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From: The European Commission
To: Council
Subject: Proposal for a Regulation on distortive foreign subsidies
- Information from the Commission

Delegations will find attached an information note from the European Commission on "Proposal for a Regulation on distortive foreign subsidies" with a view to AOB items at the meeting of the Competitiveness Council on 27 May 2021.

Proposal for a Regulation on distortive foreign subsidies

The European Council in its Conclusions of the meeting on 21 and 22 March 2019 encouraged the Commission to identify new tools to address the distortive effects of foreign subsidies on the Single Market.

On 17 June 2020, the Commission adopted a White Paper (COM(2020) 253 final) proposing ways to deal with the distortive effects caused by foreign subsidies in the Single Market. This White Paper was followed by a public consultation that largely confirmed the existence of a regulatory gap concerning distortive foreign subsidies and the endorsed the need to address it, including through the envisaged proposals. At the end of last year, the Commission consulted the public on the Inception Impact Assessment and ran a targeted consultation with a sample of most impacted stakeholders. The Commission has thoroughly analysed the input received and has taken it duly into account when formulating the proposal for a Regulation on distortive foreign subsidies (COM(2021) 223 final), which was adopted on 5 May 2021.

This proposal for a Regulation aims at levelling the playing field in the Single Market. While subsidies granted by Member States are subject to close scrutiny through the EU state aid control regime, the subsidies granted by non-EU governments currently go largely unchecked. The proposal is also a key element to deliver on the updated EU Industrial Strategy, adopted on 5 May 2021, by promoting a fair and competitive Single Market.

Under the proposed Regulation, the Commission will have the power to investigate financial contributions granted by a non-EU country that benefit companies engaging in an economic activity in the EU and redress their distortive effects. The Regulation proposes the introduction of two notification-based tools – to investigate large concentrations and bids in large public procurements (as defined by certain thresholds) – and a general market investigation tool. Where a company does not comply with the obligation to notify a subsidised concentration or a financial contribution in procurements meeting the thresholds, the Commission may impose fines and review the transaction as if it had been notified.

If the Commission establishes that a foreign subsidy exists and that it is distortive, it will, where warranted, consider the possible positive effects of the foreign subsidy and balance these effects against the negative effects brought about by the distortion. When the negative effects outweigh the positive effects, the Commission will have the power to impose redressive measures or accept commitments from the companies concerned that remedy the distortion, such as the divestment of certain assets or the prohibition of a certain market behaviour. In case of notified transactions, the Commission will have the power to prohibit the subsidised acquisition or the award of the public procurement contract to the subsidised bidder.
