

Guide to the Foreign Subsidies Regulation

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Key facts for businesses

More and more companies from outside the EU are operating on the internal market—investing, acquiring local companies, winning public tenders. Until recently, they could operate with the advantage of support from their home countries. But now, under the Foreign Subsidies Regulation, the European Commission can examine their situation to ensure fair competition on the internal market.

In this guide we explain what the FSR is, who is affected by it, what new obligations it introduces, and when it is necessary to notify financial support received from outside the EU. We have compiled practical examples and tips on how to prepare for the new requirements.

What is the FSR, and how does it work?

The FSR—Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market—has applied since 12 July 2023 to **all undertakings operating on the EU internal market** (whether they are registered in the EU or elsewhere).

The FSR is designed to ensure fair competition and equal conditions for undertakings operating on the internal market, and to ensure the competitiveness of the European market.

The regulation requires certain forms of financial support to be notified to the European Commission—particularly in the case of mergers and acquisitions and in large public tenders.

Why do we need the FSR?

More and more companies from non-EU countries are investing, acquiring other companies, or entering tenders on the EU market. Before, such companies might enjoy a financial advantage thanks to support from their governments or other institutions, which sometimes distorted competition.

The FSR introduces clear rules so that all companies have an equal chance, regardless of the country of origin of their capital.

Example:

A company from outside the EU receives a subsidy from its home government, allowing it to offer a lower price in a public tender in Poland. The FSR is intended to make such situations transparent and fair for all market participants.

When does financial support have to be notified under the FSR?

The FSR requires notification of financial support in two key instances: participation in concentrations, and participation in public procurement.

The table below outlines the conditions that must all be met for notification to be mandatory.

| Concentrations (M&A) | Public procurement |
|---|--|
| <p>Threshold of turnover: At least one of the parties (the acquired company, one of the merging companies, or the joint venture) has its registered office in the EU and in the last financial year generated turnover in EU territory of at least EUR 500 million.</p> <p>Threshold of subsidies: Within three years before the notification, at least one of the parties to the transaction* has received “financial contributions” of over EUR 50 million from a third country (i.e. from outside the EU).</p> | <p>Contract value: The estimated value of the contract (excluding VAT) is EUR 250 million or more.</p> <p>Financial contribution: The contractor (together with related entities, principal subcontractors and suppliers participating in the offer) has received EUR 4 million or more in financial contributions from a third country (or more than one third country, counting separately for each third country) within the three years prior to the notification.</p> |
| <p>*The parties include:</p> <ul style="list-style-type: none"> • In an acquisition: the acquirer and the acquired company • In a merger: all of the merging companies • In a joint venture: the companies forming the JV and the JV itself. | |

Examples:

Acquisition. An American company wants to buy a company from France. The French company had turnover in the EU in the previous year of EUR 700 million, and in the last three years the two companies together received a total of EUR 60 million in support from the US government (including grants, preferential loans, and guarantees). **The transaction must be notified to the Commission.**

Tender. A Korean company is entering a tender for construction of infrastructure in Germany (contract value EUR 300 million). In the past three years the company and its principal subcontractor received a total of EUR 5 million in support from the Korean government. **The bid must be notified to the Commission.**

Ex officio review

Apart from mandatory notification by companies, the European Commission has the right to commence proceedings at its own initiative (*ex officio*). This means that even if the company does not report financial contributions from a third country (for example because the company did not reach the notification threshold or was not aware of the support), the Commission can launch an investigation if it suspects that the support may distort competition on the EU market.

How can the Commission learn of potential subsidies from a third country?

- The information may come from various sources: media, competitors, national authorities, whistleblowers, or the Commission's own analysis of the market.
- The Commission does not need to rely on official reports—it can act on circumstantial evidence or even industry rumours.

What situations are particularly vulnerable to *ex officio* investigation?

- Transactions and tenders of high value, particularly involving strategic sectors (such as energy or infrastructure)
- Support in atypical forms, such as debt forgiveness, unlimited guarantees, or investments by sovereign funds.

The concept of “financial contribution”—key to understanding the FSR

To determine whether an entity has a notification obligation under the FSR, it must be determined whether the entity has received a foreign subsidiary, i.e. a “financial contribution.”

For purposes of the FSR, a financial contribution is any support which:

- Gives an advantage to an undertaking which is not available under normal market conditions
- Confers a benefit
- Is selective, i.e. is limited legally or factually to a selected undertaking or industry, and
- Is made directly or indirectly by a third country (it may come from the state or from a private entity acting on behalf of the state).

Financial contribution—most common forms

| Form of financial contribution | Example |
|--|--|
| Grants | A Chinese electronics manufacturer receives EUR 10 million from its government for expansion in the EU |
| Loans under preferential terms | A company obtains credit from a state-owned bank at a below-market interest rate |
| Tax relief or exemption | A government from outside the EU exempts a company from corporate income tax under the condition that it opens a branch in Poland |
| Forgiveness or restructuring of debt | An Italian subsidiary has a debt incurred by its foreign parent company written off, thanks to a decision by state authorities |
| Purchases or deliveries at non-market prices | A company sells goods to a foreign administration at an inflated price, and invests the profit in the EU |
| Capital injections (contribution by sovereign investment fund) | A state fund takes up shares in a startup under preferential terms |
| State guarantees | The state guarantees repayment of a company's credit, thus allowing the company to borrow more, and at less cost |
| Compensation | The government pays damages to selected companies for losses following an infrastructure breakdown, but only to the biggest entities in the industry |

Note!

If a company would not be in a position to obtain such financial support from private investors or on the market, then it is almost certainly a "financial contribution" for FSR purposes.

Financial contribution distorting the internal market

Financial contributions by third countries to companies operating in the EU will not always distort competition on the internal market. Under the FSR, a foreign subsidy is deemed to distort competition on the internal market when the foreign subsidy is liable to improve the competitive position of an undertaking in the internal market, so that the foreign subsidy actually or potentially negatively affects competition in the internal market.

The Commission examines financial contributions with a view to:

- Factors involving the foreign subsidy (amount, nature, purpose, conditions, how the subsidy is used in the internal market), and
- The situation of the undertaking (its size, the sector, and the evolution of the undertaking's activity on the internal market).

According to the FSR there is a high risk of distorting competition on the internal market in the case of a foreign subsidy which:

- Is granted to an undertaking which would likely go out of business in the short or medium term in the absence of any subsidy
- Is granted in the form of a guarantee without limitation in amount or duration
- Constitutes an export financing measure not in line with the OECD Arrangement on Officially Supported Export Credits
- Directly facilitates a concentration, or
- Enables an undertaking to submit an unduly advantageous tender for award of a public contract.

In such instances, the Commission will require additional detailed information so that it can assess whether the subsidy will actually distort competition on the internal market. The undertaking can also present a justification showing that under the specific circumstances, the subsidy will not have a negative impact on the internal market.

Why is this so important?

Failure to notify a financial contribution can lead to imposition of high penalties (fines of up to 10% of the undertaking's global turnover in the preceding year). The Commission can also bar the undertaking from participating in public tenders.

The notification obligation doesn't apply only to huge corporations. Even smaller companies may fall under the FSR if they receive foreign support.

What should companies do now?

To avoid the consequences of infringing the Foreign Subsidies Regulation, undertakings should:

- Examine whether the company or affiliates have received any support in recent years from countries outside the EU
- Gather documents concerning grants, loans, tax incentives, guarantees and other forms of support
- Prepare to notify such contributions to the Commission.

Notification of concentrations

Mergers, acquisitions and joint ventures on the EU market are now subject to review not only for antitrust considerations, but also with regard to support from third countries. Below we examine when a transaction must be notified under the FSR and how to prepare for the new procedure.

What is a concentration under the FSR?

For purposes of the regulation, a concentration is a transaction resulting in a change of control on a lasting basis over an undertaking or part of an undertaking. Such a change in control may occur as a result of:

- Merger of two or more previously independent undertakings (or parts of undertakings)
- Acquisition of direct or indirect control over an undertaking (or part of an undertaking) by one or more undertakings
- Creation of a joint venture.

The key concept of “control” over an undertaking is understood to mean:

“rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking.”

Thus control can be exerted over an undertaking thanks to holding all or part of an undertaking’s assets, or holding rights to influence the composition, voting or decisions of the undertaking’s authorities.

So, by way of illustration, there would be a “change of control on a lasting basis” in the case of:

- Acquisition by a Chinese company of a majority of the shares in a Polish IT company (acquisition of control)
- Merger of two large manufacturers of home appliances in Europe (merger of undertakings)
- Establishment of a joint-venture company by a French energy company and an American energy company (new company under joint control).

When is it necessary to notify a concentration to the European Commission?

A notification obligation arises when two conditions—threshold of turnover in the EU and threshold of financial contributions from third countries—are both met.

If one or more parties to the transaction with their registered office in the EU generated **combined turnover of least EUR 500 million** on the internal market in the preceding financial year, the undertakings involved in the concentration will need to examine the amount of financial contributions they have received.

If a party involved in the concentration received **financial contributions of at least EUR 50 million** within the three years preceding the concentration, it will be required to notify the financial contribution before carrying out the transaction.

Note!

When calculating turnover and financial contributions, affiliated companies (subsidiaries, parent companies, and other entities from the capital group) must also be counted. The most errors crop up in identifying these connections and aggregating the data—particularly in groups with a complicated structure.

Examples:

Company X, based in Germany, had EUR 600 million in turnover in the EU in the previous year, and during the past three years it received EUR 55 million in support from its parent company in the United States. **The transaction must be notified.**

Company Y from Poland (annual turnover in the EU of EUR 520 million) plans to acquire a company from Turkey. The combined support from third countries (including from Turkey) over the past three years was only EUR 25 million. **Notification is not required**, because the threshold of financial contributions was not met.

Note!

Pursuant to the “standstill obligation,” the transaction cannot be closed before obtaining formal approval of the European Commission. This means that ownership of the shares or assets cannot be transferred, nor can the joint venture begin operating, until receiving the green light from the Commission. Premature closing of the transaction, known as “gun jumping,” is exposed to very high fines, even up to 10% of the annual worldwide turnover of the undertakings participating in the concentration.

How does the notification procedure work? (form FS-CO)

In the case of a merger (e.g. of two equal companies), the notification is filed jointly by all entities taking part in the merger. In the case of an acquisition (e.g. purchase of a majority stake by another company), the notification is filed by the entities acquiring control. And when creating a joint-venture company, the notification is filed by all of the founders of the new company.

Example:

Company A (from the EU) and company B (from China) plan to establish a joint venture in Poland. The two companies together prepare the FS-CO form, in which they must describe not only the new JV company, but also their capital groups, ownership structure, and all sources of financing (including any grants or loans from the Chinese government or sovereign funds). The transaction cannot be finalised (i.e. the JV company cannot be established) until they receive approval from the Commission.

What information and documents are required in the notification (on form FS-CO)?

Form FS-CO is an official document that must be filled out and submitted to the Commission if the transaction (merger, acquisition or joint venture) meets the thresholds set forth in the FSR. Detailed information must be presented in the form concerning the transaction as well as financial support received from third countries.

Form FS-CO covers the following elements:

1. Basic information about the transaction
 - Parties to the transaction: full list of all participants (including contact details, subsidiaries, group structure)
 - Type of transaction: merger, acquisition, or joint venture
 - Description of transaction: the nature of the transaction, its main aims, strategic and economic rationale
 - Value of the transaction, how it was determined, how it will be financed
 - Dates: planned closing date, timetable of activities
2. Structure of ownership and control
 - State before and after the transaction: a clear presentation of who will exercise control post-closing, and in what respect (diagrams and breakdown of shareholdings encouraged)

- Description of mechanism of control: whether control results from share-holdings, contracts, voting rights, right to appoint members of corporate authorities, etc
3. Profile of undertakings
- Description of activity: main business areas in which each participant operates
 - Financial results: recent financial reports of the parties (typically from the past three years)
 - Market position: basic information on market share, competitors, customers, potential barriers to market entry
4. Information on financial contributions from third countries
- In the case of contributions \geq **EUR 1 million**, the following should be provided for each contribution separately:
 - Form (grant, loan, guarantee, tax incentive, compensation etc)
 - Amount of support
 - Third country or entity providing the support
 - Conditions for award and use of support
 - Aim of the support and economic rationale
 - Whether access to support is available on market terms
 - Whether access to support is legally or factually restricted
 - Whether the contribution concerns exclusively the operating expenses connected with the specific concentration (note: even if the contribution only concerns operating expenses, this does not exempt it from the notification obligation or from aggregation up to the threshold of EUR 45 million).
 - If the sum of all contributions of \geq EUR 1 million received from a single third country exceeds EUR 45 million over the course of three years, it is necessary to:
 - Prepare a summary list of such contributions
 - Provide the name of the third country, the total contributions within a range (e.g. EUR 45–100 million, EUR 100–500 million, etc), and identify the specific contributions (if required by the Commission at the verification stage)
 - In the case of contributions $<$ EUR 1 million (but above EUR 300,000), the list is optional.

Contributions whose unit value does not exceed EUR 1 million, but which jointly exceed EUR 300,000 from one third country, do not need to be notified. However, a list of such contributions may be enclosed voluntarily, with a brief description naming the third country and providing brief information on the form and purpose of the support (without providing the exact amount).

Note!

This information should be gathered sufficiently far in advance. This often requires cooperation with the finance and compliance functions in different countries.

A contribution is considered to be “received” at the time it is awarded, for example on the date of the decision, award of the grant, or signing of the contract, even if the funds have not been disbursed yet.

5. Supplementary documentation

- Copies of decision by authorities, analyses, presentations or reports concerning the concentration and the rationale for the transaction (also concerning support received from third countries)
- Internal documents (if any) used in the process of planning the transaction

6. Information on other proceedings and notifications

- Here it should be indicated whether the transaction has been or will be notified to other authorities (e.g. competition authorities in the EU or elsewhere, or national FDI authorities)
- Notifications which the parties to the concentration have made over the past three years (under the FSR or the Merger Regulation) should be provided

7. Protection of confidential information

- Information may be marked as “confidential,” with the reasons why the information should not be disclosed
- If multiple parties to the concentration file a joint notification, each party may submit its confidential information in a separate encrypted file

8. Signatures and attestations

- The form must be signed by the parties’ lawful representatives
- The signatures and statements must attest to the accuracy and completeness of the information presented.

What to remember in practice?

- Timetable for the transaction—factor in the time for preparing the documentation and the duration of the proceedings.
- If the transaction is subject to merger control, FDI oversight, and the FSR, it is worth considering drafting the submissions simultaneously, to help avoid delays or conflicting decisions.
- Sensitive data (e.g. trade secrets or financing details) may be covered by a confidential clause and filed separately—the Commission enables such documents to be filed in encrypted form.

Any major transaction in the EU now poses more than just an antitrust question. Preparing for the FSR requires careful analysis of the financing and coordination of activities among all the parties. The sooner you begin to collect data on financial contributions from third countries, the less risk of mistakes, delays and penalties.

The difference between FDI and foreign subsidies

[Foreign direct investment](#) is a situation where an investor from a third country (outside the EU) obtains a lasting influence over an undertaking operating in the EU, for example by acquiring shares, purchasing a manufacturing plant, or opening a company.

FDI is not the same as a foreign subsidy under the FSR, but in many instances the regimes complement each other:

| | FDI | FSR |
|----------------------|---|---|
| Involves: | Impact on public safety and order in the EU | Impact of foreign financing on competition on the internal market |
| Enforced by: | National authorities | European Commission |
| Key question: | Does the investment pose a threat to state security, including critical infrastructure, technologies, strategic supplies etc? | Does financial support from third countries distort competition? |

In practice, the same transaction may be subject to review under the FSR, and also under the FDI regime and control of concentrations (antitrust). This is why it is essential to identify all relevant legal regimes, coordinate the timing and scope of the filings, and allow for these obligations in the timetable for the transaction.

Notification in public procurement

In this section we discuss step by step the key requirements of the FSR for notification of foreign subsidies in public procurement procedures, from the threshold and the scope of information that must be submitted, to responsibility for the data, and practical pointers for contractors and consortia.

Why is public procurement subject to the FSR?

Public contracts are financed out of public funds, and their value often reaches into the hundreds of millions of euro. This makes it essential that foreign subsidies not give contractors an unfair advantage. The FSR introduces clear rules designed to protect competition on the market.

When is there a duty to notify the European Commission?

Notification of the Commission is mandatory when two conditions are met, for the value of the procurement and the value of financial contributions received by the contractor.

| Notification conditions related to: | |
|---|--|
| Procurement value | Financial contributions |
| <ul style="list-style-type: none"> Estimated procurement value (excluding VAT) is EUR 250 million or more In a procurement divided into lots, the value of the lot or lots which the contractor seeks is EUR 125 million or more. <p>Remember that the Commission can require prior notification in selected procurement procedures regardless of the procurement value.</p> <p>In practice, contracting authorities sometimes request information from contractors about foreign subsidies they have received, even when the estimated contract value is below the threshold indicated in the FSR.</p> | <ul style="list-style-type: none"> The contractor, its holding companies, subsidiaries, main subcontractors and suppliers participating in the bid have together received EUR 4 million or more in foreign financial contributions from a given third country within the last three years. <p>If the contractor has not received such contributions, it should file a declaration to this effect instead of a notification.</p> |

What public procurement procedures are exempt from the FSR?

The notification obligation does not apply to:

- Contracts in the defence sector
- Contracts awarded in the negotiated procedure without prior publication of a contract notice, for reasons of extreme urgency brought about by unforeseeable events.

When the contract (with an estimated value of EUR 250 million or more) is awarded through the negotiated procedure without prior publication because it can be performed only by a specific contractor (e.g. due to a lack of competition, exclusive rights, or creation of an artwork), **the contractor is required to submit information about foreign financial contributions**. However, in that case the Commission will not investigate the impact of foreign subsidies on the internal market.

Who makes the notification, and what do they notify?

| Solo contractor | Consortium |
|---|---|
| <p>If the tender is submitted by one firm, it is responsible for preparing and filing the notification.</p> | <p>The notification is submitted by the consortium leader or designated representative, but covers all members of the consortium.</p> <p>Each consortium member must provide the consortium leader information about its financial contributions from third countries—even if they are small amounts!</p> |
| <p>Subject to notification:</p> <ul style="list-style-type: none"> • Financial contributions to a contractor (including affiliates—holding companies, subsidiaries) received from third countries within the past three years • Contributions to main subcontractors and suppliers, if their economic share in performing the contract exceeds 20% of the value of the bid | |

If the contractor has not received support, or the support totals less than EUR 4 million, a declaration should be submitted (on the same form FS-PP) that the contractor (together with affiliates, main subcontractors and suppliers) have not received contributions at or above the EUR 4 million threshold from any third country.

Even if the contracting authority does not state in the contract announcement that the notification must be made, there is still an obligation to notify financial contributions. This obligation arises directly under the regulation.

The contractor is responsible for correctly identifying and carrying out the notification obligation.

Most frequent errors to watch out for:

- Omitting support received by a main subcontractor or supplier (>20% share of the contract)
- Lack of cooperation between consortium members—this carries the risk of rejection of the bid
- Assuming that a failure to mention the notification obligation in the terms of reference means that contractors have no duty to notify the Commission.

Example:

A Polish contractor is building an airport for EUR 500 million, and 30% of the work will be carried out by a subsidiary from Turkey. The consortium leader must gather and submit information not only about its own grants or loans from third countries, but also those received by the Turkish company within the last three years (e.g. credit from a state bank in Istanbul).

If the sum of financial contributions from the Turkish government is EUR 4 million or more, notification to the Commission is mandatory.

What information is required? (form FS-PP)

1. Identification of the contractor and participants in the tender
 - Contractor's full name, contact details, legal form
 - In the case of a consortium, details for all members of the consortium, main subcontractors and suppliers whose economic share exceeds 20% of the value of the tender
 - Description of links between participants (diagram of capital group).
2. Details of the procurement
 - Title and number of the procedure, contracting authority's name and address
 - Indication of the lots of the procurement which the contractor is seeking (if the procurement is divided into lots)
 - The value of the tender and its share of the procurement (particularly in procurements divided into lots).

3. Financial contributions from third countries

All “financial contributions” from third countries (outside the EU) received within three years before filing the bid.

For each contribution \geq EUR 1 million, the following should be stated:

- Form (grant, loan, guarantee, tax incentive, compensation etc)
- Amount of support
- Awarding entity (third country, government agency, sovereign fund)
- Conditions for award and use of support
- Aim of the support and economic rationale
- Whether access to support is available on market terms
- Whether access to support is limited in law or fact
- Whether the contribution concerns exclusively the operating costs connected with the specific procurement (if the contribution involves only the operating costs of the specific procurement, it may be excluded from the calculation up to the threshold of EUR 4 million.

If the **sum of all contributions of EUR 1 million or more** from a given third country equals or exceeds EUR 4 million in the past three years, a collective list of contributions should be prepared for each such third country.

If the sum of contributions from a given country **exceeds EUR 300,000** (the de minimis threshold) but is below EUR 1 million, the contractor may enclose a list (brief description without stating the values). This list is optional.

4. Declarations/attestations

- Attestation that all information provided is true, correct and complete
- Declaration on the lack of a notification obligation (if no contributions were received or the sum of contributions was below EUR 4 million)

5. Additional information (optional)

- Any positive effects of the subsidies for the EU market (e.g. investments in new technologies, jobs, green transition) may be described
- Other information or documents explaining the nature of the support may be enclosed

6. Protection of confidentiality

- Information may be marked for treatment as “confidential” (trade secrets, sensitive financial data)
- A justification should be provided why disclosure of such information would infringe the interests of the contractor or its group

- A list of confidential contributions may be set forth in a separate encrypted file—this is particularly important in the case of a consortium or multiple subcontractors
7. Enclosures to form FS PP
- Documents confirming receipt of financial contributions (contracts, decisions, letters, certifications)
 - As needed: documents concerning the group, financial reports, analyses of the impact of the support on execution of the procurement.

Note!

Prepare a list of all links between entities and collect information on their financing going back a minimum of three years.

Talk to subcontractors and suppliers sufficiently far in advance—they must prepare similar data!

Don't understate or ignore small amounts—even modest support is included in the collective lists.

If the list of financial contributions constitutes a trade secret, and the notification is made by multiple entities (e.g. consortium members or the contractor along with its main supplier), lists from specific entities can be submitted separately as an enclosure to the notification, in the form of an encrypted file.

Verification of notifications and supplementary proceedings

The contracting authority will check the completeness and formal correctness of the notification. If anything is missing (e.g. a lack of notification from certain members of a consortium), the contracting authority will summon them to supplement the filing within 10 days.

The European Commission can also demand supplementary information, in which case the contractor has 10 days to respond. If the information is not supplemented, the bid will be deemed improper and rejected.

Responsibility

The contractor who has received the subsidy is responsible for inaccurate or incomplete data. If the error concerns only one member of a consortium, only that member is exposed to sanctions (including fines or exclusion from the procurement).

Fines and other penalties

The obligations under the FSR aren't purely technical. They are formal requirements, and failure to comply can lead to serious legal and financial consequences. Non-notification, submitting incomplete or inaccurate information, or delay in responding to a request from the European Commission can result in a high fine or other monetary penalty, a ban on conducting a concentration, or exclusion from a public procurement proceeding.

In this part of the guide, we explore the risks of non-notification or submission of erroneous data, and the sanctions that can be imposed by the Commission.

What duties can be infringed, and what is subject to sanctions?

Undertakings covered by the Foreign Subsidies Regulation must exercise the greatest care in performing their informational obligations, both when filing notifications (on form FS-CO for concentrations or FS-PP for procurement procedures), and when submitting information requested by the Commission.

Acts or omissions that may be found to infringe the FSR can be divided into three groups.

1. Infringement of notification obligation

Notification of a planned concentration (form FS-CO) or participation in a procedure for award of a public contract (form FS-PP) is a fundamental obligation under the FSR. Non-notification, late notification, or carrying out a transaction without the prior approval of the Commission can have serious consequences.

Infringements include the following:

- Failure to make a mandatory notification despite achieving the notification thresholds (e.g. EUR 500 million of turnover in the EU or EUR 50 million in contributions from third countries in the case of concentrations, or in the case of public procurement a contract value of EUR 250 million and EUR 4 million in contributions)
- Filing a late notification (e.g. after concluding a merger agreement or after the deadline for submitting tenders in a procurement)
- Concluding a transaction without prior approval of the Commission (i.e. violating the standstill rule).

Example

Company X, based in the EU, acquires company Z without first notifying the transaction to the Commission, despite exceeding both of the thresholds set forth in the FSR (high turnover and significant financial contributions from a third country). The Commission may impose a fine of up to 10% of X's total annual turnover for infringing the notification obligation.

2. Infringement of duty to provide information

Apart from notifications on form FS-CO or FS-PP, the FSR provides for a broad duty to cooperate with the Commission, at the formal stage of proceedings and during the course of ex officio review or inspection. Submitting inaccurate data or failing to respond may result in serious financial sanctions.

Infringements include:

- Supplying incomplete, incorrect or misleading information requested by the Commission
- Failing to provide (complete) information sought in an inspection
- Producing the required books and records in incomplete or inadequate form
- **Non-cooperation, including ignoring a request for information or evading questions from the Commission (e.g. during the course of ex officio review).**

Example

During the course of a procedure, the Commission requests an undertaking seeking a public contract to provide detailed data on the terms of a loan it received from a sovereign fund from outside the EU. The undertaking fails to provide the information on time and does not justify the delay. The Commission may impose a periodic penalty payment of up to 5% of the undertaking's daily turnover for each day of delay, until the required information has been fully submitted.

3. Preventing or hindering inspection

The FSR vests the European Commission with the authority to conduct investigations and inspections, including site visits, searches, document requests, and interrogation of staff. Failure to cooperate with the Commission at this stage is also subject to administrative sanctions.

Infringements include:

- Refusal to submit to an inspection (e.g. blocking access to premises or IT systems)
- Providing incomplete documents or information during an inspection
- Violating the terms of the inspection, e.g. restricting activities to selected areas or individuals
- Hindering the Commission's contact with the undertaking's staff, including individuals with relevant information.

Example

During an ex officio proceeding the Commission requests an undertaking to conduct an inspection at the premises of a subsidiary outside the EU where documents concerning foreign subsidies are stored. The undertaking does not admit inspectors from the Commission to the location in question and refuses to provide access to the information. This can result in imposition of a fine as well as a periodic penalty payment until the inspection is allowed.

What are the potential penalties for infringing informational obligations?

Non-compliance, whether intentional or negligent, may lead to imposition of **administrative sanctions** in the form of:

- **One-off fines** of 1% to 10% of the undertaking's aggregate turnover in the preceding financial year, depending on the violation, or
- **Periodic penalty payments** of up to 5% of the average daily aggregate turnover for each day of the ongoing infringement.

The amount of the sanction depends on the type and seriousness of the infringement. It can also differ depending on whether it involves a concentration, participation in a public procurement procedure, or non-cooperation.

When setting the sanction, the Commission takes into account the nature, gravity and duration of the infringement, as well as the principles of proportionality and appropriateness.

Below we provide a breakdown of the most common infringements and the potential sanctions.

Infringements involving both concentrations and procurement

| Type of infringement | Sanction |
|--|--|
| Submitting incorrect, incomplete or misleading information (in the notification or at the request of the Commission) | Fine of up to 1% of aggregate annual turnover Periodic penalty payment of up to 5% of average daily aggregate turnover |
| Refusal to submit to an inspection or hindering an inspection in the EU | |
| Failure to comply with a Commission decision imposing commitments, redressive measures or interim measures | Fine of up to 10% of aggregate annual turnover, or Periodic penalty payment of up to 5% of average daily aggregate turnover |

Infringements involving concentrations (form FS-CO)

| Type of infringement | Sanction |
|--|---|
| Failure to notify a concentration before carrying it out, despite meeting the thresholds | Fine of up to 10% of aggregate turnover |
| Concluding a transaction without Commission approval (infringement of the standstill obligation) | |
| Circumvention of notification requirements | |
| Carrying out a notified but prohibited concentration | |

Infringements concerning public procurement (form FS-PP)

| Type of infringement | Sanction |
|---|--|
| Submitting an inaccurate declaration or notification | Fine of up to 1% of aggregate annual turnover |
| Submitting incorrect or misleading information in a notification, declaration or supplement | |
| Failure to notify foreign financial contributions of EUR 4 million or more in a procurement procedure | Fine of up to 10% of aggregate annual turnover |
| Circumvention of notification obligations or concealing information about contributions | |

What happens if the Commission finds a distortion of the internal market?

If the Commission finds as a result of analysis of a notification (form FS-CO or FS-PP) or in an ex officio proceeding that a financial contribution from a third country distorts or may distort the internal market, the Commission may:

- **Accept commitments** offered by the undertaking, which the Commission deems appropriate and sufficient to fully and effectively remedy the distortion, or
- **Impose redressive measures** proportional and adequate to remedy the distortion in the internal market.

Examples of redressive measures:

- Offering access under fair, reasonable, and non-discriminatory conditions to infrastructure (e.g. research facilities) acquired or supported by foreign subsidies
- Reducing capacity or market presence (e.g. by a temporary restriction on commercial activity)
- Divestment of certain assets or refraining from certain investments
- Licensing on fair, reasonable and non-discriminatory terms of assets acquired or developed with the help of foreign subsidies
- Publication of R&D results
- Requiring the undertakings to adapt their governance structure, or dissolve the concentration
- **Repayment of the foreign subsidy, with interest.**

The Commission may also prohibit the concentration or award of the public contract, if appropriate redressive measures are not proposed or implemented.

Interim measures

If there are sufficient indications that a foreign subsidy distorts the internal market and there is a risk of serious and irreparable damage to competition, the Commission may issue a decision imposing interim measures. If required by the urgency of the situation, such a decision may even be adopted without first hearing the undertaking, but then the undertaking has a subsequent right to address the decision.

Interim measures will apply for a specific period, which may be renewed, or until a final decision is taken. Such measures may include, for example:

- Providing access under fair, reasonable, and non-discriminatory conditions to infrastructure (e.g. research facilities) acquired or supported by foreign subsidies

- Refraining from certain investments
- Licensing on fair, reasonable and non-discriminatory terms of assets acquired or developed with the help of foreign subsidies.

Example

A Chinese undertaking which has received significant financial support from the government of a third country plans to acquire a European manufacturer of semiconductors. The Commission launches an ex officio investigation because it has serious doubts concerning the impact of the foreign subsidy on competition and the security of supplies in the EU. During the investigation, the Commission finds that European customers may be excluded from access to the acquired infrastructure, which poses a danger of distortion of the market.

Due to the risk of irreparable damage to competition, before the Commission completes its full analysis it issues a decision imposing interim measures and orders the undertaking to ensure access to the manufacturing infrastructure under fair, reasonable and non-discriminatory terms until the proceeding is completed.

In practice—how to avoid sanctions?

To minimise the risk of fines or other negative decisions, it is worth applying certain best practices from an early stage of an M&A transaction or preparations for a tender.

Prepare in advance:

- Identify all affiliated entities (holding companies, subsidiaries, joint ventures) and draw up a map of the links within the group
- Gather data on financial contributions over the past three years, including forms that may not be obvious, such as tax incentives, guarantees, research support, etc
- Engage the finance and compliance functions, as well as counterparties, particularly subcontractors and consortium members.

Assess the risk of market distortion:

- Does a foreign subsidy provide an advantage that cannot be achieved under market conditions?
- Would other entities on the market have access to comparable support?
- Is the advantage proportional to the purposes and the costs it is intended to compensate?

Be proactive:

- If you identify a risk, considering presenting to the Commission the positive effects of the financial contribution for the EU market (e.g. employment, investments, innovations)
- If necessary, propose redressive measures to limit the potential distortion of the market and enable the Commission to issue a conditional decision instead of a ban.

Don't ignore the FSR, even if the other party or the contracting authority doesn't mention it:

- In public procurement, the notification obligation arises under the regulation itself, not the tender documentation. Lack of an indication in the contract announcement or terms of reference does not relieve contractors of the notification obligation. And in the case of M&A, a failure by the other party to require notification is not an excuse.

Summary

The FSR has formally been in force since mid-2023, and the duty to notify concentrations or participation in public procurement procedures went into effect on 12 October 2023. But we can already make a few key observations from the European Commission's practice and the market's response:

The scale of notifications has exceeded expectations

The first year of the FSR being in force showed that the new rules are having a real impact on commercial practice. Through the end of October 2024, the Commission received over 100 formal notifications concerning concentrations and 1,108 notifications in the public procurement context. A more comprehensive assessment will come later, as the Commission says it plans to publish its first annual report on implementation of the FSR at the end of 2026.

The early decisions show flexibility by the Commission

In the case of acquisition of a part of PPF Telecom by e& (from the United Arab Emirates), the Commission accepted commitments involving such issues as exclusion of an unlimited state guarantee and restricting the financing of PPF's operations in the EU. This example shows how the Commission may apply redressive measures in specific cases.

Impact of launch of proceedings on decisions by contractors

In October 2023 the Commission initiated an investigation into the Chinese company CRRC Qingdao Sifang Locomotive, which was participating in a tender to supply trains to the Bulgarian public rail operator. The investigation involved alleged foreign subsidies that could distort competition. In response to the Commission's move, the Chinese company withdrew from the tender.

Focus on strategic sectors

The investigation of the planned investment by BYD (from China) in an electric vehicle factory in Hungary shows that the Commission examines particularly closely projects in sectors key to the EU's strategic autonomy—such as electromobility, semiconductors, and green technologies.

The experience to date shows that the Foreign Subsidies Regulation is an instrument actually being applied in practice, and is not just theoretical. For businesses, this means a need to change their approach. Now an assessment of the impact of foreign financing on competition in the EU should be a part of any major M&A deal or participation in any large public tender.

Strategic preparations for meeting the disclosure obligations, early analysis of financial contributions, and informed communications with the European Commission may not only help avoid sanctions, but also help achieve market success.

Contact

We advise our clients in the procedure for notification to the European Commission of the following instances:

- M&A deals (concentrations) where at least one of the merging companies, the target of the acquisition or the joint venture generates over EUR 500 million in annual turnover, and the parties have received combined financial contributions from third countries in the three preceding financial years of over EUR 50 million
- Participation in a procedure for award of a public contract with an estimated value of at least EUR 250 million, where the participant has obtained financial contributions of at least EUR 4 million from a non-EU country.

Our support covers such matters as:

- Completing the proper forms (FS-CO in the case of concentrations, or FS-PP in the case of public procurement)
- Review of contracts (within the EU and beyond) which may result in obtaining a foreign subsidy
- Analysis of documents concerning:
 - Foreign subsidies received on or after 12 July 2018
 - Concentrations or participation in procurement procedures on or after 12 July 2020.



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