



Council of the European Union  
General Secretariat

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**Brussels, 20 May 2021**

**WK 6750/2021 INIT**

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From: General Secretariat of the Council  
To: Working Party on Competition

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Subject: Proposal for a Regulation on distortive foreign subsidies

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Delegations will find in annex a presentation given by the European Commission during the Working Party meeting on Competition on 20 May 2021: Agenda item 2.

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# Proposal for a Regulation on foreign subsidies

Council Working Party on Competition

*20 May 2021*

# Context

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- EU is world's largest trading block with 16.4% of global trade.
- EU is world's largest FDI destination with 25% of worldwide FDI stock.
- In this intertwined global economy, foreign subsidies can distort the internal market and undermine the level playing field.

# Purpose and problem definition

**Objective:** Ensure level playing field

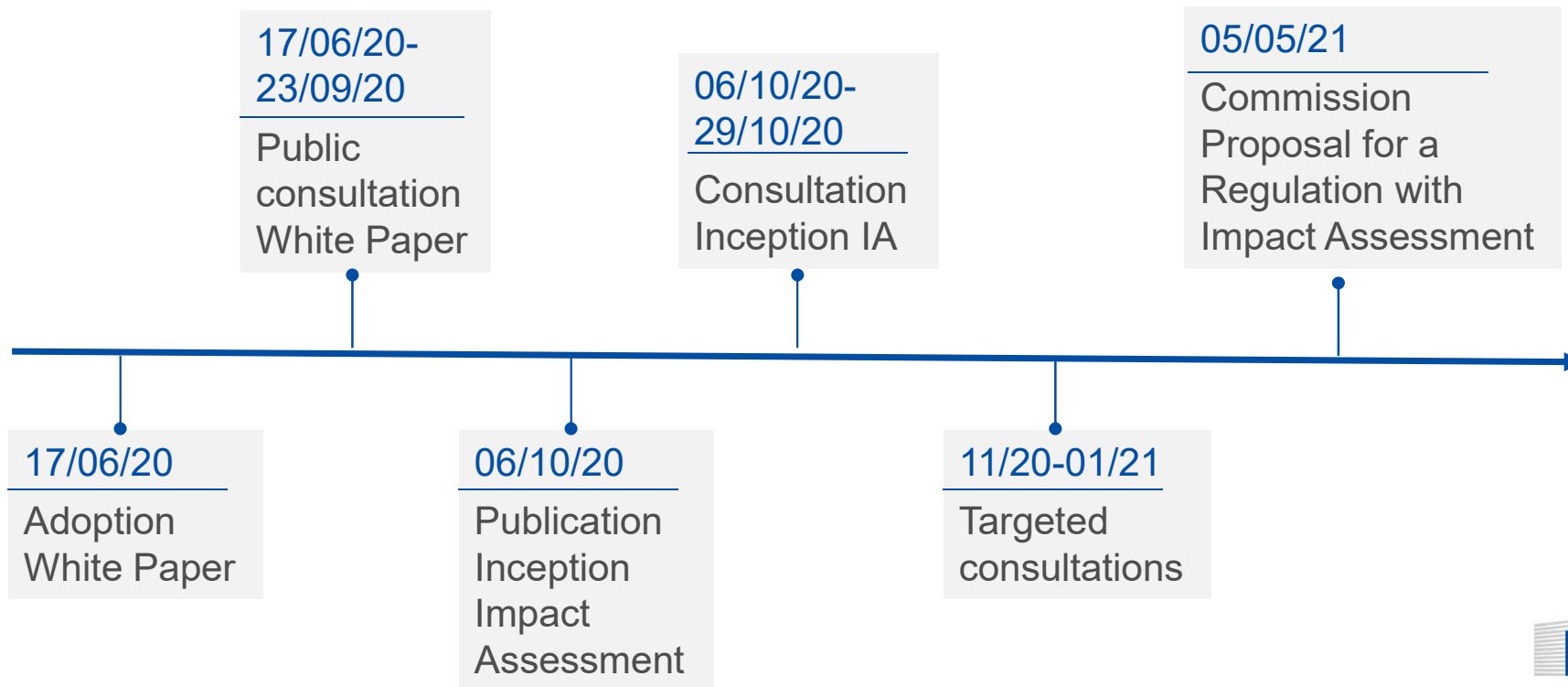
- EU control of State aid granted by Member States, but no control of foreign subsidies
- Instances of foreign subsidies impacting the internal market

## Gap analysis

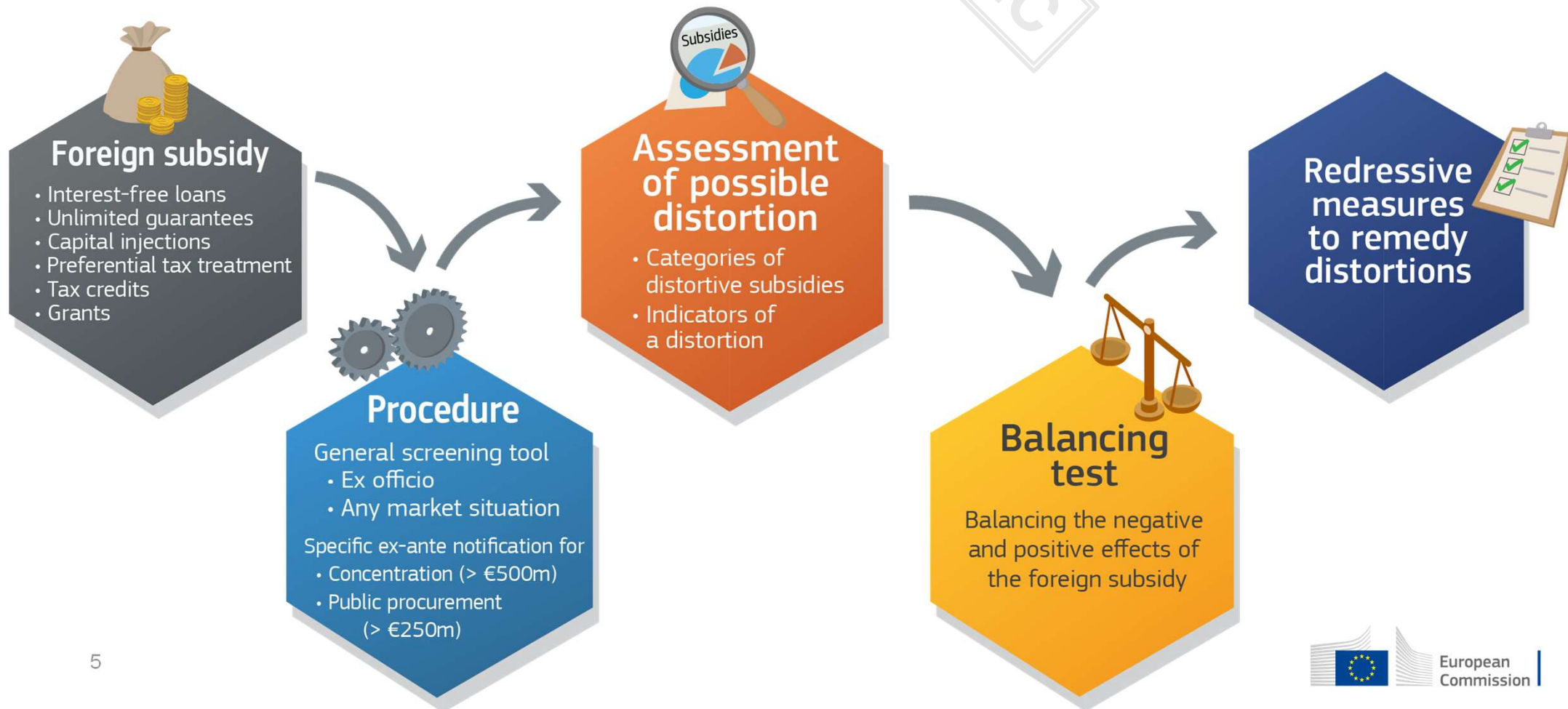
- Competition instruments, trade policy and public procurement rules do not adequately tackle distortions that foreign subsidies can cause in the internal market.

# Milestones

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# The Commission proposal at a glance



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# The Commission proposal: main elements

# General points



- Legal basis: Articles 207 and 114 TFEU
- Commission as sole enforcer
  - Taking into account feedback on White paper, enforcement of EU anti-subsidy rules, State aid rules
  - Uniform application of the rules
  - Member States consulted before decision is adopted
- Combining ex officio and notification

# Definition of foreign subsidy

Three cumulative conditions:

**Financial contribution**  
granted by a third country

Confers a **benefit** to an undertaking(s)

it is **'selective'**

## Foreign subsidy

- Interest-free loans
- Unlimited guarantees
- Capital injections
- Preferential tax treatment
- Tax credits
- Grants

# Distortion on the internal market – negative effects on competition

## When is a foreign subsidy distortive?

- improves the competitive position of the undertaking concerned in the internal market and where, in doing so, actually or potentially negatively affects competition on the internal market.

## How to establish it? => using indicators such as:

- amount, nature, purpose of the subsidy
- situation of the undertaking or the markets concerned
- level of economic activity of the undertaking in the EU

## Categories of most likely distortive FS

- subsidy to ailing undertaking without restructuring plan
- unlimited guarantee
- direct facilitation of a concentration
- submission of unduly advantageous bid



## Assessment of possible distortion

- Categories of distortive subsidies
- Indicators of a distortion

Foreign subsidies below EUR 5m/3y are unlikely to be distortive

# The balancing test



- **What is the balancing test?**

- A foreign subsidy may also have positive effects
- Balancing the negative with the positive effects

- **What are the possible outcomes of the test?**

- Positive effects outweigh negative effects: No redressive measures
- Otherwise, positive effects taken into account when establishing redressive measures or commitments







# Remedying the distortions

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## Process:

- The undertaking may offer commitments which the Commission would accept if they are effective
- The Commission could also impose redressive measures

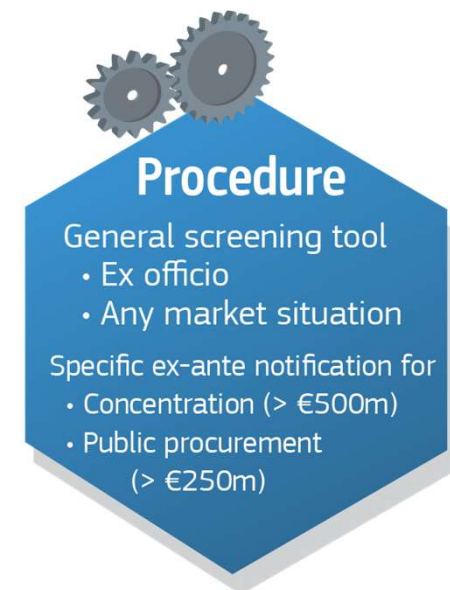
## Types of redressive measures

			
<b>Structural</b>	<b>Behavioural</b>	<b>Repaying the subsidy</b>	<b>Prohibiting the transaction</b>
<ul style="list-style-type: none"><li>• Divestment of assets</li></ul>	<ul style="list-style-type: none"><li>• Give access to infrastructure</li><li>• Reducing market share</li></ul>		<ul style="list-style-type: none"><li>• concentration</li><li>• Public procurement</li></ul>



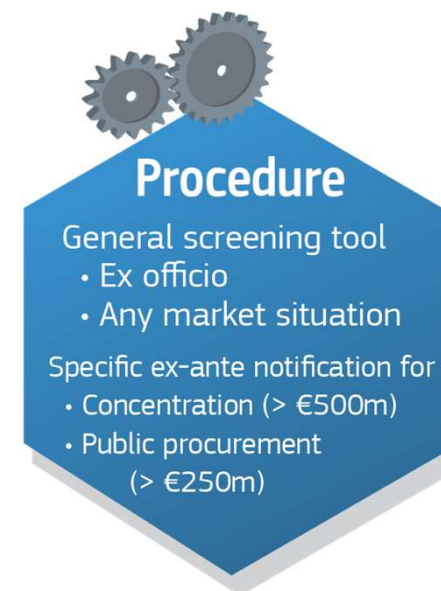
# Investigative tools and procedure (1)

- Ex officio review – general screening tool
  - Scope: undertaking engaged in an economic activity
  - Gathering information
    - Information requests
    - Inspections in and outside the Union
    - Fines and penalty payments
    - Market investigations
  - Non-cooperation
    - Decision on the basis of facts available



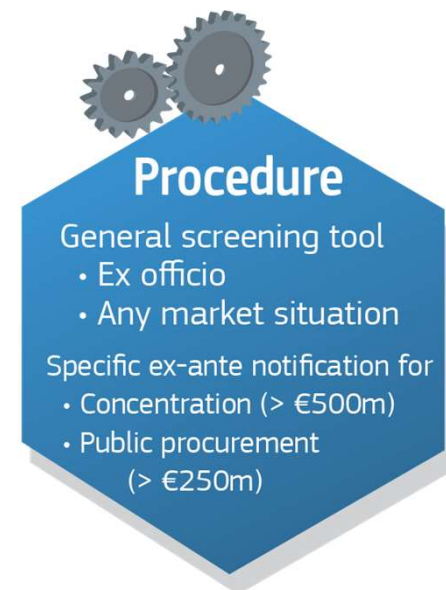
# Investigative tools and procedure (2)

- Ex ante notification tools for large concentrations
  - Thresholds
    - EU turnover: at least EUR 500 million of EU target or one of the merging parties
    - Financial contribution: at least EUR 50 million in three years prior to notification
  - Ad hoc notification for concentrations below thresholds
  - Suspensive effect and time limits



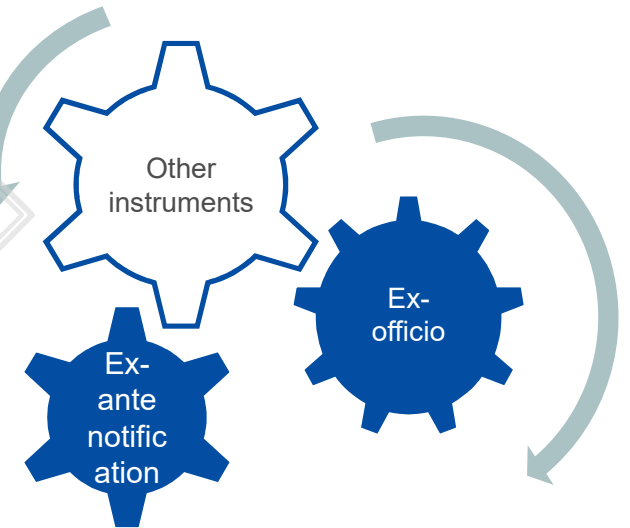
# Investigative tools and procedure (3)

- Ex ante notification tools for large public procurement procedures
  - Threshold:
    - Value of procurement more than EUR 250 million
  - Ad hoc notification for public procurement procedures below thresholds
  - Suspensive effect and time limits



# Proposed Regulation and relation to other instruments

- EU anti-subsidy Regulation
- FDI screening Regulation
- EU Merger Regulation
- Public procurement Directives
- Sectorial instruments



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# Thank you



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