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**NOTE**

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From: The Presidency  
To: Permanent Representatives Committee/Council

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Subject: Preparation of the Competitiveness Council (Internal Market, Industry, Research and Space) on 24 February 2022.  
Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market  
- *Policy debate*

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Delegations will find attached a Presidency note on ‘the Regulation on foreign subsidies distorting the internal market’ for the policy debate at the Competitiveness Council on 24 February 2022.

## **Proposal for a Regulation on foreign subsidies distorting the internal market**

### **I. Subject-matter of the proposal for a Regulation**

1. The international and EU framework does not allow for the full correction of distortions caused by public funds granted by third States to undertakings active in the internal market. At international level, WTO rules are not effective enough to combat unfair trading practices linked with State intervention in the economy, in particular distortions not related to trade in goods. At EU level, the European Commission's monitoring of State aid solely targets aid granted by Member States. None of the rules in force apply expressly to foreign subsidies aimed solely at facilitating the acquisition of undertakings or the award of public contracts in the internal market.
2. As the Commission noted in its White Paper published in June 2020, this legal vacuum may impede fair competition in the internal market and consequently have negative effects on growth, competitiveness of enterprises and consumer protection, and be detrimental to the achievement of the EU's long-term objectives, including those determined in the EU's Industrial Strategy adopted on 5 May 2021.

3. At international level, the Commission has undertaken to start work on updating WTO rules to enable effective reactions to distortions of competition, and is continuing its efforts in this regard in relation to its partners. At European level, the European Council conclusions of 21 and 22 March 2019 called upon the Commission to identify how to remedy this legal vacuum in order to address fully the distortive effects on the internal market caused by foreign subsidies. The European Commission therefore published on 5 May 2021 the proposal for a Regulation on foreign subsidies distorting the internal market.
4. The adoption of an instrument aimed exclusively at the problem of foreign subsidies from third States, for example, for the purpose of acquisitions of undertakings or for submissions of bids for public contracts in the internal market, therefore constitutes a new, key lever for guaranteeing fair competition in the internal market.
5. Under the legislative proposal, the European Commission would have the authority to investigate subsidies granted by public authorities in a third State to undertakings carrying out an economic activity in the internal market. The Commission would also have the investigate power to examine concentrations as well as bids submitted for public contracts connected with a subsidy from a third country. The Commission will also have the authority to examine, at its initiative, all economic activity carried out in the internal market connected with a subsidy from a third country.
6. The European Commission would have at its disposal a wide range of measures (reduction in market presence, divestment of certain assets, repayment of the foreign subsidy, etc.) to restore fair competition in cases where foreign subsidies have distorted the internal market.

## II. Next steps

7. In accordance with the Trio programme, the French Presidency considers that the proper enforcement of competition rules is essential on a global level and is determined to take work forward on the Commission's proposal on foreign subsidies distorting the internal market. An examination of this text by the Working Party on Competition was initiated under the Portuguese and Slovenian Presidencies and is still ongoing under the French Presidency.
8. These technical discussions have shown that the Member States broadly support the overall scheme of the Commission's proposal and its swift adoption.
9. Ministers are invited to exchange views on the following questions:
  - a) Do you agree with the European Commission that there is a legal vacuum in terms of instruments for combating distortions caused by foreign subsidies and, consequently, that it is necessary to adopt the proposal for the Regulation and for it to enter into force as soon as possible?
  - b) Do you agree with the overall scheme of the instrument proposed by the European Commission?
  - c) Do you agree to the European Commission implementing the instrument centrally for the purpose of facilitating its harmonised implementation in the internal market?

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