

## WINDEUROPE RESPONSE TO THE PUBLIC CONSULTATION ON THE

### FOREIGN SUBSIDY REGULATION GUIDELINES

The FSR is a critical tool to address the distortive effects of foreign subsidies on the EU market. This is particularly relevant for the wind energy sector which faces significant challenges from foreign competitors that receive substantial state-backed financial and wider subsidy support. To address these challenges, the application of principles like those in existing EU state aid and competition rules is required.

To ensure European competitiveness, we make following recommendations:

**1) Criteria to determine the existence of a distortion:** in addition to the open list of indicators in Article 4(1), the Commission should also scrutinise:

- any **relevant investments** made by undertakings receiving foreign subsidies in the EU market, particularly those that seem disproportionate to their revenue. Significant investments that do not align with a company's financial capacity may indicate the presence of subsidies supporting these expenditures. Unfairly advantageous access to capital for investments can impact the level playing field.

- The **ownership and governance** of the undertaking's facilities in the value or supply chain should be examined. Fully or partially state-owned facilities can allow for more favourable pricing and the ability to offer excessive payment terms which create an unfair advantage and market distortion – this can have impact tenders before the award stage as well as after.

- Furthermore, the undertaking's **access to materials** should be considered. Finished products at lower prices than competitors may derive from foreign subsidization of materials in the production process, creating an unfair advantage and distorting competition.

- The Commission should also thoroughly consider the **conditions** under which an undertaking that may be recipient of a foreign financial contribution offers its services or goods on the EU market. Although distortions mostly occur when contracts are awarded to bidders that have benefited from unfair foreign subsidies, the latter can already influence customer expectations and contract conditions even before the award stage. For example, a foreign bidder with state support or access to cheap financing from a state-owned bank can offer more favourable payment terms. Even if the total bid amount is the same (e.g., 100), a subsidized foreign bidder might propose that only 10 is payable upfront, with the remaining 90 payable upon completion. This can distort the tender process compared to a non-subsidized EU bidder, who must manage cash flow more strictly.

- We call for the Commission to also evaluate whether the undertaking in scope has received excessive foreign subsidies to invest heavily in **R&D**. When these investments are transferred and utilized in the European market, they could potentially distort the competition. Competing companies with less support might not be able to invest similar amounts in research and development without a secured business opportunity.

**2) Assessment of negative effects on competition in the EU market:** In assessing whether a foreign subsidy negatively affects competition in the internal market, priority should be given to the negative effects on the **competitive process**. When distorted, it can lead to market inefficiencies and hinder compliance with high standards and qualitative requirements in a purely price-driven competition. Foreign subsidies can create imbalances, hindering the ability of other competitors to operate effectively and reducing overall market competitiveness. Of equal importance are the effects on the competitive position of competitors. Subsidized entities may lower prices, invest more in innovation, or expand market share unfairly, weakening the position of unsubsidized competitors and reducing competition.

**3) Balancing test:** This should also consider the broader Union interest and align with the full range of relevant EU policies and their long-term goals. The Commission should preclude positive effects from a foreign subsidy on the EU market when they don't fulfil, or even contradict, the objective of promoting the EU's economic security and resilience in strategic sectors for the EU economy. In the case of solar panels, the Commission prioritised the positive environmental effects of cheap, subsidised solar panels over the EU's economic and technological independence. As a result, the EU is now fully reliant on foreign solar panels as well as its entire value chain. This includes access to raw materials, transforming, processing, and related components, at the cost of European jobs and resilience. Clean tech manufacturing industries that are essential in achieving economic and energy security in the EU should therefore be investigated proactively.

**4) Suspicion of a foreign subsidy:** Although subsidised imported goods are exclusively subject to trade defence investigations, **increased foreign market shares** in relation to significantly lower-priced products should be considered as suspicion of a foreign subsidy for the purposes of an FSR investigation. In the case of wind energy projects, the Commission should also consider as suspicious excessively generous conditions at which **operation and maintenance (O&M)** are being offered by service and goods providers as compared to other competitors. Finally, **overcapacity** in the domestic market of the third country undertaking should also be seen as potentially driven by government subsidies.

**5) Access to findings:** The FSR-enforcing authority should be allowed to access and reference any relevant findings and analysis on products or services already subject to previous investigation under trade defence instruments.

#### **Additional remarks on the FSR implementation**

WindEurope would like to raise attention to following two issues related to the practical FSR implementation that would deserve further discussion and improvement:

- 1) Misalignment on pre-notification thresholds between EU state aid and FSR public procurement obligations:** lowering the threshold from €250 million for tenders and €125 million for individual lots to €15 million would make it comparable to the applicable ceilings to exempt EU Member states from the required notification procedure to the European Commission for granting state aid to EU companies. Most importantly, this adjustment may mitigate the risk of tender lots being reduced to circumvent the thresholds in cases of foreign financial contributions from countries with laxer state aid rules and with previous record of distortive subsidies and market distorting behaviour.

- 2) **Disproportionate administrative burden** in case of foreign financial contributions from countries with deep economic integration with the EU, namely from **the European Economic Area**: such trade partners have proven high standards of transparency and accountability but are nonetheless disproportionately impacted by the heavy FSR administrative burden. The Commission should explore options to adapt and re-balance the FSR pre-notification requirements in cases of closely integrated partners.