

EU Foreign Subsidies Regulation Takes Effect and Filing Forms Adopted

July 12, 2023

On July 12, 2023, the [EU Foreign Subsidies Regulation \(FSR\)](#) entered into effect. The European Commission (**Commission** or **EC**) can now open *ex officio* investigations. From October 12, businesses must notify M&A deals (if signed on or after July 12 and not yet implemented on October 12) and public procurement tenders meeting the relevant thresholds. The review procedures and form requirements are set out in the [FSR Implementing Regulation \(IR\)](#), adopted on July 10, 2023.

This alert memo summarizes the main rules and procedures under the FSR and accompanying IR. It updates and consolidates our [previous coverage](#) of this legislation.

The FSR: A Brief Overview

The FSR aims to tackle distortive subsidies given by non-EU countries to companies active in the EU. It seeks to fill a perceived regulatory gap concerning foreign subsidies that is not addressed by the EU State aid, merger control, antitrust, trade defense, and public procurement regimes.

The FSR comprises three modules: (i) *ex officio* review of foreign subsidies by the Commission, (ii) *ex ante* notification regime for mergers, and (iii) *ex ante* notification regime for public procurement procedures. The Commission will assess if there is a “foreign subsidy”, which is defined as (a) a financial contribution; (b) which is provided by a non-EU state; (c) which confers a benefit on the recipient; and (d) which is selective *i.e.*, limited to one or more undertakings or industries. The Commission may intervene against foreign subsidies that create competitive distortions in the internal market, unless such distortive effects are counterbalanced by positive effects for the development of the relevant economic activity or policy objectives.

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Financial contribution. “Financial contribution” is broadly defined and covers any transfer of funds, foregoing of revenues, or provision or purchase of goods and services. The table below lists examples of the main categories of financial contributions.

Main categories of financial contributions

CATEGORY	DESCRIPTION
Tax	Tax rulings, tax credits, set-off of operating losses
Government contracts	Provisions or purchase of goods and services to governments or state-owned entities e.g., public contracts, utilities, real estate.
Capital transfers	Equity injections by governments or state-owned entities
Loans	Loans, debt forgiveness, debt to equity swaps, debt rescheduling
Guarantees	Guarantees on loans or on the value of some assets
Operating subsidies	Subsidies (grants) aimed at funding operating expenses
Investment subsidies	Subsidies (grants) aimed at funding all or part of certain investments
Other payments	Grants, compensation for financial burdens imposed by public authorities
Other rights	Special or exclusive rights (e.g. a right to exploit a concession) without adequate remuneration

Provision by non-EU State. Based on EU State aid precedent, the support would be attributable to a non-EU government if it was involved in the decision to grant this support, regardless of whether the support was provided by a public or private entity. This is assessed based on all relevant circumstances, including the grantor’s governing structure and activities, its interactions with government bodies, and the prevailing legal and economic environment of the state where the beneficiary operates.

Benefit. The support will not confer a benefit if it is provided in line with normal market conditions. This is assessed based on comparative benchmarks, such as the investment practice of private investors, the rates

of financing obtainable on the market, the tax treatments for similarly situated companies and normal remuneration for the goods or services transferred.

Selectivity. The support will not be selective if it is available to all firms in the economy (including after satisfaction of objective and non-discriminatory criteria that are consistent with the scheme’s objectives). The support is selective if it is limited, in law or in fact, to one or more undertakings or industries.

Distortive Effect. A subsidy is distortive if it could improve the undertaking’s competitive position in the EU and in doing so, negatively affect competition in the internal market. Certain forms of support are “most likely to be distortive”, namely (a) aid to ailing firms outside a viable restructuring plan; (b) unlimited guarantees; (c) support “directly facilitating” a concentration; (d) support enabling submission of an “unduly advantageous tender”; and (e) export financing measures that are not in line with the OECD Arrangement on officially supported export credits.

The FSR defines two *de minimis* thresholds: foreign subsidies shall not be distortive if the total amount received by the beneficiary did not exceed EUR 200,000 per non-EU country in any three year period, and are “unlikely” to be distortive if they did not exceed EUR 4 million in any three year period. A subsidy may not be distortive if it is aimed at repairing damage caused by natural disasters or exceptional occurrences.

Positive Effects. The Commission may consider any positive effects on the subsidized economic activity in the internal market, which may mean that no or less onerous redressive measures are required. The Commission may also take account of other positive effects, such as the achievement of policy objectives (particularly those of the EU) like environmental protection or the promotion of R&D or social standards.

Ex Officio Review

General and Substantive Assessment

The FSR empowers the Commission to proactively investigate foreign subsidies distorting the internal market and to require repayment of the foreign subsidy or impose other redressive measures. The Commission can investigate foreign subsidies granted up to 10 years prior, including in the five years preceding the FSR's effective date.

Ex Officio Procedure

There are no statutory deadlines for the Commission's conduct of *ex officio* investigations, but it should endeavor to adopt a final decision within 18 months from the opening of the in-depth investigation.

Preliminary review. The investigation begins with a preliminary review phase, where the Commission may request information and conduct inspections in and outside the EU. If the Commission has sufficient indications of a foreign subsidy that distorts the internal market, the Commission shall adopt a decision opening an in-depth investigation. Conversely, where there are no sufficient grounds to initiate an in-depth investigation, the Commission will close the preliminary review and inform the undertaking concerned.

In-depth investigation. During the in-depth investigation, the Commission will further assess the foreign subsidy identified and seek additional information necessary for its assessment. When the Commission finds that a foreign subsidy distorts the internal market, it may adopt a decision imposing redressive measures (*e.g.*, repayment of the foreign subsidy with interest) or other commitments. If the Commission finds that its preliminary concerns were

not confirmed or a distortion is outweighed by positive effects, it shall adopt a no objection decision.

M&A Review

Notification Threshold

The FSR imposes a filing obligation for concentrations where:

- the acquired undertaking, one of the merging undertakings, or the joint venture, is established in the EU¹ and has EU turnover of at least EUR 500 million in the preceding year;² and
- the parties to the transaction collectively received financial contributions from non-EU states exceeding EUR 50 million in the three years preceding the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.³

Notifiable concentrations may not be implemented unless approved by the Commission or the statutory review periods have expired.

The parties responsible for notification are, in the case of an acquisition or joint venture, the party or parties acquiring control, and in the case of a merger, the parties to the merger.

Substantive Assessment

The Commission's review assesses whether there is a foreign subsidy "*liable to improve the competitive position of an undertaking in the internal market and where, in doing so, that foreign subsidy actually or potentially negatively affects competition in the internal market.*"⁴ The Commission's assessment "*shall be limited to the concentration concerned.*"⁵ Based on the FSR's preparatory texts, this may be

¹ "Established in the EU" means that the business is engaged in the effective and real exercise of economic activity through stable arrangements in the EU (see *e.g.*, Case C-230/14 *Weltimmo*, ¶¶29-30). This includes the incorporation of a subsidiary, branch or representative office in the EU.

² The calculation of the JV's turnover excludes the parents' turnover (unlike the position under the EU Merger Regulation). Where the concentration involves the

acquisition of parts of one or more undertakings, only the turnover relating to the acquired parts are taken into account.

³ The parties to the notification means: (a) in an acquisition, the acquirer(s) and the target; (b) in a merger, the merging undertakings; and (c) in a joint venture, the joint venture and its parents.

⁴ FSR, Article 4(1).

⁵ FSR, Article 19.

where the subsidies have distorted the M&A process or could give the acquired undertaking a competitive advantage post-transaction.

Distortion of M&A process. A subsidy may be distortive if it enables the subsidized company to pay an inflated price for the target and more efficient competitors are crowded out from the acquisition process. Subsidies directly facilitating a concentration are deemed likely to have distortive effects, which are “less likely” to be outweighed by positive effects.

Competitive advantage for the acquired business. A subsidy may confer a competitive advantage on the post-merger entity compared to rivals. Access to significant low-cost financing could, for example, place an undertaking in a position of financial strength that enables it to (i) have easier access to cutting-edge technologies or (ii) pursue low-pricing strategies which are not based on comparative cost advantages vis-à-vis its competitors. The Commission will need to evaluate the prospects for such conduct based on the amount, nature and terms of the foreign subsidy. The Commission will also need to assess if such behavior is capable of distorting competition, which will depend on the size and market position of the undertaking involved.

The Commission has promised to issue initial guidance on how it will conduct the distortion and balancing test by July 2024, with formal guidelines to follow within the FSR’s first three years of operation.

Notification Form Requirements for Mergers

Merger notifications are submitted on a template form (the Form FS-CO). The form and any supporting documents (or translations) must be provided in one of the EU’s official languages.

As in antitrust merger control, there is a pre-notification process during which the parties submit and iterate a draft form and engage with the Commission on the precise information required. The statutory review period begins once the Commission

deems the notification complete, although the Commission could still request additional information during its investigation.

The IR does not provide for a simplified notification process although the Commission may agree to waive information requirements during pre-notification discussions if these are (a) “*not reasonably available*” – provided the parties provide “*best estimates for the missing data*” or indicate where the Commission could obtain this information; or (b) “*not necessary*” for the Commission’s examination of the case.

Information on the transaction (Sections 1 to 4)

These sections require basic details about the concentration which are largely in line with information provided under the EU Merger Regulation. In addition, parties must provide (a) the enterprise value of the target and how this was calculated; (b) details on the sources of finance (whether debt or equity) used to fund the transaction, such as the identity of the lenders or subscribers for shares and the conditions attached to any equity financing; and (c) whether the parties have made any acquisitions of control during the last three years which were notified to the European Commission (whether under the FSR or EU merger control regimes) or under EU national merger control rules.

Information on non-EU financial contributions (Section 5)

The notification form requests information on non-EU financial contributions equal to or in excess of EUR 1 million that the parties have received in the three years preceding the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

For financial contributions which fall into one of the relevant “*most likely to be distortive*” categories,⁶ the parties must provide the following information with supporting documents:

⁶ These are (a) aid to ailing firms outside a viable restructuring plan; (b) unlimited guarantees; (c) a foreign financial contribution directly facilitating a concentration;

and (d) export financing measures that are not in line with the OECD Arrangement on officially supported export credits.

- the form of the contribution (*e.g.*, loan, tax exemption, *etc.*);
- the third country to which the financial contribution is attributable;
- the granting entity;
- the amount of the contribution;
- the purpose and economic rationale;
- the conditions attached to the contribution or its use;
- the main elements and characteristics of the contribution;
- whether the contribution confers a benefit;
- whether the contribution is selective;
- other specified information depending on the category of financial contribution.

For all other financial contributions, the parties provide summary information in an overview table. The table lists financial contributions grouped by country and by type (*e.g.*, direct grant, loan, guarantee, tax incentive), with a brief description of the purpose of the financial contribution and the granting entity. The table should also indicate the estimated aggregate value of financial contributions granted by each third country in the last three years using the ranges specified.⁷

Overview table for M&A filings

Third country	Type of financial contribution	Brief description of the purpose of the financial contribution and the granting entity
Country A	Tax advantage	Tax exemption for the production of product A and R&D activities
	Loan	Several loans with State-owned banks for purpose X
	Loan; Guarantee	Several financing measures with State investment

⁷ This estimated value should also include the financial contributions falling into the “*most likely to be distortive*” categories but should exclude other financial contributions

		<i>agencies to cover operating expenses/for R&D activities</i>
	<i>Equity intervention</i>	<i>Public capital injection in Company X</i>
<i>Estimated aggregate financial contributions granted by A: [EUR 45-100 million, EUR >100-500 million, EUR >500-1 000 million, more than EUR 1 000 million]</i>		

The overview table should exclude:

- countries where the estimated aggregate amount of financial contributions received was less than EUR 45 million;
- in an acquisition of control, financial contributions granted to the target;
- deferrals of payment of taxes or of social security contributions, tax amnesties and tax holidays as well as normal depreciation and loss-carry forward rules that are of general application (*i.e.*, not limited to certain sectors, regions or undertakings);
- tax reliefs for avoidance of double taxation in line with international agreements, as well as unilateral tax reliefs for avoidance of double taxation applied under national tax legislation which follow the same logic and conditions as international agreements;
- the provision and purchase of goods or services (except financial services) at market terms in the ordinary course of business (*e.g.*, if carried out following a competitive, transparent and non-discriminatory tender procedure); and
- in the case of a concentration involving an investment fund subject to Directive 2011/61/EU (or equivalent third-country legislation), contributions granted to funds (and their portfolio companies) managed by the same investment company but with a majority of different investors measured according to their entitlement to profit,

that do not have to be included in the overview table (as described below).

provided that there are no or limited economic and commercial transactions between the funds.⁸

Distortive effects (Section 6)

For purposes of assessing the distortive effect of the non-EU financial contributions, the parties must provide:

- (a) details of how the transaction was agreed *i.e.*, whether there was a bidding process, and a description of the profile of each of the other candidates;
- (b) information on their business lines or activities in the EU and relevant turnover;
- (c) for any “*most likely to be distortive*” financial contributions, an explanation of whether these are liable to improve the parties’ competitive position in the EU, by reference to the nature, amount and use or purpose of the financial contribution; and
- (d) contact details for the target’s five largest competitors in the EU and any competitor contact details provided for EU or national merger control filings.

Positive effects (Section 7)

The parties have the option to provide information on any positive effects generated by the financial contributions disclosed, whether on the development of the related economic activity in the EU or other positive effects *e.g.*, linked to policy objectives. The parties should specify when and where these effects have or are expected to take place.

Supporting documentation (Section 8)

The form requests three categories of supporting documentation for each party to the concentration: (a) supporting documentation for the financial contributions that fall within the “*most likely to be*

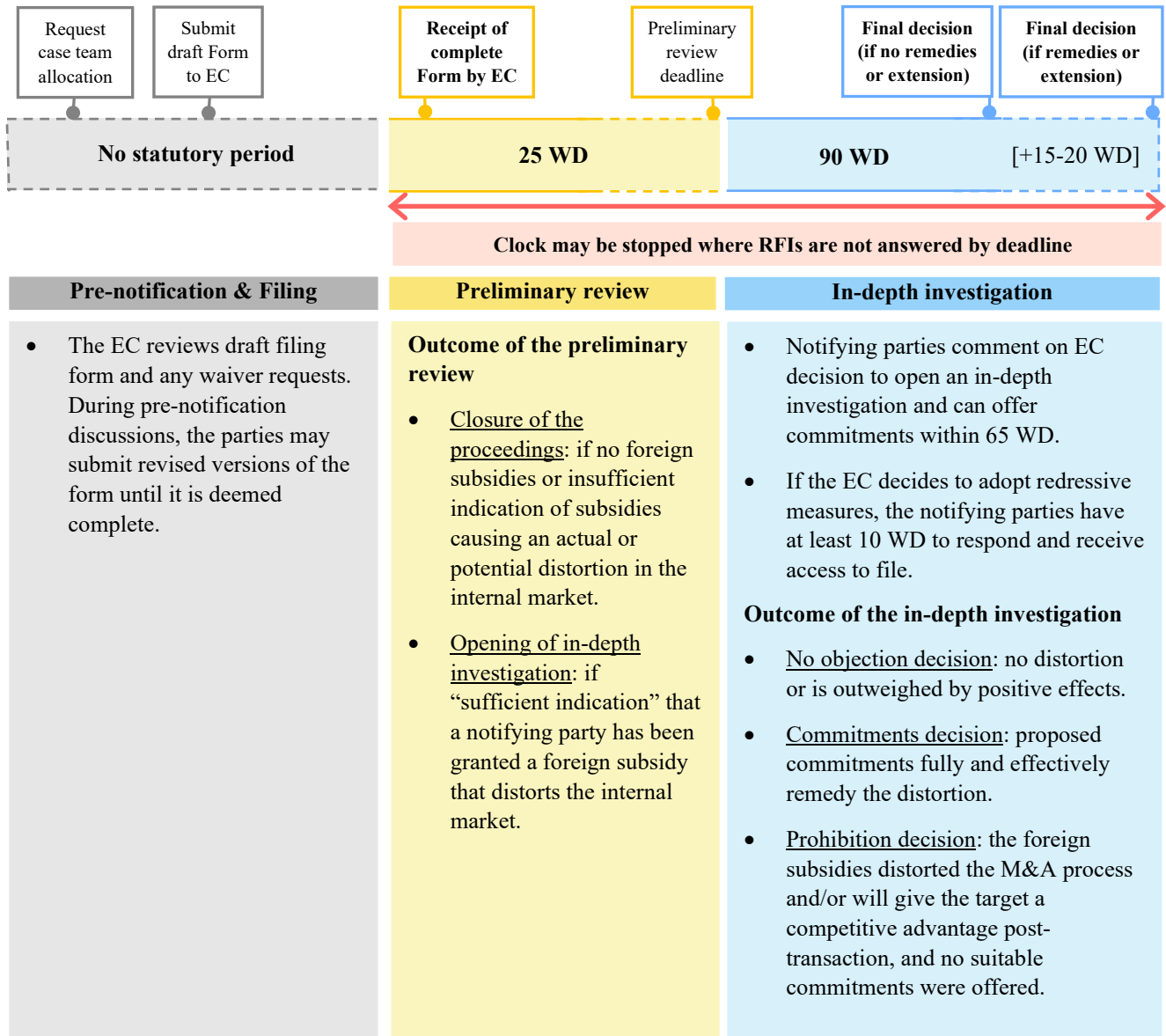
distortive” categories; (b) documents prepared by or for or received by any member of the board of management, the board of directors or the supervisory board (i) discussing the purpose, use and economic rationale of the “*most likely to be distortive*” financial contributions (and the same documents prepared by or for or received by the granting entity, if available); (ii) on the transaction rationale (including in relation to potential alternative acquisitions); and (iii) due diligence reports prepared by external advisors as well as any documents discussing the value of the transaction; and (c) the parties’ annual accounts.

Review Procedure

The FSR’s formal review timelines for concentrations mirror the EU merger control procedures. During the FSR’s first months of operation, FSR review may be carried out by the same case team responsible for reviewing any EU Merger Regulation filing.

⁸ Economic and commercial transactions include the sale of assets (*e.g.*, ownership in companies), loans, credit lines, or guarantees.

Merger filing review procedure



Public Procurement Review

Notification Threshold

The FSR imposes a filing obligation for public procurement tenders in the EU where:

- the overall contract value of the tender is at least EUR 250 million; and
- in cases where the tender is divided into lots, the aggregate value of the lots applied for is at least EUR 125 million; and
- the bidding party and any main subcontractors and suppliers involved in the same tender received at least EUR 4 million in financial contributions from a single non-EU country in the last three years prior to notification.⁹

If the bidding party (and, if relevant, main subcontractors and suppliers) did not receive financial contributions exceeding EUR 4 million from a single third country, they must still make a declaration that they fall under the threshold and submit certain information on financial contributions (see below).

If a public tender bid meets the filing thresholds, the contracting authority may not award the contract to this bid until the Commission has given its approval or the statutory review periods have expired. However, the contracting authority may award a contract to the most economically advantageous tender if (a) it is provided by a bidding party who was only required to submit a declaration, and (b) the Commission has not opened an in-depth investigation, reopened a preliminary review, or requested the tenderer to submit a notification.

The contracting authority's procurement documents must state whether the FSR applies to the procedure. However, the absence of such a statement will not justify a failure to notify.

The parties responsible for the notification are the bidding party and any main subcontractors and suppliers known at the time of filing.

Substantive Assessment

During its review, the Commission will assess whether the foreign subsidies granted to the filing parties enabled them to submit a tender that is unduly advantageous in relation to the works, supplies or services concerned in the public procurement procedure in question.

The Commission will need to assess both whether the tender is unduly advantageous and whether this is due to foreign subsidies received. In considering if a tender is unduly advantageous, the Commission may consider factors such as the originality of the work proposed by the tenderer or the technical solutions chosen or any exceptionally favorable conditions available to the tenderer. The relevance of foreign subsidies will be assessed taking into account factors such as their amount, nature, purpose and conditions, and the recipient's contribution to the tender.

Notification Requirements for Public Procurement Procedures

Public tender notifications are submitted on a template form (the Form FS-PP). The form and any supporting documents (or translations) must be provided in one of the EU's official languages.

If there is more than one responsible filing party, the form is submitted by the main bidding party on its behalf and on behalf of all the filing parties. However, each filing party's confidential information can be submitted separately to the contracting authority. Each filing party is only responsible for the correctness of information linked to its own financial contributions.

Information on the public procurement procedure (Sections 1 to 2)

These sections require basic details about the public procurement procedure and the participating entities

⁹ A main subcontractor or supplier is one whose participation ensures key elements of the contract performance and in any case where the economic share of

their contribution exceeds 20 % of the value of the submitted tender.

which are largely in line with information provided under the European Single Procurement Document (ESPD).

Information on non-EU financial contributions (Section 3)

The notification form requests information on non-EU financial contributions equal to or in excess of EUR 1 million that the parties have received in the three years preceding the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

For financial contributions which fall into one of the relevant “*most likely to be distortive*” categories,¹⁰ the parties must provide the following information with supporting documents:

- the form of the contribution (*e.g.*, loan, tax exemption, *etc.*);
- the third country to which the financial contribution is attributable;
- the granting entity;
- the amount of the contribution;
- the purpose and economic rationale;
- the conditions attached to the contribution or its use;
- the main elements and characteristics of the contribution;
- whether the contribution confers a benefit;
- whether the contribution is selective; and
- other specified information depending on the category of financial contribution.

For all other financial contributions, the parties provide summary information in an overview table. The table lists financial contributions grouped by

country and by type (*e.g.*, direct grant, loan, guarantee, tax incentive), with a brief description of the purpose of the financial contribution and the granting entity. The table should also indicate the estimated aggregate value of financial contributions granted by each third country in the last three years using the ranges specified.¹¹

Overview table for public tender filings

Third country	Type of financial contribution	Brief description of the purpose of the financial contribution and the granting entity
Country A	Tax advantage	Tax exemption for the production of product A and R&D activities
	Loan	Several loans with State-owned banks for purpose X
	Loan; Guarantee	Several financing measures with State investment agencies to cover operating expenses/for R&D activities
	Equity intervention	Public capital injection in Company X
Estimated aggregate financial contributions granted by A: [EUR 45-100 million, EUR >100-500 million, EUR >500-1 000 million, more than EUR 1 000 million]		

The overview table should exclude:

- countries where the estimated aggregate amount of financial contributions received was less than EUR 4 million;
- deferrals of payment of taxes or of social security contributions, tax amnesties and tax holidays as well as normal depreciation and loss-carry forward rules that are of general application (*i.e.*, not limited to certain sectors, regions or undertakings);

¹⁰ These are (a) aid to ailing firms outside a viable restructuring plan; (b) unlimited guarantees; (c) a foreign financial contribution enabling submission of an unduly advantageous tender; and (d) export financing measures that are not in line with the OECD Arrangement on officially supported export credits.

¹¹ This estimated value should also include the financial contributions falling into the “*most likely to be distortive*” categories but should exclude other financial contributions that do not have to be included in the overview table (as described below).

- tax reliefs for avoidance of double taxation in line with international agreements, as well as unilateral tax reliefs for avoidance of double taxation applied under national tax legislation which follow the same logic and conditions as international agreements; and
- the provision and purchase of goods or services (except financial services) at market terms in the ordinary course of business (*e.g.*, if carried out following a competitive, transparent and non-discriminatory tender procedure).

Justification for absence of undue advantageous tender (Section 4)

Where filing parties have received a financial contribution that facilitates a tender, they can provide the Commission with information that demonstrates that the tender is not unduly advantageous due to such financial contribution, notably by referring to:

- the economics of the manufacturing process, of the services provided or of the construction method;
- the technical solutions chosen or any exceptionally favorable conditions available to the tenderer for the supply of the products or services or for the execution of the work;
- the originality of the work, supplies or services proposed by the tenderer;
- compliance with applicable obligations in the fields of environmental, social and labor law; or
- compliance with obligations regarding subcontracting.

Possible positive effects (Section 5)

Filing parties have the option to provide information on any positive effects generated by the financial contributions disclosed, whether on the development of the related economic activity in the EU or other positive effects *e.g.*, linked to policy objectives. Filing parties should specify when and where these effects have or are expected to take place.

Supporting documentation (Section 6)

The form requests three categories of supporting documentation for each notifying party: (a) supporting documentation for the financial contributions that fall within the “*most likely to be distortive*” categories; (b) documents prepared by or for or received by any member of the board of management, the board of directors or the supervisory board discussing the purpose, use and economic rationale of the “*most likely to be distortive*” financial contributions (and the same documents prepared by or for or received by the granting entity, if available); (c) the parties’ annual accounts; and (d) where relevant, supporting documentation for the absence of an undue advantage of the tender, such as tax returns and business plans and market research underlying the decision to participate in the public procurement procedure.

Declaration in lieu of notification (Section 7)

If the bidding party and any main subcontractors and suppliers have not received financial contributions equal to or exceeding EUR 4 million per third country in the past three years prior to the notification, they do not need to submit a filing.

However, they must submit a declaration by completing Section 7 of the form, stating: “*None of the notifying parties have received foreign financial contributions notifiable under Chapter 4 of Regulation (EU) 2022/2560.*” The declaration should list all financial contributions received in the last three years preceding the declaration, except that:

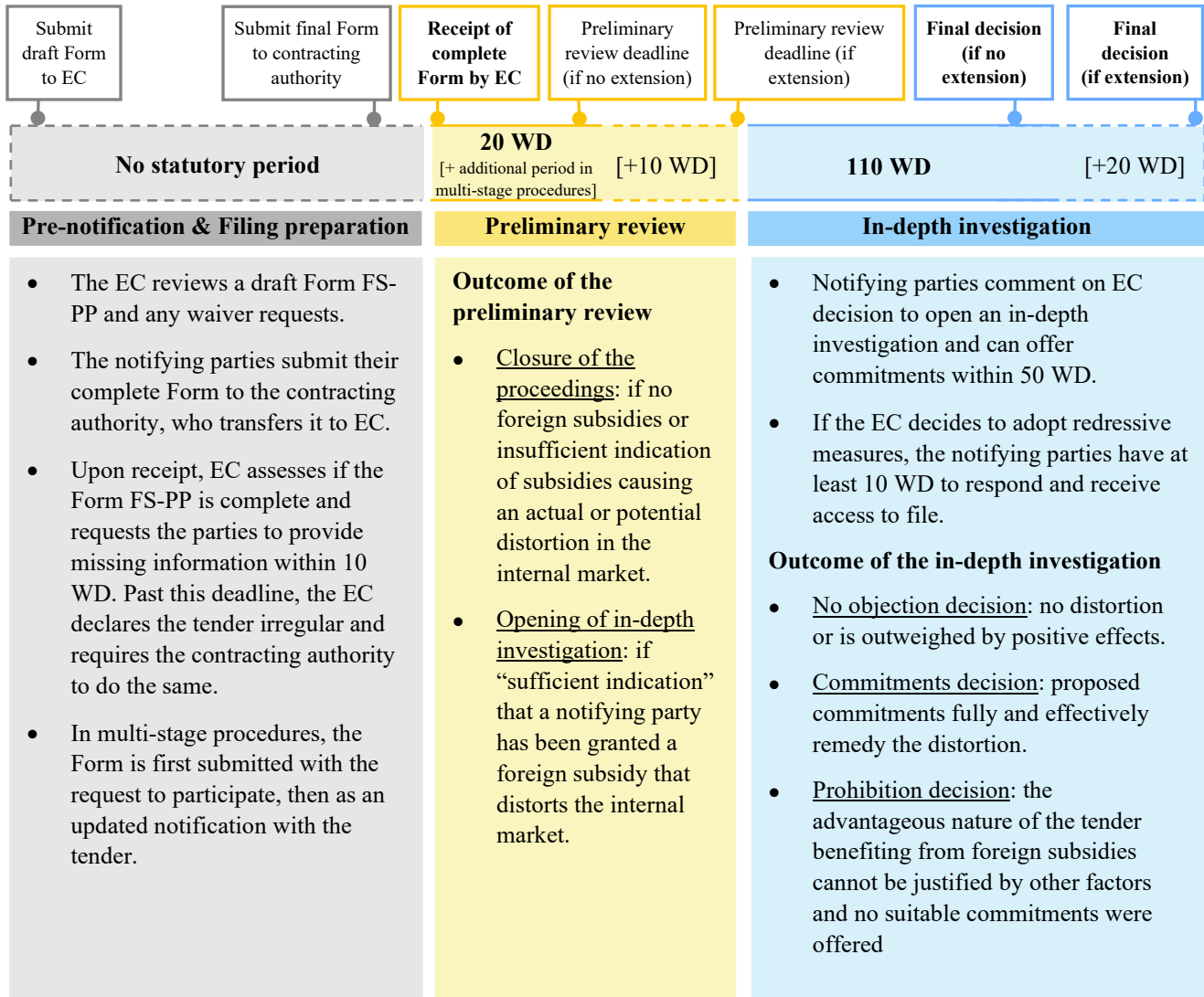
- financial contributions with a value below EUR 1 million but above EUR 200,000 can be declared in aggregate by country with a brief description; and
- financial contributions with a value below EUR 200,000 do not need to be reported.

Review Procedure

The FSR review runs in parallel to the contracting authority’s public procurement procedure. The

contracting authority is involved in screening FSR filings to ensure they are complete before transferring the filings to the Commission.

Public procurement filing review procedure



Procedural Rules

Common procedural rules apply to the M&A, public procurement and *ex officio* investigation procedures. The Commission has investigative powers to gather evidence from notifying parties, and must provide the parties with access to its evidence file before adopting a decision imposing redressive measures. The FSR does not provide for the possibility to lodge formal complaints (although the Commission in practice might well take such complaints into consideration as general information) and leaves the Commission with extended prosecutorial discretion in the context of *ex officio* proceedings.

Investigative powers. The Commission can gather information for its investigation through various means. These include:

- (a) information requests from the undertakings under investigation, other undertakings, EU Member States, and third countries;
- (b) inspections at the undertaking's premises, both within the EU and on the territory of third countries, provided that the government of that third country has been officially notified and raises no objection. During these inspections, Commission officials examine books and business records, take copies and ask for explanations that are recorded as oral statements; and
- (c) interviews with natural or legal persons, which may be carried out during the inspections.

As in trade defense proceedings, the Commission can take decisions based on the facts available where the undertaking under investigation or the third country granting the foreign subsidy do not cooperate. It can also impose fines and periodic penalty payments for incorrect, incomplete, or misleading information or a refusal to reply to requests for information or submit to investigations.

Access to file. Before the Commission adopts a decision that a party has received a distortive foreign subsidy and imposes redressive measures, the party under investigation has a right to comment on the

Commission's provisional findings. This includes a right to review the evidence collected by the Commission in order to prepare its defense ("access to file").

The IR details the procedures for access to file. Access to file is reserved to the undertaking under investigation and limited to a non-confidential version of the file. However, access to file does not extend to:

- internal documents of the Commission;
- internal documents of Member States or third countries;
- correspondence between the Commission and Member States or third countries; and
- correspondence between Member States or Member States and third countries.

The IR provides for access to the confidential file for "clean teams" of external legal and economic advisors and technical experts engaged by the undertaking under investigation. Clean team participants cannot be employed by or part of the management of the undertaking under investigation and they must notify the Commission if they enter in such a relationship during or three years following the end of the investigation.

Enforcement Powers

The Commission has sweeping powers to impose redressive measures (or accept commitments) to remedy a distortion in the internal market. It may: (a) prohibit the merger transaction or public contract award; (b) impose structural remedies (such as capacity reductions, temporary restrictions on commercial activity, or divestments); and (c) impose behavioral remedies (such as access commitments for infrastructure, the publication of R&D results, an obligation to refrain from certain investments, governance structure changes, and an obligation to alert the Commission of future M&A or public tender activity). If the undertaking offers to repay the foreign subsidy (with interest), the Commission shall accept this as a commitment if the repayment is transparent, verifiable and effective.

The Commission may impose fines in the range of up to 1-10% of global turnover for non-cooperation such as a failure to notify relevant mergers or public tender bids or to provide required information.

How Companies Should Prepare

Initial Risk Assessment

Businesses should carry out a general assessment of the likelihood of filing obligations under the FSR, by examining how many M&A deals or public tenders they have been involved in that met the FSR value thresholds in the past five years. Businesses can also assess *ex officio* enforcement risks by evaluating if they have received “*most likely to be distortive*” subsidies that are closely linked to their EU activities, if they could be targeted by complaints (this is less likely if rivals have received similar subsidies), or if they might have an interest to inform the Commission of subsidies received by rivals.

Preparing To Make Filings

Businesses that might participate in large M&A or procurement projects in Europe should start preparing for possible filings. This process will likely require planning and resources as the information required may not be systematically tracked within your organization.

Step 1: Initial Organization-Wide Survey

Assess how your company is exposed to financial contributions from non-EU countries. A possible approach could be to systematically evaluate, for each business unit (using your organizational chart), if they have received the main categories of financial contributions (described above). The survey should focus on controlled affiliates, and could be further limited in scope to prioritize financial contributions that are most likely to be distortive subsidies and/or your top countries by turnover (and those likely to have ≥EUR 45 million in financial contributions).

Step 2: Map Out Information Sources

Identify where to find information about each of the main financial contribution categories, both within

your organization (*e.g.*, centrally or in separate entities/countries) and externally (*e.g.*, from auditors or financial advisors). For example, “classic” subsidies like grants and loans are often recorded as a specific category in financial statements. The tax department or external tax advisors may track information on tax incentives.

Step 3: Establish Internal Reporting System

Set up centralized reporting to collect and store financial contributions data for the filing form. You will need to consider how often to update this database. The database is ideally maintained on an ongoing basis as the forms require information looking back three years on a rolling basis.

Compliance Steps When Receiving Public Support

When receiving important financial contributions from non-EU governments, businesses can prepare documentation to demonstrate that such financial contributions do not amount to a subsidy or to a “most likely to be distortive” financial contribution. This includes evidence that such contributions are made on market terms (such as a fairness opinion, independent expert report, or institutional investment guidelines for sovereign bodies).

If the financial contribution is not made on market terms or fall into the “*most likely to be distortive*” categories, businesses should conduct a critical review to ensure:

- possible public policy justifications (such as environmental protection, R&D, social standards, *etc.*), preferably with positive effects in the EU; and
- limited negative effects on competition in the EU.

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