

Alert: Our Views on the EU Foreign Subsidies Regulation Guidelines

26 September 2025

In July 2025, the Commission published its draft Foreign Subsidies Regulation (FSR) guidelines for [consultation](#). The guidelines discuss the FSR's distortion and balancing tests and the EC's powers to call in "below threshold" mergers and public tenders for *ex ante* review.

This post highlights our key observations on the draft guidelines, with our full contribution available to view [here](#). These comments build on our [submission](#) to the Commission's earlier [call for evidence](#) on the guidelines.

The EC will review the feedback from the consultation and publish the final guidelines by January 12, 2026.

The EC has also launched a general [consultation](#) on the implementation of the FSR, which will inform its first report to Parliament and Council, due by July 2026, and possible legislative proposals to refine and simplify the regime. This consultation runs to November 18, 2025.

1. The Assessment of a Distortion

- **Economic harms addressed by the FSR:** The guidelines should clarify that the FSR targets market inefficiencies causing long-term consumer welfare loss, as opposed to – for example – economic security or international competitiveness concerns which are better addressed by other instruments, such as FDI screening.
- **Guidance on intra-group transfers:** The guidelines should recognize that intra-group transfers can occur on market terms and provide a benchmark to evaluate this. The guidelines should also clarify how the Commission will assess cross-subsidization between group entities where a subsidy's effect is to provide financial support, since money is fungible.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors:

BRUSSELS

François-Charles Lapr v te
+32 22872184
fclaprevote@cgsh.com

Wanjie Lin
+32 2 287 2076
wlin@cgsh.com

Teresa Capelli
+32 2 287 2189
tcapelli@cgsh.com

Rith Tshimanga
+32 2 287 2030
rtshimanga@cgsh.com

Johan Stagstrup
+32 2 287 2094
jstagstrup@cgsh.com



- **Competitor reactions to a subsidy:** The EC should examine rivals’ market positions when assessing the distortive impact of foreign subsidies. Subsidies may have a neutral or positive effect by prompting more vigorous competition if rivals have access to similar subsidies or are in a strong position relative to the beneficiary.
- **Distortions in public tenders:** In assessing subsidized public tenders, the guidelines should explain how to identify an “advantageous” tender since any given tender may be assessed across a range of metrics (e.g., price, quality, support terms) and draw on the contracting authority’s own assessment under applicable EU public procurement principles. The guidelines also should recognize the need for a causal link with the foreign subsidy, and clarify if the Commission must separately analyse whether an advantaged tender could have distortive effects before imposing redressive measures.

2. The Application of the Balancing Test

- **Legal standard for assessments:** The Commission should apply consistent standards in assessing the negative and positive effects of foreign subsidies, including for evidentiary requirements and in assessing the likelihood that certain effects will materialize.
- **Safe harbors in line with EU State aid law:** The guidelines should establish safe harbors for foreign subsidies that comply with EU State aid rules. This would ensure non-discrimination and promote legal certainty. Such subsidies are also unlikely to result in distortive effects when equivalent State aid is deemed permissible.

3. The EC’s Call-In Powers for Concentrations and Public Tenders

- **A tool for exceptional circumstances:** To ensure predictability for business and protect the integrity of the *ex ante* notification regime, the Commission should only exercise the call-in powers if it has a reasonable suspicion of potentially serious competitive distortions from a subsidy. The powers should not be deployed

merely to intervene in “strategic” or “sensitive” transactions or public tenders, and the guidelines should clarify that these powers are for exceptional use.

- **Procedural Framework:** The guidelines should define procedural timelines for intervention under the call-in powers to limit disruption to mergers and procurement procedures. They should also explain how the EC will decide whether to use its call-in powers vs *ex officio* investigations to investigate below-threshold cases.

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