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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Competition

Subject:	Background paper on Foreign Subsidies Regulation Working Party on Competition meeting on 20 November 2023
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Working Party on Competition

Foreign Subsidies Regulation Background paper

Date: 20 November 2023

Objectives of the agenda point:

- a. Update from the Commission.
- b. Debate with Member States about national developments regarding the implementation of the Foreign Subsidies Regulation.

Background:

One of the declared objectives of the European Union is pursuing a model of open strategic autonomy in order to take advantage of the benefits of global trade while taking measures to minimize negative impacts. In 2020, the New Industrial Strategy presented by the Commission mapped out a clear path to allow European companies to remain competitive based on competition, open markets and a strong Single Market.

The Single Market and Competition rules ensure a level playing field for all Member States, economic operators and consumers. The European Commission, in its ambitious communication “A competition policy fit for new challenges” enshrines the important role of competition policy in that context.

Together with the update of regular competition tools, the Commission envisaged new hybrid instruments to address problems that go beyond traditional tools. The Foreign Subsidies Regulation is one of these new instruments. Its main objective is to tackle foreign subsidies that have a distortive effect on the Single Market while remaining open to trade and investment.

To this end, the Foreign Subsidies Regulation gives the Commission the role of sole enforcer, with investigative powers and the authority to adopt possible redressive measures in case of established distortive foreign subsidies. However, cooperation with Member States is crucial for a good enforcement, in particular regarding the exchange of information and assistance during investigations.

The Foreign Subsidies Regulation is at a crucial implementation phase. Following its adoption at the end of 2022, the implementation procedure started: most of the Regulation applies since 12 July 2023, with the exception of some provisions, such as the notification obligation, which applies since 12 October 2023. The possibility to conduct inspections and other fact finding measures will start to apply as of January 2024. The Advisory Committee was established in

February 2023 and has been working since then. During 2023, its focus has been on the adoption of the Implementing Regulation.

At the same time, Member States have designated two Single Point of Contacts with the Commission (for communication with DG COMP and DG GROW respectively) and, in parallel, new competences have been assigned to different national bodies in order to fulfil all the cooperation and assistance requirements foreseen in the Regulation once they become fully applicable in January 2024.

In the meantime, while the administrative provisions are being developed at both European and national level, cases are beginning to emerge in the international context that might be connected to the specific scope of this instrument. In this line, some questions might arise on the criteria that would guide its use, on the resources needed to ensure its implementation and on how this would be complemented by the possible action through pre-existing instruments (both at EU and international level, particularly in the WTO Framework).

It could be useful, for both the Commission and the delegations, to engage in a constructive debate and analysis through an exchange of views on the Foreign Subsidies Regulations. We therefore invite delegations to have an open and fruitful debate presenting their views, in particular on the following issues:

Questions:

Administrative arrangements:

- *What is the model that Member States have adopted for the national regulatory and institutional development of the Regulation? To which bodies or entities have Member States assigned the two roles of point of single contact for the Regulation? Furthermore, how has Article 14(7) on inspection or other fact-finding measure by a MS under its national law been transposed into national legislation? Was any further legal amendment necessary at the national level?*

Practical implementation:

- *Regarding the relationship of this Regulation with other instruments, have Member States identified problems of practical co-existence with other regulatory frameworks, such as national merger control or foreign direct investment control?*

Information and awareness:

- *Given the novelty and potential impact of this new instrument, have Member States developed any general or targeted awareness action for authorities or the general public? Have Member States received complaints or information from operators/administrations about any specific problems that might be covered by this instrument?*