competition rules (including the facts and legal qualification). The cooperation framework allows the Commission to apply a simpler and faster procedure and the cooperating companies to obtain a reduction in fines, which in this case was 50% for two of the companies and 15% for the third company.

With its decisions, the Commission sends a stark reminder to companies on the importance of designing antitrust compliance programs to effectively manage the enforcement risk in the EU by ensuring that pricing practices fully comply with antitrust rules. RPM practices are not tolerated, and independent resellers must be free to set their own prices and discounts. While the Commission's decisions confirm that the use of price monitoring tools is generally legitimate, it reminds that such tools are not used to retaliate independent resellers by putting pressure, threats, supply limitations, or supply incentives. The decisions also confirm the increasing recourse by companies to the Commission's antitrust cooperation procedure to seek a substantial reduction in the level of fines in exchange for the acknowledgement of their liability for the infringement of the EU competition rules.

We acknowledge the contributions to this publication from our paralegal Martina Pesci, and trainee associates Edoardo Crosetto and Etienne Perrin.

KEY CONTACTS



FRANCESCO CARLONI
OFFICE MANAGING PARTNER,
BRUSSELS

BRUSSELS, MILAN
+32.2.336.1908
FRANCESCO.CARLONI@KLGATES.COM



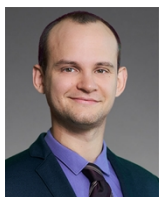
MÉLANIE BRUNEAU
PARTNER

BRUSSELS
+32.2.336.1940
MELANIE.BRUNEAU@KLGATES.COM



DR. MICHAEL HOFMANN, LL.M.
COUNSEL

BRUSSELS
+32.2.336.1921
MICHAEL.HOFMANN@KLGATES.COM



PETR BARTOŠ
SENIOR ASSOCIATE

BRUSSELS
+32.2.336.1922
PETR.BARTOS@KLGATES.COM



NIKOLAOS PERISTERAKIS
PARTNER

BRUSSELS
+32.2.336.1934
NIKOLAOS.PERISTERAKIS@KLGATES.COM



GIOVANNI CAMPI
SENIOR POLICY DIRECTOR

BRUSSELS
+32.2.336.1910
GIOVANNI.CAMPI@KLGATES.COM



ANTOINE DE ROHAN CHABOT
COUNSEL

BRUSSELS
+32.2.336.1941
ANTOINE.DEROHANCHABOT@KLGATES.COM



EDOARDO CROSETTO
TRAINEE ASSOCIATE

BRUSSELS
+32.2.336.1924
EDOARDO.CROSETTO@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.