



# Foreign Subsidies Regulation

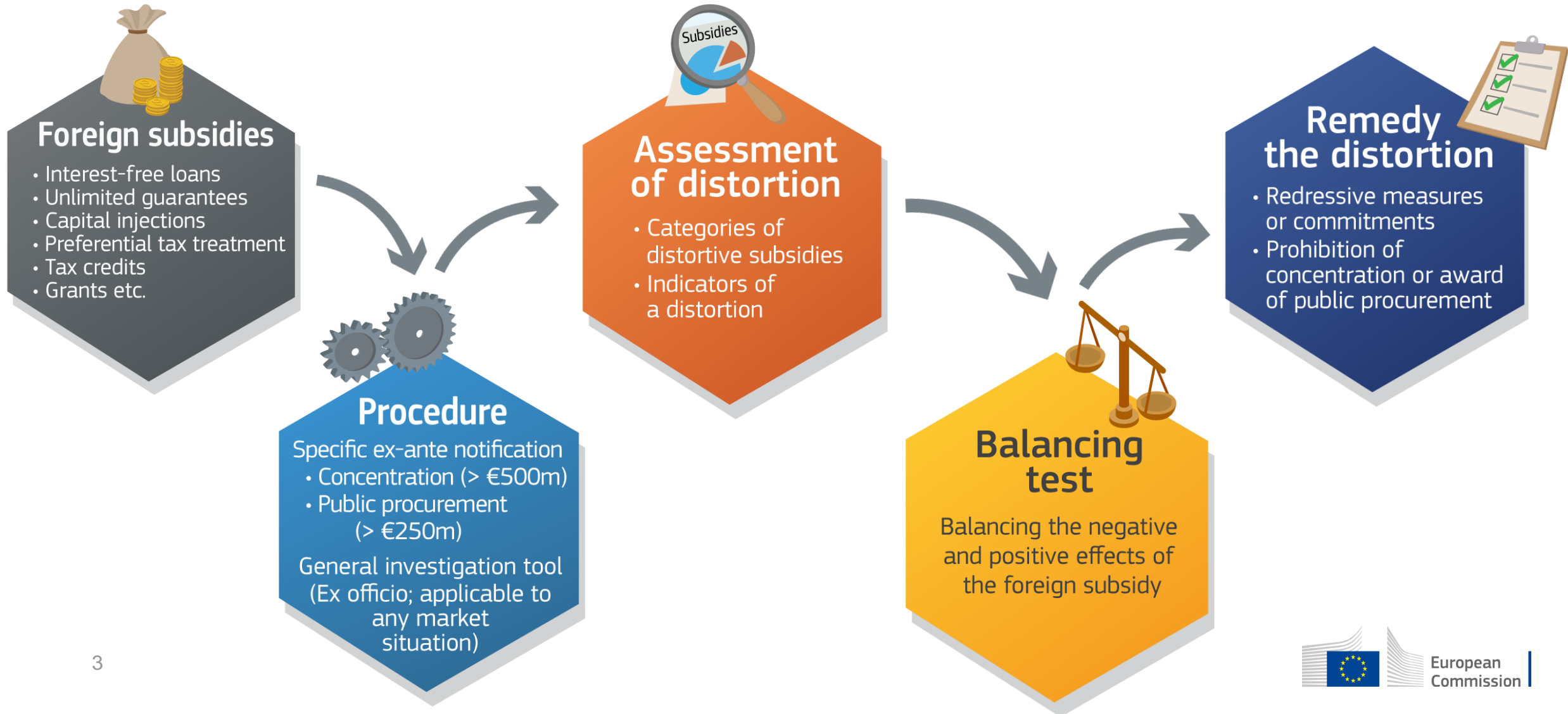
Policy Debate:  
What Impact Will It Have on Energy Sector?

DG COMP Taskforce Foreign subsidies

# Some guiding principles

- **Maintain trade and investment flows**
  - Target most distortive foreign subsidies
  - Minimise administrative burden
    - e.g. high thresholds, alignment with EU merger Regulation concepts and timelines
- **Respect international obligations, in particular WTO compatibility**
  - Comply with non-discrimination, national treatment principles
  - Avoid conflict with existing rules (e.g. Agreement on Subsidies and Countervailing Measures)

# The political agreement at a glance



# Main elements of the Foreign Subsidies Regulation:

# Definition of foreign subsidy

Four cumulative conditions:

**Financial contribution**

Provided **directly or indirectly** by third country

Confers a **benefit**

**Limited to one or more undertakings or industries**

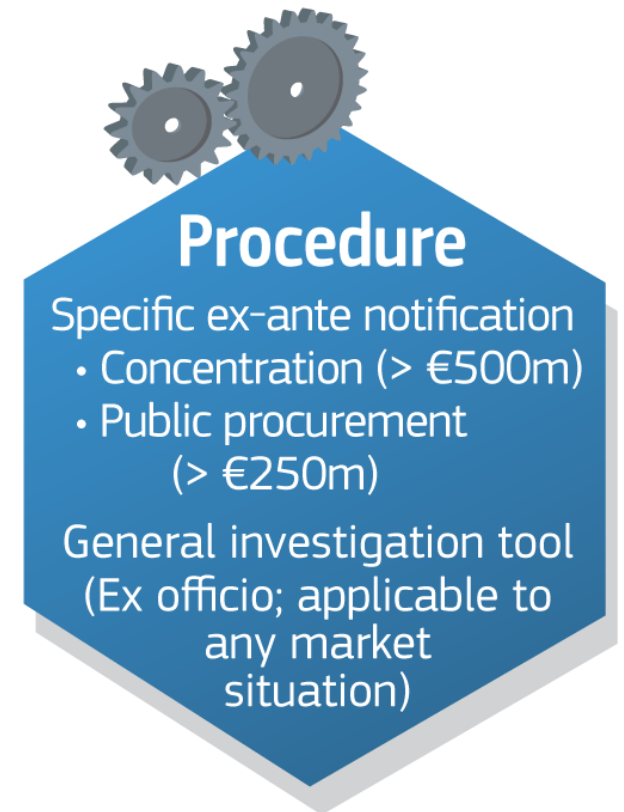


## Foreign subsidies

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

# Investigative tools and procedure (1)

- **The Commission enforces the three tools**
  - Uniform application of the rules
  - Member States involved through advisory procedure + Exchange of information with Member States
- **Ex officio review – general screening tool**
  - Scope: undertaking engaging in an economic activity in the EU
  - Gathering information
    - Individual cases
    - Market investigation
- 6 ➤ Non-cooperation: ‘based on the facts available’



# Investigative tools and procedure (2)

## ➤ Ex ante notification tools

### ➤ for large concentrations

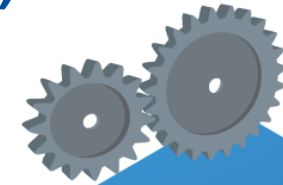
- EU turnover  $\geq$  EUR 500 million of EU target or the joint venture
- Financial contribution  $\geq$  EUR 50 million in last three years

### ➤ for large public procurement procedures (PP)

- Value of procurement  $\geq$  EUR 250 million / lots of 125 million
- Financial contribution  $\geq$  EUR 4 million per third country

## ➤ Ad hoc notifications for concentrations or PP below thresholds

## ➤ Suspensive effect



### Procedure

Specific ex-ante notification

- Concentration ( $>$  €500m)
- Public procurement ( $>$  €250m)

General investigation tool  
(Ex officio; applicable to any market situation)

# Distortion in the EU (negative effects)

## When is a foreign subsidy distortive?

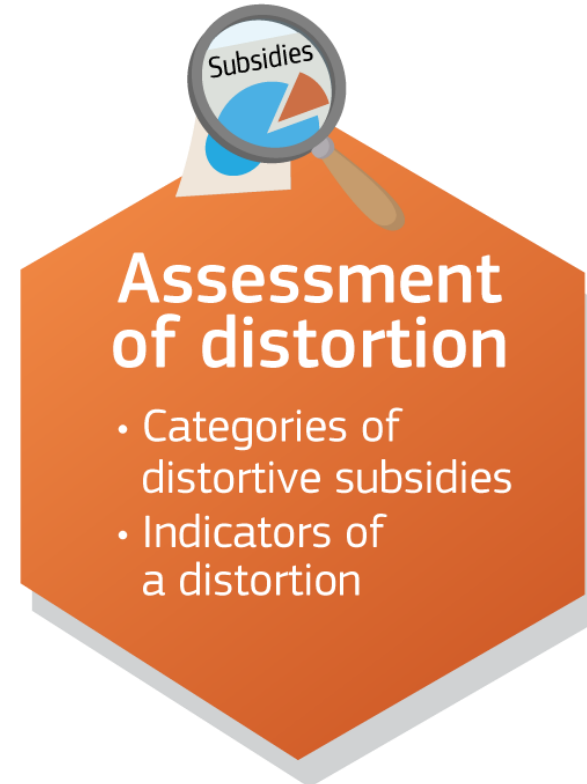
- improves the competitive position of the undertaking concerned in the internal market and where, in doing so, actually or potentially negatively affects competition on the internal market.

## 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



Foreign subsidies below EUR 4 million are unlikely to be distortive, FS below State aid 'de minimis' threshold (EUR 200.000) are considered not distortive.



# Balancing test (positive effects)

- **What is the balancing test?**
  - A foreign subsidy may also have positive effects
  - Balancing the negative with the positive effects
  - Focus on the positive effects on the internal market, but also consider other positive effects (i.e. related to policy objectives)
- **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

## 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 (non-exhaustive list):



### Structural

- Divestment of assets
- Adapt governance structure



### Behavioural

- Give access to infrastructure
- Reducing market share



### Repaying the subsidy



### Prohibiting the transaction

- Concentration
- Public procurement

## Remedy the distortion

- Redressive measures or commitments
- Prohibition of concentration or award of public procurement

# New elements in the political agreement (I)

- **Interplay with trade policy**

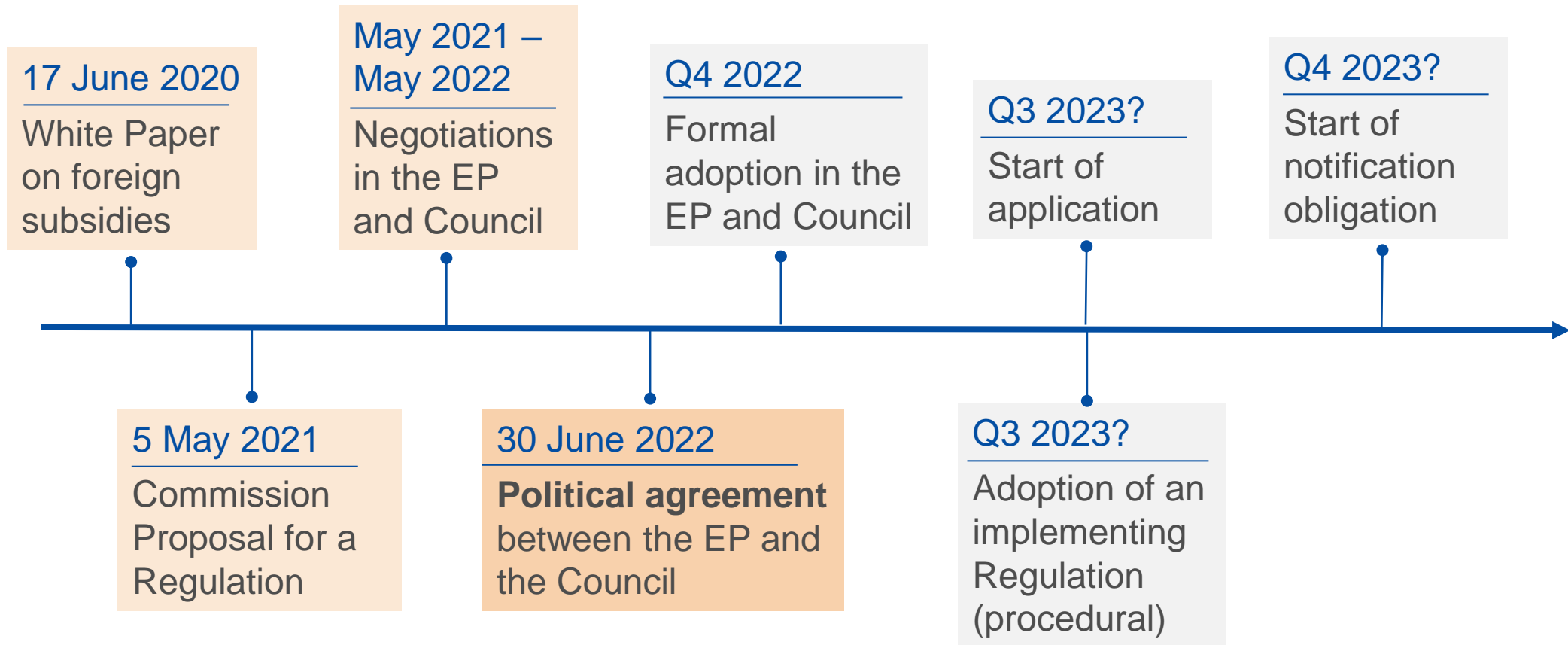
- Commission proposal already provided for carve-out of ASCM
- Political agreement complements the carve-out with
  - **Joint declaration** of EP, CL and COM
    - Commitment to open and rules-based multilateral trading system and
    - to enhance the effectiveness of the multilateral framework on subsidies
  - **Unilateral declaration** of COM
    - Reference to ‘open strategic autonomy’
    - Modernising rules on industrial subsidies to enhance functioning of ASCM
    - Recalling trilateral cooperation with Japan and US on subsidies

# New elements in the political agreement (II)

- **Future guidance and guidelines**

- 3 years after entry into force, Commission will publish guidelines based on experience with application on:
  - (i) criteria for determining a distortion;
  - (ii) balancing test;
  - (iii) assessment of a distortion in public procurement;
  - (iv) requesting ad-hoc notifications below thresholds for concentrations and PP
- Commission commits to provide initial clarifications on (i), (ii) and (iii) by 12 months after start of application

# Milestones / next steps



# Thank you



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