

The EU Foreign Subsidies Regulation

Berliner Gesprächskreis zum Europäischen Beihilfenrecht

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Where does this all fit?

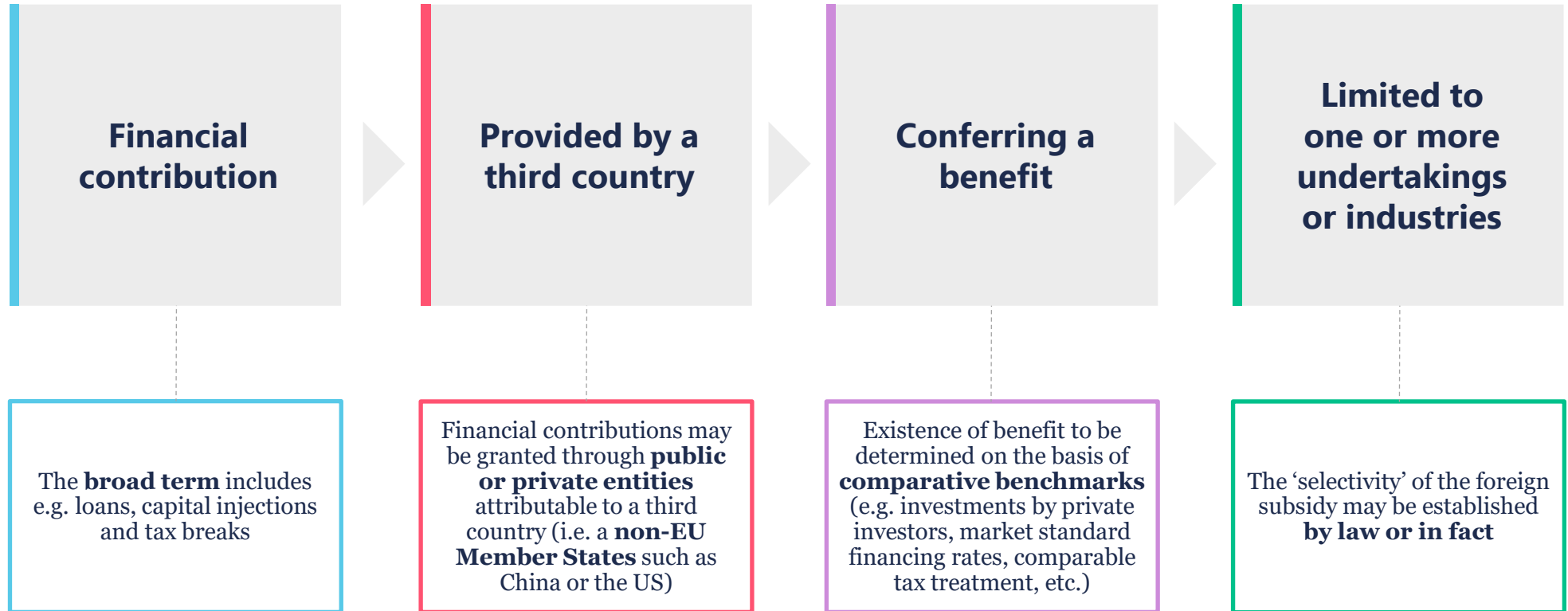
EC wants to close a perceived “regulatory gap”

EU State Aid law
Strict controls on subsidisation of undertakings by EU Member States

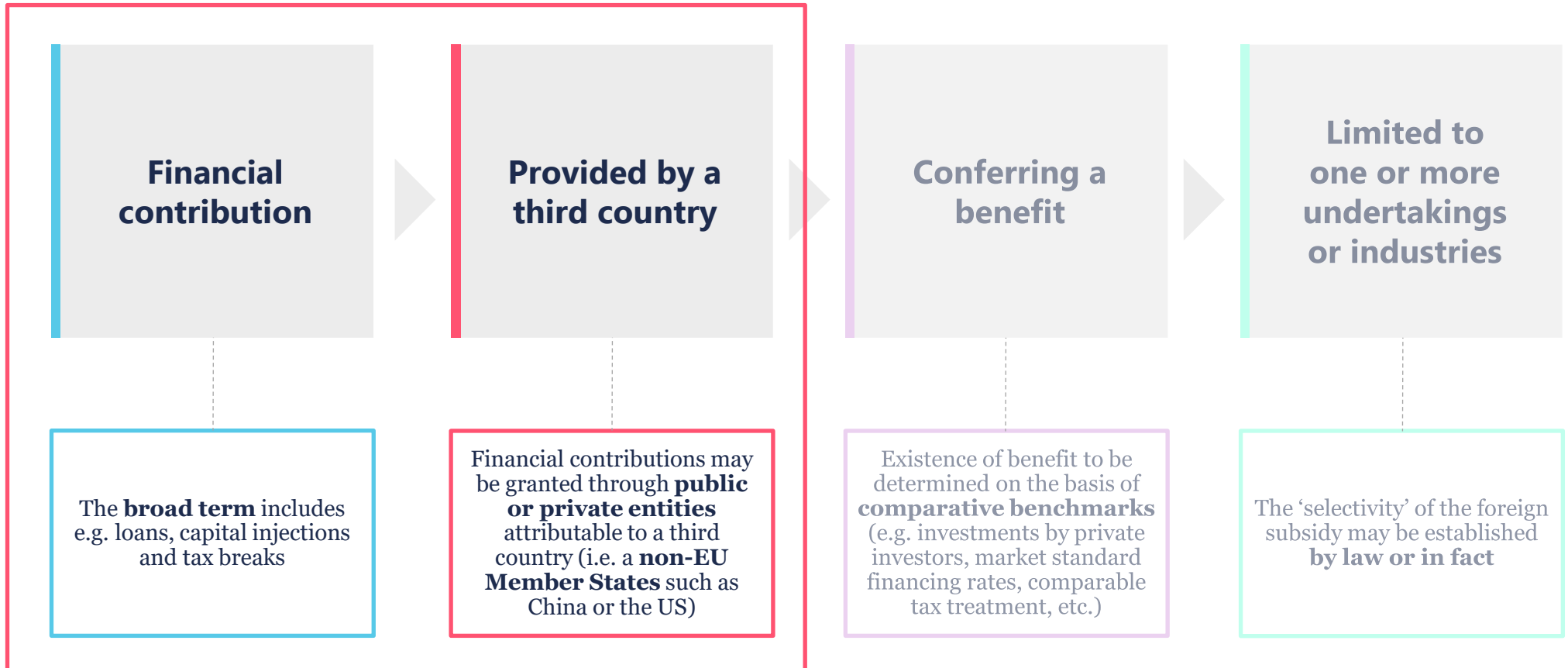
Foreign Subsidies R.
Instruments to investigate any economic activity on the internal market subsidised by Non-EU Member States (e.g. production of goods in EU, cross border services, M&A / tenders)

Anti-subsidy control
Part of a broader set of trade defence instruments targeting subsidised *goods* imported into the EU customs territory

Concept of a Foreign Subsidy



Financial Contribution Threshold



Review Procedure for all Tools



Preliminary review

In-depth investigation

Where the EC has **sufficient indications** that a foreign subsidy distorts the internal market

1st assessment: existence of a foreign subsidy

2nd assessment: distortion in the internal market

- I.e. where a foreign subsidy is liable to: **(i) improve an undertaking's competitive position** and **(ii) negatively affect competition** on the internal market
- **Categories** of foreign subsidies **most likely** (e.g. unlimited guarantees, facilitation of concentrations) / **unlikely** (e.g. total amount not more than €4m) to distort the internal market

3rd assessment: balancing

- EC *may* balance the distortion with **positive effects** on the development of the relevant subsidised economic activity (including relevant policy objectives, in particular those of the EU)

EC decisions

- **No objection decision**
- **Decision with redressive measures/commitments (mixed bag of possible remedies:** e.g. repayment, prohibition of a concentration/award of the contract, other structural and/or behavioural remedies)

Ex Officio Investigation Tool

Extensive EC powers

- The EC may on its **own initiative** examine information from **any source** regarding alleged distortive foreign subsidies in **all market situations**
- Additionally, “safety net” tool for the EC to investigate **smaller concentrations** not subject to mandatory filing
- **Risk of parallel antitrust and foreign subsidies investigations:** investigations under Article 101 and 102 TFEU as well as under the FSR could result in diverging outcomes

Extensive retrospective scope:
applies to foreign subsidies granted in the 5 years before the Regulation is applied

Information gathering

- **Information requests** from undertakings and **third countries**
- **Dawn raids** in the EU and **in third countries** (in theory)

Non-cooperation penalties

- **Fines up to 1% of the aggregate turnover** and **periodic penalty payments up to 5% of the average daily aggregate turnover** for each working day of delay
- Assumption that benefit of a financial contribution was received
- Decision **based on facts available**

Interim measures

- EC may impose interim measures if there is a **serious risk of substantial and irreparable damage to competition** in the internal market

Transaction Review Tool

Thresholds

1. Turnover threshold:

Target/merging party/JV is **established in the EU** and generates an **aggregate turnover** of at least **€500m** in the EU

+

2. Financial contribution threshold:

Undertakings concerned have received **combined financial contributions exceeding €50m** from third countries in three previous financial years

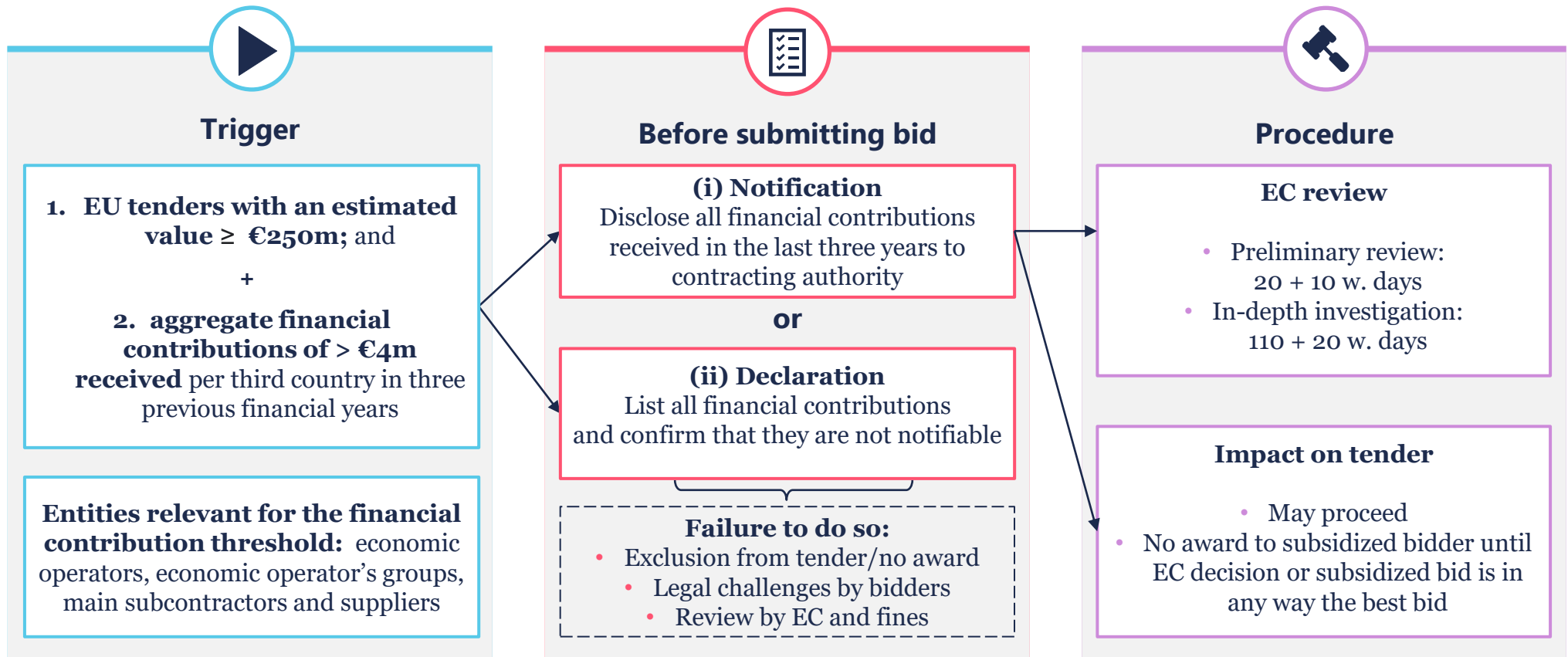
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Mandatory notification requirement

EC review

- **Preliminary review:**
25 working days
- **In-depth investigation:**
90 working days
- **Standstill obligation**
(Gun Jumping)

Public Procurement Review Tool



Thank you!

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