



Council of the European Union
General Secretariat

Brussels, 18 June 2021

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

WK 8048/2021 INIT

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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.



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

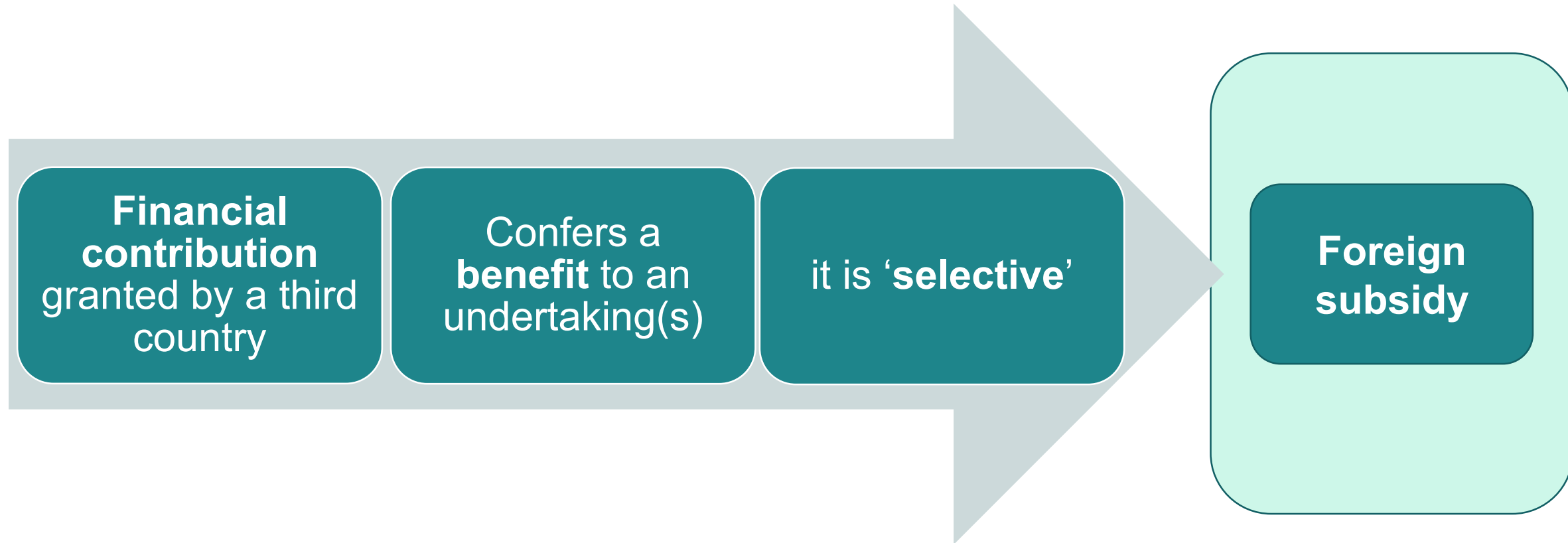
Subject matter

- 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">• characteristics of the entity• legal and economic environment in the State in which the entity operates• government's role in the economy	<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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