



Brussels, 5.5.2021
SWD(2021) 100 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the

COMMISSION STAFF WORKING DOCUMENT
IMPACT ASSESSMENT

**Proposal for a Regulation of the European Parliament and of the Council on foreign
subsidies distorting the internal market**

{COM(2021) 223 final} - {SEC(2021) 182 final} - {SWD(2021) 99 final}

Executive summary sheet (max. 2 pages)
Impact assessment accompanying the draft regulation on foreign subsidies
A. Need for action
What is the problem and why is it a problem at EU level?
<p>The EU has committed itself to being one of the most open economies in the world in terms of trade policy. At the same time, some of its trading partners' industrial policies involve granting subsidies that give beneficiaries a competitive advantage in accessing or strengthening their presence in the EU economy. Such subsidies can distort the internal market and undermine the level playing field in three areas: (i) the acquisition of companies; (ii) public procurement procedures; and (iii) other market situations. While it is already possible to observe such distortions, the impact of foreign subsidies on the internal market is likely to grow. In addition, the current economic crisis is likely to lead to a higher number of subsidised investments in the EU.</p> <p>The main cause of the problem is the existence of distortive foreign subsidies based on the industrial strategies of certain non-EU countries and the absence of any regulatory mechanism to prevent or remedy their distortive effects. While the granting of support by Member State authorities is subject to EU State aid control, there is no control of the impact of foreign subsidies on the internal market, thereby putting the EU industry at a disadvantage when competing with undertakings that receive foreign subsidies.</p>
What should be achieved?
The objective is to restore the level playing field on the EU internal market by identifying and removing distortions caused by foreign subsidies in the context of acquisitions, public procurement procedures and general market situations.
What is the added value of action at EU level (subsidiarity)?
Distortions caused by foreign subsidies often affect several Member States and therefore have an EU dimension. In addition, the EU has exclusive competence in the area of State aid and trade defence instruments.
B. Solutions
What are the various options to achieve the objectives? Is there a preferred option or not?
<p>The impact assessment report (IAR) sets out four options: 1) baseline, including adapting international trade rules; 2) issuing guidance on existing legislation; 3) adapting existing EU rules; and 4) developing a new legal instrument. For option 4, the IAR proposes sub-options for various design parameters: (i) competence level: Commission only or with Member States; (ii) investigative approach: <i>ex officio</i>, notification with different thresholds or combining <i>ex officio</i> and notification; (iii) threshold for distortive subsidies: low or high; (iv) assessment criteria; (v) balancing test (yes or no); and (vi) redressive measures.</p> <p>The preferred policy option is option 4, with a notification obligation for large acquisitions and public procurement cases, and an <i>ex officio</i> system for small cases and other market situations.</p>
What are different stakeholders' views? Who supports which option?
EU stakeholders expressed general support for legislative action to tackle the distortive impact of foreign subsidies (option 4). Some non-EU stakeholders were concerned that a new instrument on foreign subsidies could have a chilling effect on foreign direct investment (FDI).
C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise of main ones)?
The preferred option would restore the level playing field for all economic operators and prevent innovative non-subsidised competitors from being crowded out, leaving consumers with less choice. It could also partially tackle the issue of companies delocalising to non-EU countries potentially with lower environmental standards, resulting in job losses in the EU.
What are the costs of the preferred option (if any, otherwise of main ones)?
The main costs are increased compliance costs for the affected businesses as a result of the new procedural rules. Undertakings that receive a foreign financial contribution in the context of a large merger or public procurement procedure will be required to submit notifications and comply with information requests. As transactions are also notifiable under other existing rules (EU Merger Regulation, FDI), the incremental costs are likely to be less significant.
What are the impacts on SMEs and competitiveness?
The preferred option involves a low administrative burden for small and medium-sized enterprises (SMEs), as they will not be subject to the notification obligation, which uses high thresholds for acquisitions and public procurement. In addition, a high threshold for distortive subsidies should benefit SMEs, as their subsidised investments may fall below the threshold and therefore not be investigated.
Will there be significant impacts on national budgets and administrations?
The burden on the Commission for implementing this initiative is low compared to the benefits for the economy. As the Commission would be the sole enforcer, national authorities would not have major costs.
Will there be other significant impacts?
The preferred option may lead to a drop in foreign direct investment in the EU in the short term. This may be offset by a more level playing field and healthy competition among non-subsidised companies in the medium to long term.
Proportionality?
The preferred option would be proportionate in view of the significant impact of foreign subsidies on the EU internal market. The targeted investigative tool and proportionate remedies would restore the level playing field while imposing low compliance costs on the companies concerned.
D. Follow-up
When will the policy be reviewed?
The Commission will review the indicators periodically and evaluate the impacts of the legislative act on an ongoing basis.