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WORKING PAPER

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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 1 and 2 - presentation by the Commission

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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Articles 1 and 2

Proposal for a Regulation on foreign subsidies distorting the internal market

*Competition Council Working Party
Brussels, 18 June 2021*

Article 1 – Subject matter and scope

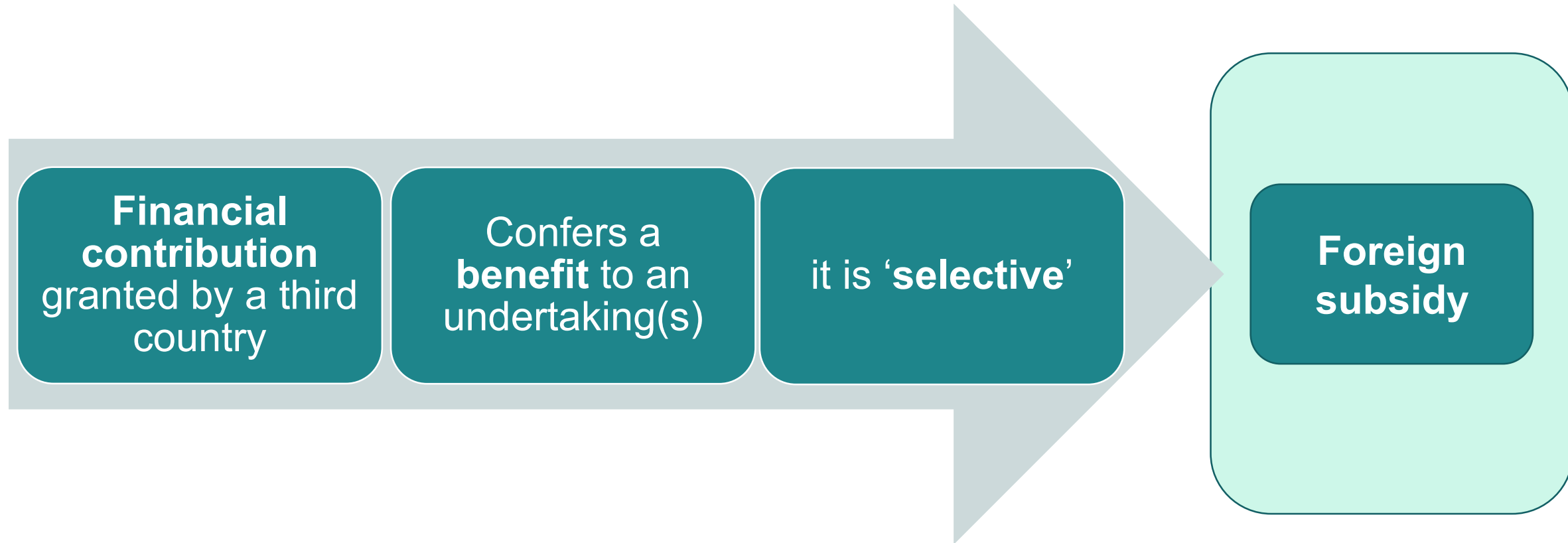
Subject matter

- Rules and procedures for investigating foreign subsidies distorting the internal market and for redressing such distortions.
 - Foreign subsidies – Article 2
 - Distortion on internal market – Article 3
 - Redressive measures and commitments – Article 6

Scope

- “undertaking”
- “any economic activity in the internal market”
- “in any sector”

Article 2 – Definition of foreign subsidy – at a glance



Article 2 - Definition of foreign subsidy – in more detail

Financial contribution

- transfer of funds or liabilities (non-exhaustive list):
 - capital injections
 - grants
 - loans, loan guarantees
 - fiscal incentives
 - setting off of operating losses
 - compensation for financial burdens imposed by public authorities
 - debt forgiveness, debt to equity swaps or rescheduling
- foregoing of revenue that is otherwise due
- provision of goods or services or purchase of goods and services

Article 2 - Definition of foreign subsidy – in more detail

Public authorities at all levels	Public entity	Private entity
Central government, government authorities at all levels	whose actions can be attributed to the third country Taking into account elements such as <ul style="list-style-type: none">• characteristics of the entity• legal and economic environment in the State in which the entity operates• government's role in the economy	whose actions can be attributed to the third country Taking into account all relevant circumstances

Article 2 - Definition of foreign subsidy – in more detail

Confer a benefit onto an undertaking

- comparative benchmarks, such as:
 - Investment practice of private investors
 - Rates for financing obtainable on the market
 - Comparable tax treatment
 - Adequate remuneration for good or service.
- If no comparable benchmarks are available:
 - Adjust existing benchmarks or
 - Establish alternative benchmarks

Article 2 - Definition of foreign subsidy – in more detail

Limited in law or in fact

- to an individual undertaking or industry
- to several undertakings or industries
- ‘in law’ → an arrangement sets out *explicitly* that it applies only to certain undertakings
- ‘in fact’ → an arrangement favours certain undertaking *de facto / in practice*

Thank you



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