



Council of the European Union  
General Secretariat

**Brussels, 18 June 2021**

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**Interinstitutional files:  
2021/0114(COD)**

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**WK 8046/2021 INIT**

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From:	General Secretariat of the Council
To:	Working Party on Competition
Subject:	Proposal for a Regulation on Foreign Subsidies distorting the Internal Market : Impact Assessment - presentation by the Commission

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Delegations will find in annex a presentation given by the European Commission during the Working Party meeting on Competition on 18 June : Agenda item 2.

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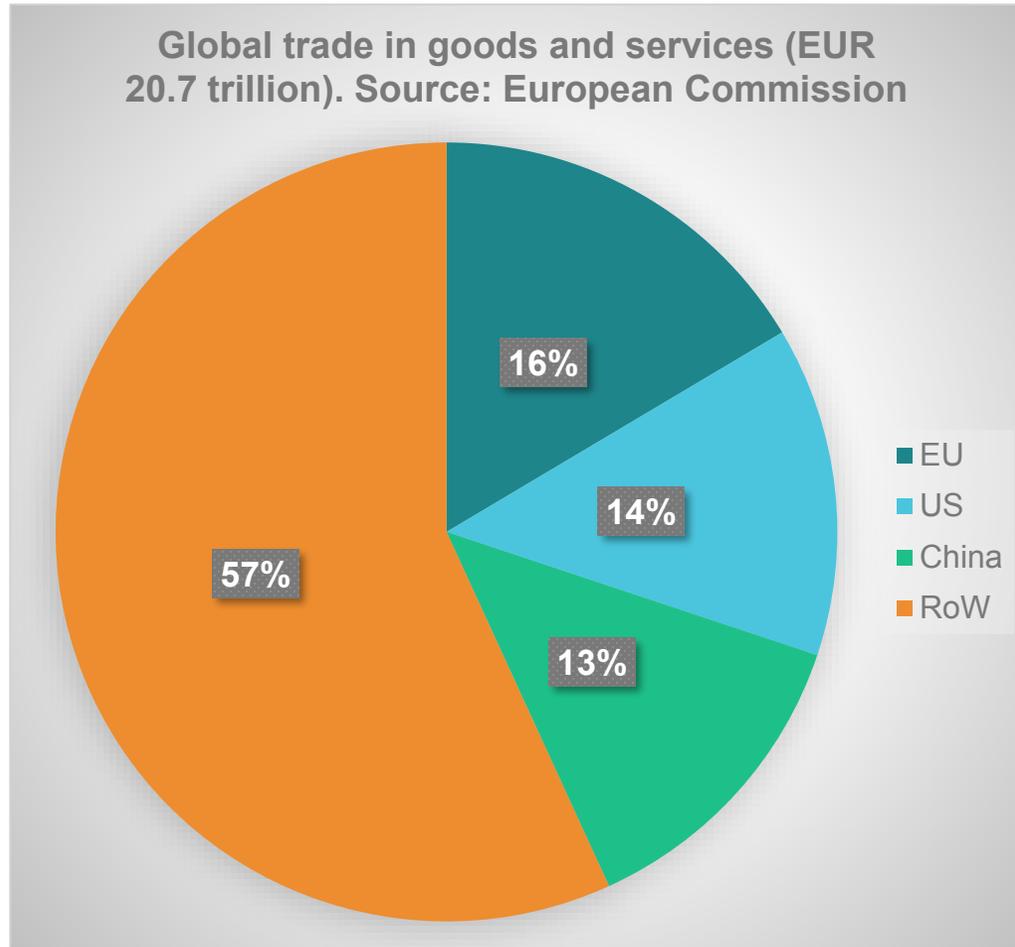


# Impact Assessment

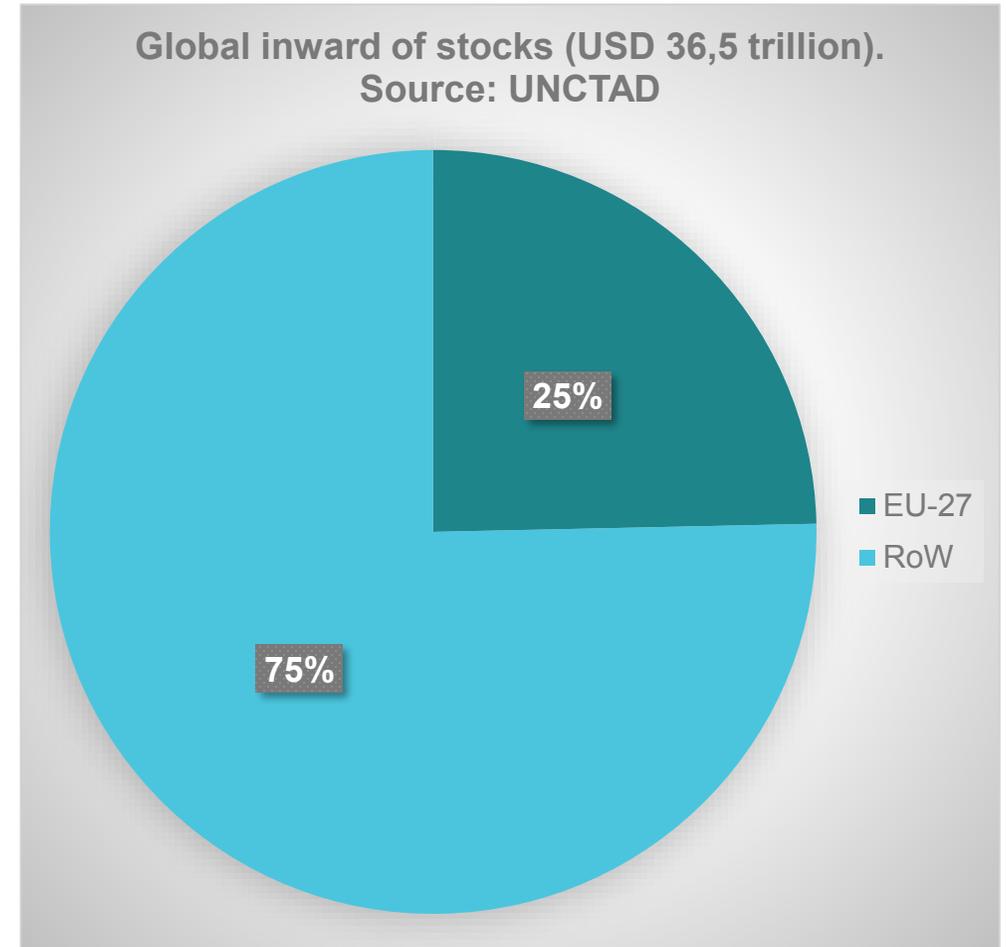
Proposal for a Regulation on foreign subsidies distorting the internal market

*Competition Council Working Party  
Brussels, 18 June 2021*

# Introduction



Trade accounts for 35% of the EU's GDP



100,000 foreign companies in the EU

# Problem definition | problem tree

Drivers

Regulatory gap

Insufficient transparency

Problems

## Distortions caused by foreign subsidies

Facilitation of acquisitions

Distortion of public procurement procedures

Other market distortions

Consequences

Crowding-out competitors and limiting their growth by overpaying for acquisitions/ investments

Unfair access to cutting-edge technologies

Crowding out competitors through subsidised bids

# Data sources

## Quantitative data

- Trade and investment data (e.g. Joint Research Centre)
- Subsidies data (e.g. Global Trade Alert)
- Subsidies' notifications (WTO)

## Studies / reports

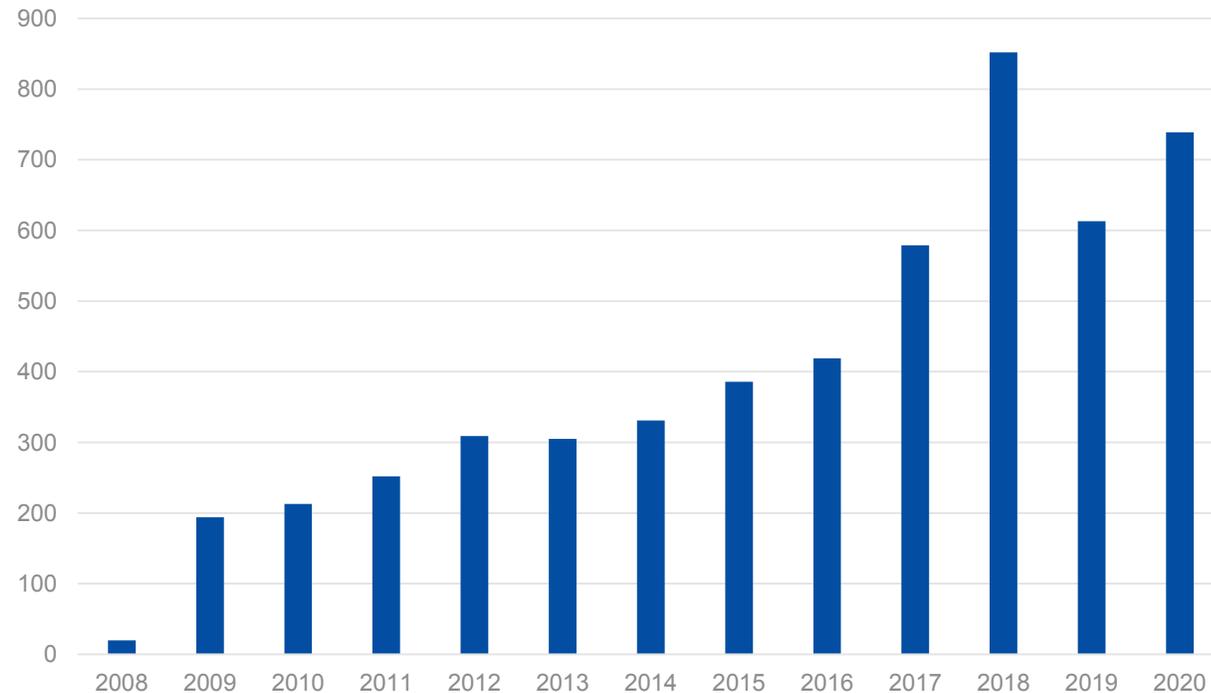
- OECD (e.g. semiconductors, aluminium, steel)
- European Court of Auditors
- German Monopolies' Commission
- European Commission (DG TRADE)
- Academia, etc

**Individual case studies: 14**

# Problem definition | Subsidies | Volume and duration

## Number of new subsidy measures (worldwide) per year

Source: Global Trade Alert



## Increased risk of distortive subsidies

- Based on experience from the global financial crisis 2008/2009, subsidy measures tend to have a long life
- Around 33% of trade distorting measures (incl. subsidies) introduced in 2009 were still in place by 2020
- The global fiscal stimulus packages provided in 2020 have been more than double compared to the fiscal response to the 2008/2009 crisis

# Problem definition | Subsidies| EU presence

## Foreign acquisitions of European companies.

Equity share	2013	2014	2015	2016	2017	2018	2019	2020*
>10%	2897	3507	3551	3476	3438	3751	3370	1906
>25%	2735	3319	3421	3327	3272	3630	3267	1837
>30%	2727	3301	3405	3314	3255	3613	3254	1830
>40%	2694	3267	3384	3286	3232	3586	3231	1823
>50%	2677	3234	3343	3263	3200	3562	3203	1817

(\*): Data for 2020 not yet complete

### Case studies (14)

- covering acquisitions, public procurement bids and other market situations
- Several 3<sup>rd</sup> countries
- Several economic sectors

### **Public procurement**

- 14% of the EU GDP or EUR 2.1 trillion
- 5% of the winning bids in contracts above EUR 250m were foreign companies

# Problem definition | Distortions | Examples

Both foreign subsidies and State aid have the same distortive potential but EU State Aid control minimises it

## Acquisitions

- Outbidding crowds out potential acquirers
- preventing external company growth
- access to technology
- Shifting production facilities

## Public procurement

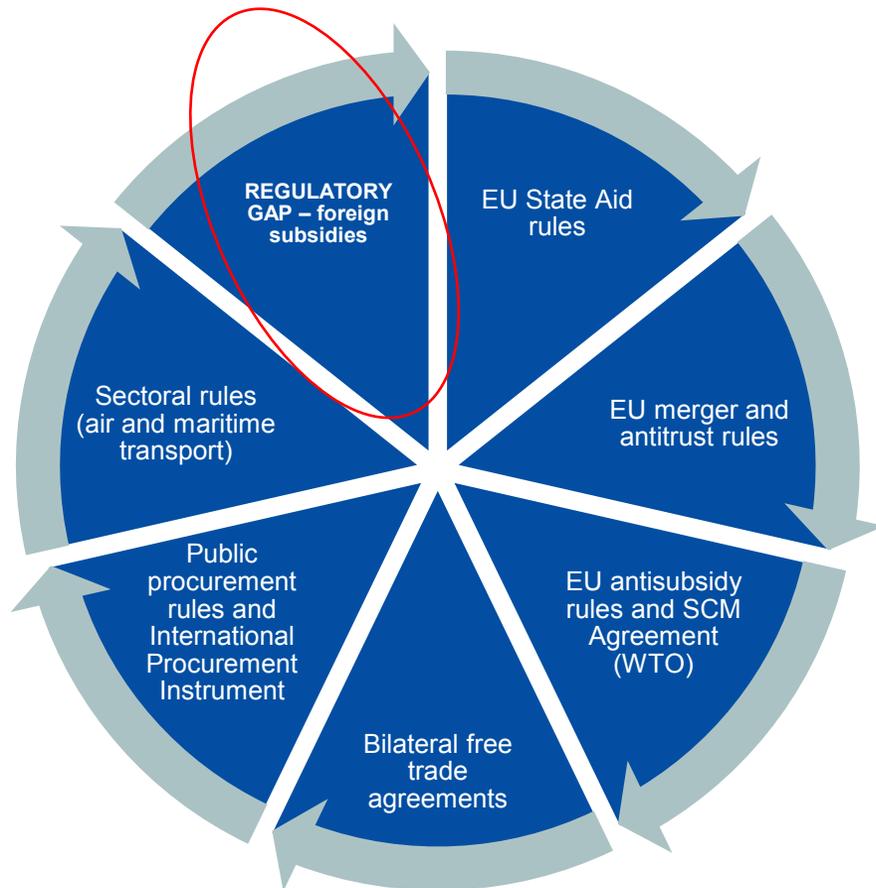
- Underbidding crowds out competing bids
- Strategic bidding to control assets
- Distorting price signals

## Other situations

- Distorting private tenders
- Delocalisation
- Distorting price signals in production or provision of services

# Problem definition | Drivers

## Regulatory gap



## Insufficient transparency

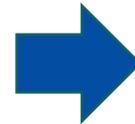
Existing reporting obligations on subsidies are insufficient:

- Latest comprehensive WTO report on subsidies is from 2006; acknowledges scarce data, also difficult to compare across sectors and countries
- WTO data only include schemes, not individual grants outside schemes
- By October 2020, 83 out of 164 WTO members have not yet made their full notification for 2019, 68 have not notified for 2017 and 58 have not notified for 2015

# Objectives

## Objectives

- General objective: Restore the level playing field
- Specific 1: Identify the most distortive subsidies
- Specific 2: Remove the distortions caused by foreign subsidies



## Problem/drivers

- Problem: Foreign subsidies distort the internal market
- Main driver: Regulatory gap
- Secondary driver: Insufficient transparency

# Why should the EU act?

## Legal basis and necessity for EU action

- Art. 207 (commercial policy),
  - mentions explicitly subsidies and foreign direct investments
  - exclusive competence
- Article 114 (approximation EU law):
  - In view of absence of rules in MSs
  - shared competence to legislate

## Added value EU action

- Similar to EU State Aid and Trade Defence
- Uniform development and application of rules

# Policy options (1) | Overview

Option 1:  
Do nothing

Option 2:  
Issue guidance

Option 3:  
Change  
existing EU  
rules

Option 4:  
Develop new  
legislation

**Upfront insufficient:**

- EU antitrust Regulation
- EU antitrust rules
- EU Foreign Direct Investment Screening Regulation

**Analysed in detail:**

- State aid provisions
- EU Merger Control Regulation
- Public Procurement Directives

# Policy options (2) | Option 4 in detail

Design parameters	Choices (sub-options) for developing new legislation (option 4)			
a. Competence level	a1) Commission only		a2) Shared enforcement by Commission and MS	
b. Investigative approach	b1) Ex-officio	b2) Notification with no thresholds	b3) Notification with moderate thresholds	b4) Notification with high thresholds
c. Distortion threshold	c1) EUR 200.000		c2) EUR 5 million	
d. Assessment criteria	Legal test + indicators + categories of most distortive subsidies			
e. Balancing test	e1) No balancing test		e2) Balancing test	
f. Redressive measures	Behavioural + structural + repayment			

# Impacts of the policy options

- Impacts of the choices within option 4 (new legislation) analysed in detail for each problem
- Main impacts are on admin burden
  - on enforcer (public authorities) and
  - on companies
  - Admin burden noted as major concern by stakeholders in consultations
- Best choices within option 4 to establish policy packages for each problem
  - Comparison of such policy packages

# Comparing packages: Problem 1 (acquisitions)

- Policy package 1:
  - Ex-officio tool with shared enforcement and low threshold for unlikely distortive subsidies
- Policy package 2:
  - Notification of large acquisitions; exclusive Commission enforcement and high threshold for unlikely distortive subsidies
- Policy package 3:
  - Same as 2 but with an additional ex-officio tool for acquisitions below notification threshold; exclusive Commission enforcement

➤ Best rating for policy package 3

# Comparing packages: Problem 2 (public procurement)

- Policy package 1:
    - ex-officio tool with shared enforcement
  - Policy package 2:
    - Notification for specific PP with exclusive Commission enforcement
  - Policy package 3:
    - Same as 2, but with an additional ex-officio tool for PP below notification threshold with exclusive Commission enforcement
- Best rating for policy package 3

# Comparing packages: Problem 3 (other situations)

- Policy package 1:
    - Ex-officio tool with shared enforcement and low threshold for unlikely distortive subsidies
  - Policy package 2:
    - Ex-officio tool with exclusive enforcement and high threshold for unlikely distortive subsidies
- Best rating for policy package 2 (focused investigative tool)

# The preferred option (1) | Summary

- One preferred package for each problem:
  - For large acquisitions → notification procedure with high threshold
  - For large public procurement procedures → notification procedure with high threshold
  - For all other market distortions; and acquisitions and public procurement cases below the notification threshold → ex officio
  - Commission as sole enforcer and distortion threshold at EUR 5m
- Stakeholder's feedback accounted for, in particular on administrative burden (thresholds, procedures) and enforcement competence.

# The preferred option (2) | Benefits and costs

- Benefit: Improved level playing
- Direct costs
  - Notification of acquisitions
    - Cases/ Companies: ~ 30 / year resulting in cost of EUR 5,000 – 500,000.
  - Notification of public procurement.
    - Cases: ~ 36/year. Consumer: Risk of higher prices in the short term
  - General ex officio tool
    - Cases: ~ 30-45/year.

# Thank you



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