Module 1 - General instrument to capture distortive effects on foreign subsidies

- Applies to all undertakings established in the EU, or foreign undertakings otherwise active in the EU that benefit from non-EU State subsidies.
- Some subsidies would be presumed to cause distortions (such as subsidies in the form of export financing; subsidies to ailing undertakings; governmental guarantees to debts or liabilities without limitation to the amount or to the duration of such guarantees; foreign subsidies directly facilitating an acquisitions).
- A second category of subsidies (which would not fall under any of the above categories) would need an in-depth assessment.
- A de minimis threshold may be set at EUR 200,000, below which the subsidies would be deemed unproblematic
- Two-steps procedure: (i) preliminary review of a possible disortion on the internal market arising from the existence of a foreign subsidy; (ii) in-depth investigation.

Module 2 - Foreign subsidies facilitating the acquisition of EU companies

- Applies to foreign companies wishing to acquire control (or at least a specific percentage of shares in an EU target). Creates an obligation to notify and obtain approval from the Commission or national authority in addition to merger control review and foreign investment review.
- Thresholds are still to be clearly determined, but it is suggested that:
  - The EU target could be defined by reference to (i) a qualitative threshold referring to all assets likely to generate a significant EU turnover in the future and/or a quantitative threshold set with reference to the value of the transaction; or (ii) a quantitative threshold based on turnover which could be set at for example EUR 100 million.
  - The threshold could be linked to acquisitions facilitated by a certain volume of financial contributions from third-country authorities (e.g. the total amount of the financial contribution received by the acquiring undertaking in the three calendar years prior to the notification is in excess of a certain amount or percentage of the acquisition price).
  - Certain qualitative criteria might be added to better balance between capturing potential distortions and limiting the burden on the companies and supervisory authorities.
- Two-steps procedure: (i) preliminary review of a possible disortion on the internal market arising from the existence of a foreign subsidy; (ii) in-depth investigation.

Module 3 - Foreign subsidies in EU public procurement procedures

- Applies to foreign subsidies in the conduct of EU public procurement procedures.
- Economic operators participating in a public procurement procedure would have to notify the contracting authority when submitting their bid whether they have received: (i) a financial contribution in the last 3 years preceding the participation in the procedures; and (ii) whether such a financial contribution is expected to be received during the execution of the contract.
- Potential thresholds and conditions for notifications could be introduced, e.g. (i) the relevant subsidy period could be limited to three calendar years prior to the date of the notification and including the year following the expected completion of the contract; (ii) notification could be required above a certain foreign financial contribution value; or (iii) a threshold could be defined that is higher than the thresholds for the application of the public procurement directives.
- The economic operator would need to provide the necessary information to assess whether it benefits from foreign subsidies in the procurement procedure to the contracting authority. The contracting authority would then transmit the notification to the supervisory authority which will investigate the information and assess the existence of a foreign subsidy in a two-steps procedure: (i) preliminary review; (ii) in-depth investigation.

Assessment:

In each of the three modules, the assessment of potential distortions related to non-EU subsidies would be based on the following criteria:

- The size of the subsidy
- The situation of the beneficiary (e.g. the larger the EU target or acquirer, the more likely that the subsidised acquisition is distortive);
- the situation on the market(s) concerned
- the level of activity in the internal market of the Parties concerned;

The established distortion would be balanced against the positive impact that the investment might have within the EU or on public policy interests (the "EU interest test"), such as creating jobs; digital development; the protection of the environment or climate transition; protection of consumers' interests.

Outcome:

- If a foreign subsidy creates a distortion, redressive measures could be imposed (i.e. divestment of certain assets; reducing capacity of market presence) or undertakings could offer commitments.
- If it finds a foreign subsidy creating a distortion, and the undertaking concerned offers commitments, which the competent supervisory authority deems appropriate and sufficient to mitigate the distortion, it issues a decision requiring the undertaking to implement these commitments.
- If it finds there is no subsidy, or there are no indications of possible or actual distortions in the internal market on a scale justifying intervention, it closes the case.

- If the authority confirms that the economic operator has received a foreign subsidy that distorted the public procurement procedure, the economic operator would be excluded from the ongoing procurement procedure.
- The economic operator may also be excluded from future procurement procedures (max. 3 years).
- If the authority concludes that there is no foreign subsidy, it informs the contracting authority of its conclusion and that it does not intend to open an in-depth investigation.