

EU FOREIGN SUBSIDIES REGULATION TWO YEARS ON

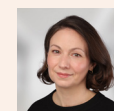
When the EU Foreign Subsidies Regulation (FSR) came in, there was concern that it would cause significant delays to M&A deals and public procurements, introduce additional cost and increase execution risk.

Here are our takeaways on the new regime, to date.

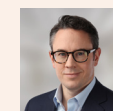
AT A GLANCE

- The Commission can block deals or require structural and/or behavioural commitments where it finds that a company may benefit from foreign subsidies distorting competition in the EU market. So far, all deals have been cleared unconditionally except one (e&s EUR 2.15 bn acquisition of PPF), which was subject to commitments.
- Most of the in-depth investigations opened by the Commission have been in connection with acquisitions or bids by Chinese State-linked businesses. However, two Chinese businesses have secured unconditional FSR clearance for a European M&A transaction (Haier/Carrier Commercial Refrigeration and Luxshare/Leoni) without an in-depth investigation. The Commission has also opened investigations into State-linked businesses of the UAE and South Korea.
- The Commission has not used its powers to formally call in M&A transactions that do not meet the mandatory filing thresholds (it has, however, sent requests for information to parties in non-notified M&A transactions).
- Review processes have been smoother than expected, at least for buyers and bidders with effective information-gathering systems. Disclosure requirements are burdensome, but flexibility, through exemptions and waivers, is possible.
- Private capital firms, with their complicated multiple-fund-based structures, face daunting reporting obligations when their deals trigger FSR notifications. It has been possible, however, to reduce the reporting burden by using the 'fund exemption' or by securing waivers from the Commission.

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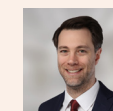
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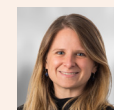
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TAKEAWAYS FROM THE FIRST TWO YEARS

Here are our insights for international corporate buyers and bidders navigating the FSR regime.

①. Most international businesses are able to navigate the new regime

The new regime has not created a significant obstacle to M&A deals and procurement bids, especially where parties have put in place sufficient information-gathering processes.

As of 1 July 2025, there have been 167 M&A filings under the FSR, around 3 times more than the Commission had initially anticipated. The Commission's approach to date has been pragmatic and all but one of those have been cleared unconditionally in the 25-working day Phase 1 review period.

For the public procurement filing regime, there have been 2112 submissions as of April 2025: around 7 times more than anticipated. Our experience is that bidders, particularly those that are not State-linked, have not faced serious challenges in obtaining clearance.

This may in part reflect constraints on enforcement activity due to a lack of staff, which the Commission plans to address with the creation of an FSR unit dedicated to the review of public procurement filings.

②. Disclosure requirements are burdensome

The filing form requires information on 'foreign financial contributions' received by any group company, such as loans and other financial services provided to or by non-EU governments or State-linked financial institutions (even if on market terms), tax breaks/exemptions (even if of general application), grants, guarantees and capital injections.

Businesses without bespoke information-gathering systems already in place typically take months to create them, which can delay the deal timetable significantly.

Exemptions exist for some categories of contributions - such as those received by funds of a PE acquirer other than the one involved in the acquisition - although for funds set up outside the EU it can be difficult to satisfy the Commission that the exemption conditions are met.

The Commission is amenable to waiving certain disclosure requirements, in particular where the parties can demonstrate that the information is not relevant to the Commission's assessment. Experience from making multiple filings gives important insight into the circumstances in which waivers and more flexibility on disclosure are most likely to be granted.

③. Most investigations so far have targeted Chinese State-linked parties

Most of the in-depth investigations opened by the Commission have been in connection with bids by Chinese State-linked businesses, which has had the effect of deterring many such businesses from engaging in large scale acquisitions and public tenders in the EU.

Two of the investigations into Chinese businesses were into public procurement procedures and caused the Chinese bidder to withdraw from the tender. Two other investigations are ongoing ex-officio investigations, not relating to a particular M&A transaction or public tender.

In one case, the Commission carried out a 'dawn raid' at the EU premises of Chinese-owned Nuctech to gather information. The EU Court of Justice rejected arguments that the Commission had exceeded its powers by demanding information held by Nuctech's Chinese parent, ruling that arguments that the disclosure of such information would infringe Chinese law were not (yet) sufficiently substantiated.

The Commission has granted unconditional FSR clearance for two M&A acquisitions by a Chinese business: Haier's USD 775 m acquisition of Carrier Commercial Refrigeration in October 2024 and, most recently, Luxshare's EUR 320 m acquisition of Leoni, in June 2025. Clifford Chance advised the buyers on both transactions on the FSR clearance process.

We are seeing Chinese clients increasingly structure their M&A investments so as not to trigger an FSR filing requirement (e.g. through non-controlling minority/limited partner interests) or seek to reduce the risk of subsidy concerns (e.g. by investing as part of a consortium with non-Chinese private businesses, on pari passu terms).

④. The Commission's approach to reviewing M&A

As clarified in the review of e&'s acquisition of PPF, when reviewing M&A transactions, the Commission focuses its assessment on two key points:

- **Distortion of the acquisition process:** Have the foreign subsidies allowed the buyer to outbid other potential purchasers of the target? This was not an issue in the e& case as the Commission found that: (i) there were no other bidders; (ii) e& was paying a market price for PPF; and (iii) e& would have been able to fund the acquisition without the subsidies it had received.
- **Distortion of the product market:** What is the risk of the foreign subsidies flowing to the target post-transaction, allowing it to enjoy a better position than its competitors in the EU? The Commission took issue with several subsidies enjoyed by e& and its shareholder, the Emirates Investment Authority (EIA). In particular, the Commission considered that e&'s exemption from UAE bankruptcy laws acted as a form of unlimited State guarantee, allowing e& to borrow on favourable terms, while grants, loans and repayable advances provided by the UAE Ministry of Finance to EIA were liable to distort the market in respect of the activities of the post-transaction combined entity.

The Commission will publish guidelines on how it assesses whether foreign subsidies are distortive of competition in the EU and whether they may be justified by legitimate public policy objectives. A draft for consultation is expected in Q3 2025, and final guidelines will likely be adopted by January 2026.

5. Use of behavioural remedies

The Commission indicated that it is willing to address concerns regarding the risk of foreign subsidies flowing to the target, through post-transaction behavioural remedies, rather than requiring structural divestment remedies which are more typical in merger control cases. In the e& case, to address the concerns relating to distortion of the product market, e& committed to amending its articles of association to end its exemption from UAE bankruptcy laws, to prohibit any financing of the target in the EU and to notify all future acquisitions to the Commission, even if they do not meet the FSR thresholds.

By accepting behavioural remedies in this case, the Commission has signalled that the EU is not closed to investment from non-EU subsidised businesses.

The Commission is currently consulting on whether it should be more open, in merger control cases, to behavioural commitments to increase investments in infrastructure and innovation in the EU, which could translate into increased flexibility on remedies under the FSR regime too.

Conclusion

Filing information requirements remain burdensome, but the Commission has generally been pragmatic. With appropriate planning and advice, parties can navigate the FSR process smoothly and still successfully bid for European businesses and public contracts.

IS MY M&A TRANSACTION IN SCOPE?

Notification obligations apply if:

- the transaction involves the acquisition of control over the target (i.e., the ability to veto strategic commercial decisions, such as approval of the budget and business plan, or appointment of senior management), including joint control in the case of joint ventures;
- the target (including subsidiaries) is: (i) established in the EU; and (ii) generates an aggregate EU-wide turnover of at least EUR 500 million; and
- the acquirer(s) and target received combined aggregate "financial contributions" of more than EUR 50 million from "third countries" during the previous three financial years (which is a threshold relatively easy to meet).

"Financial contributions" are wide-ranging in scope and include the transfer of funds or liabilities, the forgoing of revenue that is otherwise due (such as tax exemptions) and the provision or purchase of goods or services, in each case (with the exception of the grant of special or exclusive rights for which an adequate consideration has been paid) whether or not the transaction is on arm's-length terms.

"Third countries" include non-EU governments and public authorities, as well as any public (or even private) entities whose actions can be attributed to a non-EU country.

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