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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 :
Articles 3 to 6 - presentation by the Commission

Delegations will find in annex a presentation given by the European Commission during the Working Party meeting on Competition on 28 June : Agenda item 2.

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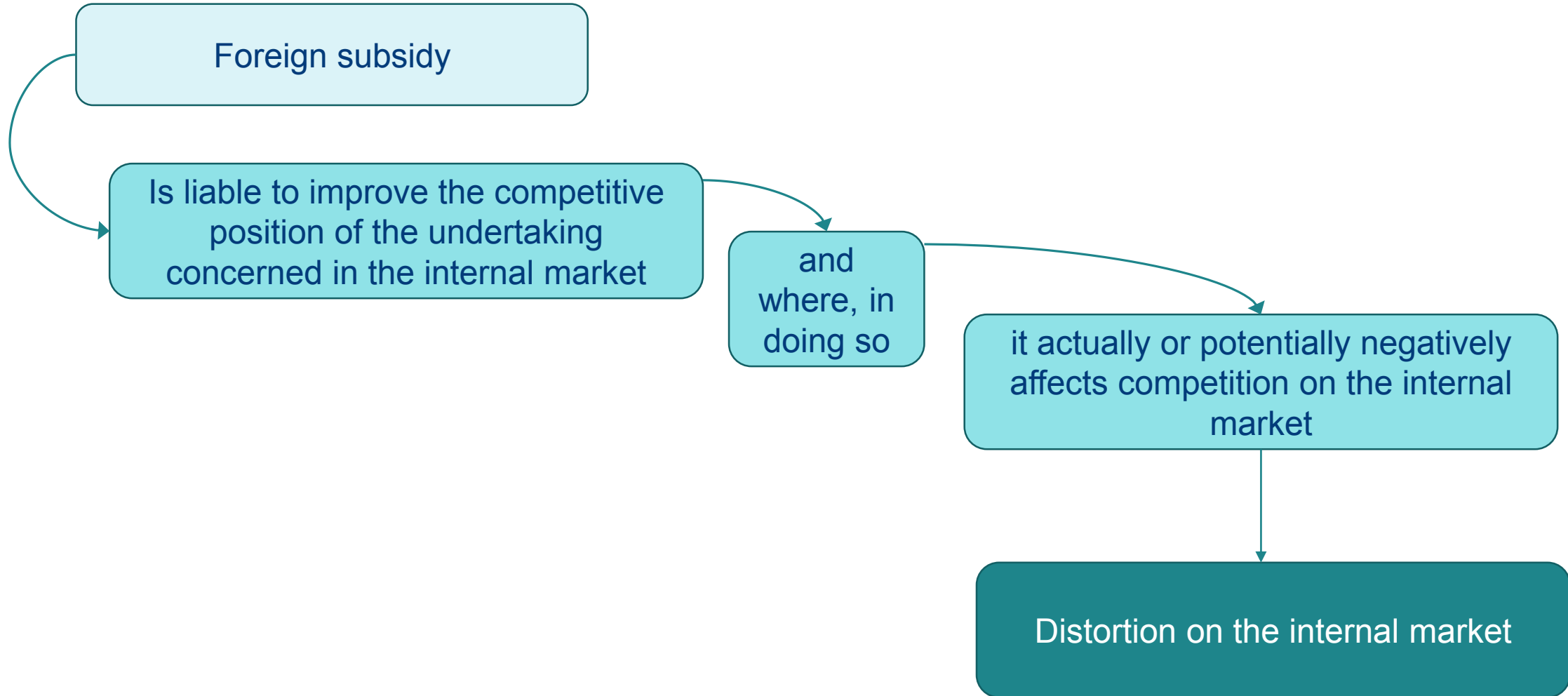


Articles 3 to 6

Proposal for a Regulation on foreign subsidies distorting the internal market

*Competition Council Working Party
Brussels, 28 June 2021*

Article 3 | Distortion on the internal market (1/4)



Article 3 | Distortion on the internal market (2/4)

List of indicators

- amount and nature of the foreign subsidy
- situation of the undertaking and the markets concerned
- level of economic activity of the undertaking concerned in the internal market
- Purpose and conditions attached to the foreign subsidy as well as its use on the internal market

- Purpose: to determine distortion on the IM
- Non-exhaustive list
- Case by case assessment

Article 3 | Distortion on the internal market (3/4)

Examples: mentioned in recital 14

- likely to be distortive:
 - Foreign subsidy that covers the substantial part of the purchase price of the target in an acquisition
- likely to be less distortive:
 - Foreign subsidies to small and medium-sized undertakings may be considered less likely to cause distortions than foreign subsidies to large undertakings.

Article 3 | Distortion on the internal market (4/4)

Foreign subsidy unlikely to distort the internal market

- below 5 million EUR
- over any consecutive period of three fiscal years
- unlikely to distort the internal market

Article 4 | Categories of foreign subsidies most likely to distort the internal market (1/2)

- Exhaustive list
- Foreign subsidy to an ailing undertaking without restructuring plan (Art. 4(1)):
 - Ailing: undertaking which is likely go out of business in the short or medium term in the absence of any subsidy
 - Restructuring plan:
 - capable of leading to the long-term viability of that undertaking, and
 - Including a significant own contribution by the undertaking

Article 4 | Categories of foreign subsidies most likely to distort the internal market (2/2)

- Unlimited guarantee for debts or liabilities of the undertaking (Art. 4(2))
 - Unlimited: without any limitation as to the amount or the duration
- Foreign subsidy directly facilitating a concentration (Art. 4(3))
- Foreign subsidy enabling an undertaking to submit an unduly advantageous tender (Art.4(4))

Article 5 | Balancing (1/2)

Negative effects of a foreign subsidy – distortion on the internal market



Positive effects on the development of the relevant economic activity

Article 5 | Balancing (2/2)

- Balancing to be taken into account when deciding whether to accept commitments or impose redressive measures:
 - Positive effects outweigh negative effects:
 - ➔ No commitments / no redressive measures
 - Negative effects outweigh positive effects:
 - ➔ Determine appropriate commitments / redressive measures
- Categories of foreign subsidies most likely to distort the internal market:
less likely to have more positive than negative effects



Article 6 | Commitments and redressive measures (1/5)

- Types of commitments / redressive measures: non-exhaustive list in Art. 6(3)
 - Structural measures
 - Behavioural measures
 - Repayment of foreign subsidy
- Reporting and transparency requirements (Art. 6(4))
- Prohibition of concentration (Art. 24(3)(c))
- Prohibition of the award of contract to the undertaking concerned (Art. 30(2))

Article 6 | Commitments and redressive measures (2/5)

- Commitments/redressive measures in Art. 6(3)
 - Offering access under fair and non-discriminatory conditions to an infrastructure that was acquired or supported by the distortive foreign subsidies unless such fair and non-discriminatory access is already provided for by legislation in force in the Union;
 - reducing capacity or market presence;
 - refraining from certain investments;
 - licensing on fair, reasonable and non-discriminatory terms of assets acquired or developed with the help of foreign subsidies;

Article 6 | Commitments and redressive measures (3/5)

- Commitments/ redressive measures (continued)
 - publication of results of research and development;
 - divestment of certain assets;
 - requiring the undertakings concerned to dissolve the concentration;
 - repayment of the foreign subsidy, including an appropriate interest rate.

Article 6 | Commitments and redressive measures (4/5)

- Choice of appropriate redressive measures
 - Distortion caused by the foreign subsidy in the internal market has to be fully and effectively remedied
 - Case by case assessment
- Undertaking may offer commitments which are fully and effectively remedying the distortion
- Undertaking may offer transparent and effective repayment

Article 6 | Commitments and redressive measures (5/5)

- Notification of concentration or public procurement procedure:
 - If undertaking does not offer commitments which fully and effectively remedy the distortion:
 - prohibition of concentration or prohibition of award of contract
 - Commission cannot impose redressive measures

Thank you



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