



Council of the European Union  
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### WORKING PAPER

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### **WORKING DOCUMENT**

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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 :<br>Articles 1 and 2 - 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.



# 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

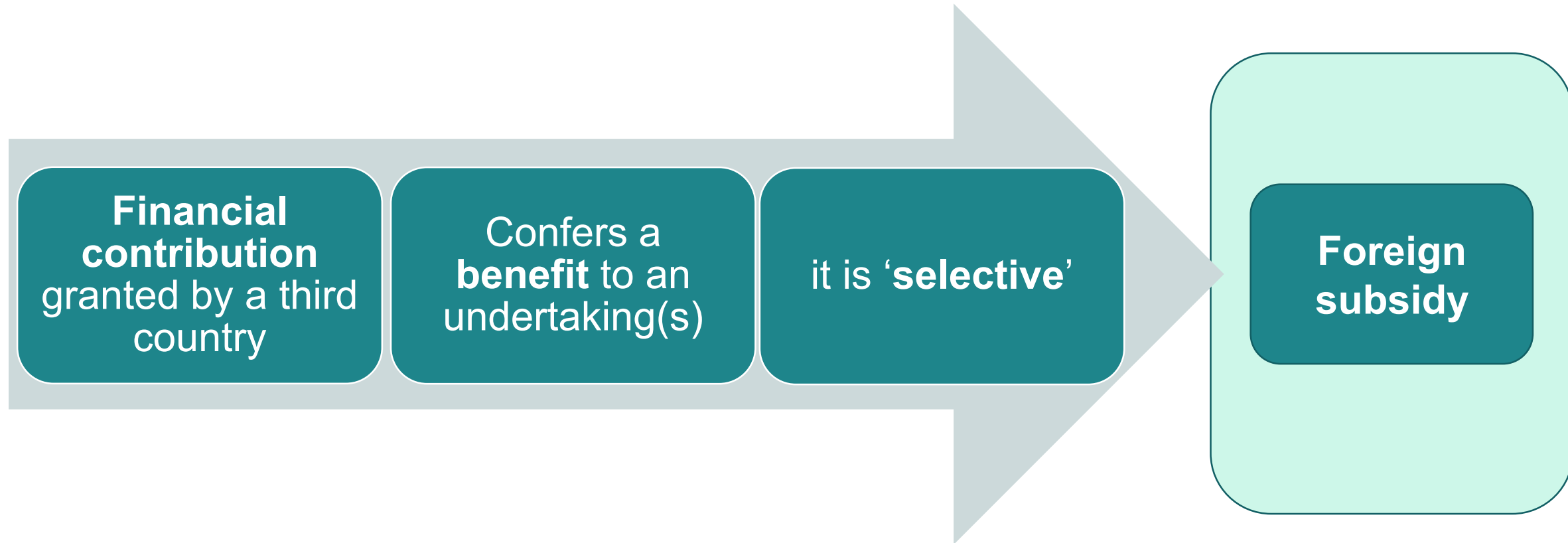
## Subject matter

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

# 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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