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The Danish Government's response to the European Commission's Inception Impact Assessment on the White Paper on levelling the playing field as regards foreign subsidies

The Danish Government welcomes the opportunity to comment on the Inception Impact Assessment (IIA) on the White Paper on levelling the playing field as regards foreign subsidies.

As stated in our response to the public consultation on the White Paper, the Danish Government welcomes the initiative from the Commission to address distortions from foreign subsidies since such subsidies are currently not under the same scrutiny as state aid originating from EU countries. Unregulated foreign subsidies risk distorting competition in the single market leading to unfair competition between subsidized and non-subsidized companies. This is not fair. Therefore, the Danish Government agree that we need the right tools to ensure that foreign subsidies do not distort our market, just as we do with our European subsidies.

A well-functioning Single Market that ensures effective competition between companies – foreign as well as European – is essential for prosperity, competitiveness, growth and consumer welfare in the European Union. Consequently, it is paramount for the Danish Government that new instruments respects the principles of open and effective competition and avoids fencing out competition from foreign companies that would otherwise be active in the single market on equal terms. The objective should indeed be to ensure a level playing field to the benefit of consumers without creating an instrument fostering protectionism.

We also mention in our response to the White Paper that we suggest the Commission to introduce a general instrument as described in Module 1 in the White Paper and a specific instrument as described in Module 2. We find that these instruments will be able to address distortions of the Single Market appropriately. In order to ensure that the instruments will detect all distortive foreign subsidies and that enforcement is efficient, the Danish Government suggests evaluating the instruments within a short time frame. However, the Danish Government cannot support a specific instrument addressing foreign subsidies in public procurement. We elaborated on our specific remarks in our response to the White Paper to which we refer.

Against this background, the Danish Government recommends the Commission to take legislative action at EU level and develop new legal instruments in regards to Module 1 and Module 2 in the White Paper to complement existing EU acquis (as presented in Option 2 "Take legislative action at EU level" in the IIA). In relation to the possible instruments described

under Module 1 and Module 2, we agree that the way forward could consist of regulation on an assessment mechanism to establish potential distortive effects of foreign subsidies and regulation on the institutional set-up for the implementation and enforcement of the mechanisms.

In relation to public procurement, we find it appropriate that it is explored how distortive foreign subsidies could be addressed in the existing public procurement framework.

We also find that it will be appropriate to combine legislative action with a non-regulatory approach, for example by developing guidance notes. The Danish Government therefore welcomes the Commission's initiative to develop guidance based on existing EU regulation (as presented in Option 1 in the IIA) for instance concerning abnormally low tenders in the public procurement rules and for the application of existing trade tools.

Finally, the Danish Government supports the Commission's initiative to address foreign subsidies by strengthening international rules for the granting of subsidies on multilateral and bilateral level (as presented in Option 3 in the IIA). In order to ensure a truly global level playing field, the EU must also continue to engage with both bilateral trading partners on comprehensive provisions on subsidies in trade agreements and work towards robust global rules and efficient enforcement against distortive subsidies in the global market.

General issues to be addressed in the coming Impact Assessment

Analyze the economic effects and administrative burdens

We look forward to seeing the results of the Commission's coming Impact Assessment. As described in our response to the White Paper, we urge the Commission to analyze both positive and negative economic effects and the administrative burden of regulating foreign subsidies. This should include further analysis into the magnitude of current and future expected distortions caused by foreign subsidies within the single market and to what extent the modules will effectively address the distortive effects as well as how they can be expected to impact consumers. Such analysis should also include assessing the likely effects on investments, including investments from non-EU companies, growth and prices in the Single Market. We therefore welcome the Commission's initiative in the IIA to identify and assess both the likely economic and social impacts of the suggested options to address distortions caused by foreign subsidies.

Interplay between the new instrument and existing regulation

As noted in our response to the White Paper, it is important to analyze and consider how the proposed instruments will relate to and interact with ex-

isting EU regulation, including merger control and trade defense instruments (cf. below) as well as the screening of foreign direct investments (FDI) and the public procurement directive. A new instrument should provide companies with transparency and a high degree of legal certainty as regards the regulation that applies for a certain practice or activity, and it should minimize the economic and administrative burdens on companies complying with or being investigated under the regulation.

Furthermore, the Danish Government finds that it is important to make clear how the proposed instruments are conceived to interact with the trade defense instruments and in particular make sure that foreign subsidies are not offset twice (e.g. both by the instruments proposed in the White Paper and by the trade defense instruments). Consequently, it is important to ensure effective and comprehensive cooperation concerning trade defense instruments investigations (conducted by DG Trade) and the investigations proposed in relation to the instrument to tackle foreign subsidies (conducted by DG COMP).

The Danish government encourages the Commission to share its views on how the proposed instrument will possibly affect international trade and investment relations, including the risk of retaliatory measures from other countries keeping in mind that many EU-firms with activities outside EU also receive domestic subsidies.

Finally, the Danish government encourages the Commission to coordinate with the ongoing efforts to modernise the regulatory framework for the use of public export finance under the auspices of the OECD. The modernisation aims at levelling the playing field with non-OECD countries where this kind of finance can be used as hidden subsidies.

Legal basis should stem from the Single Market

Since the objective of the instrument is to create a level playing field in the Single Market and addresses all economic operators operating in the Single Market, the Danish Government finds that the legal basis of the instrument should be article 114.

General remarks and specific remarks on Module 1-3

The Danish Government provided general remarks on the White Paper and specific remarks on Module 1-3 in our response to the White Paper to which we refer.

Final remarks

We hope these comments in response to the White Paper and the IIA will be useful for your further work. The Danish Ministry of Industry, Business and Financial Affairs would be at your disposal to further elaboration or any follow-up questions you may have.