

The EU Foreign Subsidies Regulation – first experiences

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In brief

What happened?

The Foreign Subsidies Regulation (FSR) entered into force on 12 July 2023. The FSR is a new EU instrument that empowers the European Commission to review and investigate financial contributions from non-EU countries that may include distortive subsidies. It is intended to protect the EU internal market from subsidised products and services, akin to EU State Aid rules which govern state aid from EU Member States.

Why is it relevant?

The FSR covers all industries and geographies, and requires businesses to notify the European Commission with respect to certain M&A activities and public procurement procedures. The notifications require significant financial information to be gathered and reported (including from previous years) which can impact the timeline of M&A transactions and public procurement tenders. Failure to notify as required under FSR may carry the risk of penalties including fines and prohibitions, and the FSR also grants the European Commission the power to conduct ex-officio reviews and market investigations. As the FSR notification procedures are time-sensitive and require a significant amount of information to be collected, companies need to be well-prepared to execute FSR notifications appropriately.

Who is impacted?

The FSR impacts businesses operating in the EU market by requiring companies participating in M&A transactions or public procurement procedures above certain thresholds to notify the European Commission with respect to foreign financial contributions.

In detail

What is FSR?

The FSR grants the European Commission the power to review foreign financial contributions (defined below) and subsidies. For the purposes of the FSR, a foreign subsidy exists where a third country provides, directly or indirectly, a financial contribution that confers a benefit on a company engaging in economic activity in the internal market.

Foreign financial contributions

Foreign financial contributions (FFC) provided by a foreign (non-EU) country include:

- The transfer of funds or liabilities, such as capital injections, grants, loans, loan guarantees, fiscal incentives, setting off operating losses, compensation for financial burdens imposed by public authorities, debt forgiveness, debt-to-equity swaps or rescheduling.
- Foregoing revenue that is otherwise due, such as tax exemptions or the granting of special or exclusive rights without adequate remuneration; or
- The provision of goods or services or the purchase of goods or services.

An in-scope financial contribution provided by a foreign country includes a financial contribution provided by the central government, public authority at any level, or a public entity whose actions can be attributed to the foreign country. This takes into account elements such as the characteristics of the entity, the government's role in the economy, or a private entity whose actions can be attributed to the third country.

Mergers and acquisitions

Thresholds for M&A transactions that trigger notification obligations are determined as follows:

- Merging parties, target or joint ventures (but not the acquirer) that are established in the European Union and have EU **revenues of more than EUR 500 million**, and
- Any parties (including acquirer) that have received **EUR 50 million or more in FFCs** in the aggregate in the last three years.
- The European Commission can request notification of transactions below these thresholds.

The M&A review under the FSR is similar to the EU merger review process with a pre-notification phase followed by formal notification that ends with a clearance within 25 working days or an in-depth investigation, which can take up to 100 working days. The key issue in the in-depth investigation is to examine whether the parties have received any FFCs which enable it to compete unfairly in the EU internal market. FSR M&A cases are published on DG Competition's [website](#).

To date, there have been approximately 100 M&A notifications. Of these notifications, the European Commission opened an in-depth investigation into one, which involved the acquisition of a European telecommunication operator by a State-controlled telecommunication operator from the United Arab Emirates (UAE). The acquisition was approved subject to conditions to remove the unlimited State guarantee at issue and ensure that foreign subsidies are not channeled into EU internal market activities.

Observation: Companies should note that the European Commission can request notifications of M&A transactions that are below the thresholds but pose a risk to the level playing field in the single market ('call-in transactions'). This discretion of the European Commission introduces a level of uncertainty for companies conducting M&A transactions, and an element of risk which could delay the closing of deals if the call-in transaction is flagged by the European Commission. Therefore, it is important that companies are prepared for such a scenario by having a robust system for the assessment and documentation of the FFC. The FSR guidelines are expected to be published in January 2026 and should provide further clarity on the circumstances in which the European Commission may decide to review mergers that are under the FSR threshold.

Public procurement

Thresholds for public procurement are determined as follows:

- Value of the contract is **EUR 250 million** or more, and if divided into lots then application for lots with a total value of **EUR 125 million** or more, and
- The bidder (including subcontractors and suppliers) has received **EUR 4 million** in FFCs per country in the last three years.
- The European Commission can request the notification also of bids that are below these figures.

For the notification in the public procurement review, bidders submit the [requisite form](#) to the contracting authority who forwards it to the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs. Note that due to the time constraints of tenders, the opening of an in-depth investigation will essentially disqualify the company from the bidding process because of the time the investigation takes.

To date, there have been over 1,000 notifications relating to more than 200 tenders. The European Commission opened in-depth investigations into three Chinese bidders in two different tenders, one for the provision of trains in Bulgaria, the other for the operation of a photovoltaic park in Romania. It is noteworthy that all three bidders withdrew their bids as a result of the FSR investigations.

European Commission ex officio investigations to date

The European Commission also has the power to conduct ex officio investigations under the FSR, independent of M&A and public procurement notifications, to assess whether FFCs distort the EU internal market. It can send requests for information, conduct interviews and even dawn raids, and order interim measures. The recent EU Omnibus package under the [Clean Industrial Deal](#) further noted that the European Commission intends to make use of FSR ex officio investigations in strategic sectors.

The European Commission has initiated two ex officio investigations to date. The first concerns Chinese Wind Turbine Suppliers and focuses on the conditions for the development of wind parks in several EU Member States. In the second investigation the European Commission conducted dawn raids for the first time at the European premises of the investigated company. During the dawn raid, European Commission officials interviewed Chinese citizens and requested access to servers located in China. The company appealed the dawn raid decision, but the appeal was dismissed by the Courts. This case showcases how far-reaching the ex officio investigative powers of the European Commission are under the FSR.

Outlook

The FSR may be intensely enforced in the coming years, as outlined in Commissioner Ribera's [Mission Letter](#) from European Commission President Ursula von der Leyen, with a likely focus on scrutinising foreign subsidies in

mergers. Commissioner Ribera, the new competition chief, is tasked with mapping distortive practices to ensure fair competition in the European market. Greater clarity is expected through more published decisions and formal guidelines by January 2026.

On 5 March 2025 the European Commission launched a Call for Evidence [public consultation](#) on the guidelines with stakeholder feedback due 2 April 2025. An annual report in 2025 and the inaugural three-year review by July 2026 will further enhance transparency. The European Commission aims to adopt a pragmatic approach by cutting red tape and streamlining notifications for non-problematic cases, in alignment with von der Leyen's agenda to strengthen European competitiveness.

Getting ready for FSR

Companies should consider taking the following actions to be prepared for FSR compliance:

1. Adapt compliance processes, e.g., to identify notification requirements as outlined above;
2. Check if they will engage in notifiable transactions or public procurement procedures;
3. Prepare their global FFCs status;
4. Monitor projects with significant financial contributions from non-EU countries to prepare for possible EU interventions.

FSR's link with wider tax compliance

When adapting compliance processes for FSR, it's crucial to integrate them with broader tax compliance and reporting processes. The data required for FSR reporting likely will be similar to that required for other reporting requirements, e.g. Pillar Two, Country-by-Country reporting, ESG, and wider finance and tax reporting. Identifying synergies between these types of reporting can simplify and connect processes. This potentially could save significant amounts of time, effort and cost for the business, whilst providing better visibility over all aspects of reporting.

Regulatory authorities increasingly are looking to reconcile disclosures across reporting, so implementing a unified approach that connects all aspects of reporting and shares data sets is essential. A robust data strategy for compliance reporting, including FSR, is pivotal, as it highlights the cross-functional data required for each filing and helps streamline and automate data gathering. Adapting control frameworks to include new FSR data sets ensures data quality and allows for business readiness down the line. Additionally, exploring insights from FSR reporting can add value to the organisation and inform broader business decision-making.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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