

Our Response to the Commission’s Review of the EU Foreign Subsidies Regulation

November 26, 2025

In August 2025, the European Commission launched a [review](#) of the Foreign Subsidies Regulation (FSR).

The review will form the basis of the Commission’s report to the Parliament and Council on the FSR’s implementation and enforcement in its first two years. This report, which will be published by July 13, 2026, may be accompanied by legislative proposals to refine and simplify the FSR.

Our [contribution](#) to the review proposes changes to make the FSR more effective, proportionate, and less burdensome for businesses and enforcers alike, including the Commission itself and public contracting authorities.

This Alert summarizes our key recommendations.

Refining the FSR’s Jurisdictional Tests

The FSR’s broad notification thresholds for *ex ante* review of mergers and public tenders capture a large number of transactions that do not warrant scrutiny. Its first two years of operation has seen a high volume of notifications but a low intervention rate of less than 1% (*i.e.*, 6 in-depth investigations out of over 200 merger and 3,400 public procurement filings).

A more targeted and resource-efficient notification framework would better serve the FSR’s objectives. This could be achieved through:

- **Recalibrating the thresholds by value and origin**, by increasing the aggregate monetary thresholds or reframing them as a value percentage of the concentration/public contract.
- **Aligning jurisdictional scope with reporting obligations**, by excluding the categories of foreign financial contributions (“FFCs”) that are not reportable in the filing form.

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- **Individualizing thresholds**, by ensuring the FFC thresholds of EUR 50 million (for mergers) and EUR 4 million (for tenders) apply to a single party rather than in aggregate, which would also streamline the filing assessment by avoiding the need for parties to exchange FFC information at an initial stage.

As a radical approach, the Commission should consider if a call-in mechanism, instead of a general *ex ante* review regime, is better suited to address subsidized mergers and public tenders. This requires clear guidance on targeted deals, such as those involving “distortive” subsidies or subsidies in excess of a certain threshold in transaction value.

Streamlining the Notification Procedure

The review processes for mergers and public procurement could be streamlined to shorten review times and reduce the reporting burden. Possible changes include:

- Creating a simplified procedure and/or simplified form for non-issue cases, which dispenses with the prenotification process and waives certain information requests, such as board documents and contact details.
- Enabling the Commission to render a decision before the expiry of the 25 working day review period of Phase 1 as in EUMR simplified review procedures.
- Instituting consistent best practices to frontload information requests during prenotification, and providing greater transparency on such best practices and on typical waivers.

For public tenders, the filing procedure could also be significantly improved by:

- Enabling direct submission of notifications to the Commission, as the existing two-step process is opaque, cumbersome, and leads to confusion and delays. For example,

contracting authorities responsible for forwarding the filing may introduce their own procedural and/or substantive requirements and inconsistent deadlines.

- Creating a public register to track cases’ filing status and outcome.
- Eliminating the obligation to file a declaration where the FFC threshold is not met.

Tailored Requirements for Private Investment Funds

The FSR disproportionately captures private fund investments, which represent c. 30% of all merger filings but do not generally raise subsidy concerns. While the Commission has eased some requirements for such filings, there is scope for further simplification by modifying the conditions so more filings can avail of the “private fund” disclosure exemption in practice. The Commission should also consider a “fast track” review process for particularly straightforward private fund investments. This would reduce the cases where the Commission will seek detailed information on passive limited partner investments.

Substantive and Remedies Guidance

The Commission’s draft FSR Guidelines proposed an economics-led approach to the distortion and balancing tests, which is welcome and necessary to ensure consistency and predictability for business compliance.

As stated in our [comments](#) on the draft Guidelines, the Commission should also articulate the types of harm that the FSR is intended to address, clarify the notion of “benefit” in intra-group transactions by establishing an arm’s-length principle, and ensure that the identification of a distortion is supported by a clear causal link to the subsidy concerned.

The Commission should also ensure the balancing test serves a meaningful role in the substantive assessment. Notably, establishing a safe harbor for foreign subsidies that reflects the State aid rules would greatly simplify recourse to the balancing test and improve legal certainty.

Given the Commission's broad powers to impose remedies or accept commitments under the FSR, the Commission should develop guidance that clarifies the legal standard it will apply in assessing such measures, the process for evaluating commitments and redressive measures, and guiding principles on the scope, type and duration of remedies accepted.

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