



**THE EUROPEAN  
DREDGING ASSOCIATION**

# The Foreign Subsidies Regulation

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# The Foreign Subsidies Regulation

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The **purpose** of the Foreign Subsidies Regulation (FSR) is:

- to address the most distortive foreign subsidies in the EU *in concentrations and public procurement procedures.*
- to ensure a level playing field

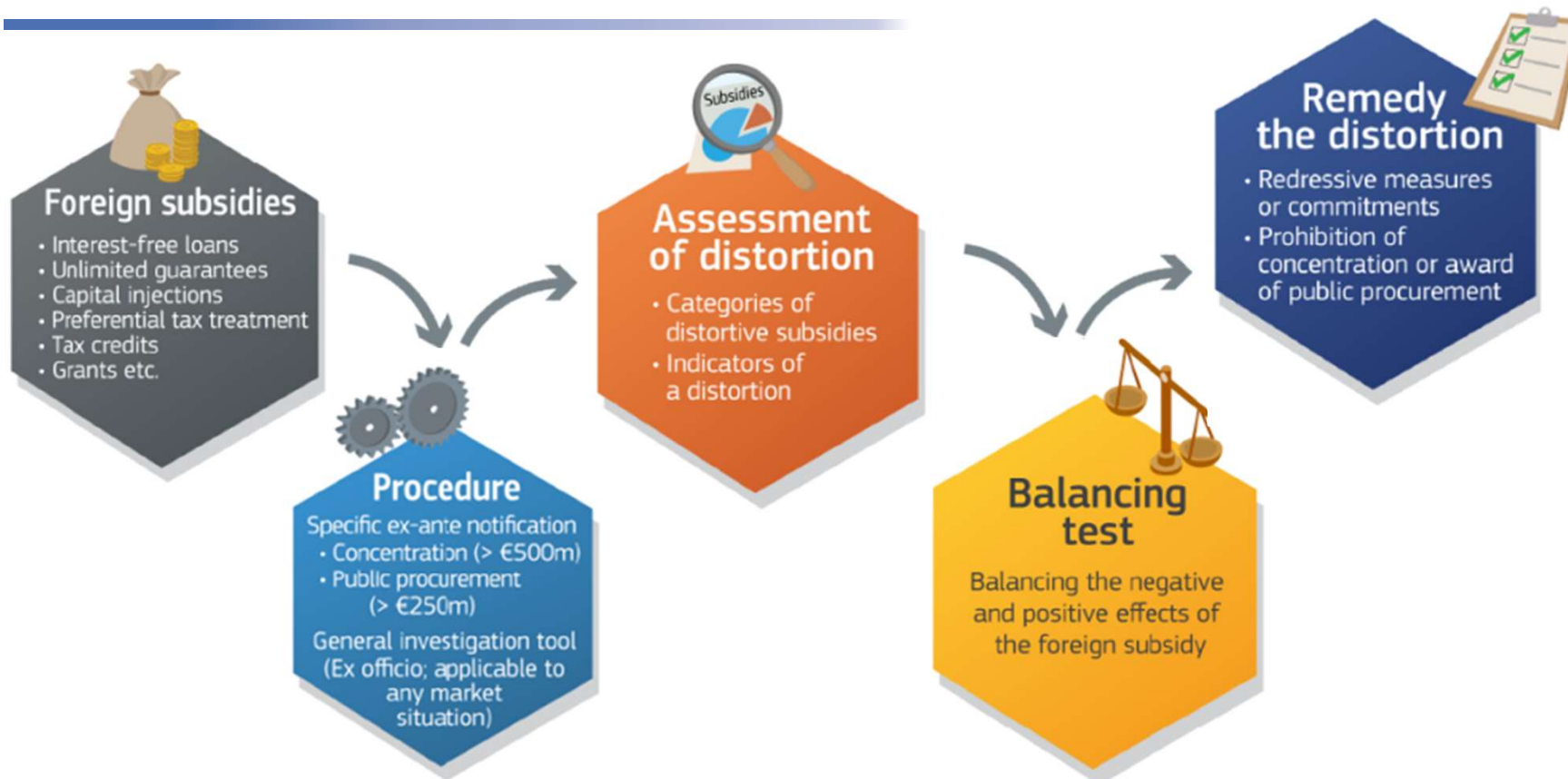
Before FSR:

- subsidies granted by non-EU governments went unchecked
- subsidies granted by Member States are subject to close scrutiny under EU State aid rules.

# FSR timeline



# FSR Process at a Glance



1.

# Foreign Subsidy

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# Foreign subsidy concept

A 'foreign subsidy' is:

- a direct / indirect **financial contribution** by a non-EU country,
- limited to one / more companies / industries and
- confers a benefit to a company active in the EU Single Market.

**Financial contributions** can be:

- interest-free loans,
- unlimited guarantees,
- capital injections,
- preferential tax treatment /tax credits,
- grants,
- provisions of goods / services



# Distortive Foreign subsidies

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Categories of foreign subsidies **most likely** to be distortive (public procurement):

- Subsidies enabling an **unduly advantageous tender**
  - Unlimited guarantees
  - Subsidies to an ailing company without a restructuring plan
  - **Export financing** not in line with OECD
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- Foreign subsidies below EUR 4 million **unlikely** to be distortive



2.

# Foreign Subsidies Regulation (FSR)

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How does it work?



# FSR Three Pillars

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- Bids in procurement (Ex ante notification tools)
  - > €250m estimated value of that public procurement and
  - > €4m contribution per non-EU country in 3 years
- Concentrations (Ex ante notification tools)
  - > €500m EU turnover and
  - > €50m foreign contribution in 3 years
- *Ex officio* procedures **below** those thresholds
  - Individual cases
  - market investigations in sector / economic activity



# FSR Procedure

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- The Commission enforces the three tools
  - Uniform application of the rules

## Commission assessment:

- If the non-EU financial contribution:
  - is a **subsidy** and
  - if it **distorts** the EU Single Market.
    - 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.
- Indicators:
  - amount, nature, purpose of the subsidy
  - situation of the undertaking or the markets concerned
  - level of economic activity of the undertaking in the EU



# FSR Procedure

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



# FSR Decision

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**1. Decision** by the Commission to **remedy the distortion** by the foreign subsidy (public procurement):

- **Prohibit award** of procurement to the subsidised bidder
- Impose structural / non-structural **redressive measures** (e.g. repayment of foreign subsidies, adapt governance structure)
- Accept **commitments** offered by the company

**2. Decision** by the Commission to raise **no objections** if there is no foreign subsidy or no distortion



**3.**

# Foreign Subsidies Regulation (FSR)

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A public procurement example

# Example of distortive foreign subsidies (public procurement)

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- A company submits a bid in an EU public tender
- The company is supported by a non-EU government through **direct subsidies**.
- The company can make an offer at a **low price** that it would not have been able to make without the subsidy, undercutting competitors.

**Burden of Proof:** undercut competitors need to demonstrate that the amount of money that was attributed by government/administration X as an interest-free loans, capital injections, grants, preferential taxation (subsidy nature), for the purpose of winning the tender.

Thank you!

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