

The New EU Foreign Subsidies Regulation — Key Aspects for Compliance

Advisory

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On July 12, 2023, the European Union's (EU) new landmark [Foreign Subsidies Regulation](#) (FSR)¹ started to apply. It empowers the European Commission (Commission) to review and remedy distortive subsidies granted by non-EU countries to companies active in the EU. The FSR significantly affects global deal making and public procurement situations in the EU, but also applies to other market situations. This advisory summarizes the main substantive and procedural rules and identifies key actions for businesses to prepare for FSR compliance.

Key Points

- The FSR closes a regulatory gap in the review of government support for companies doing business in the EU. While State aid granted by EU Member States must comply with the EU's State aid rules, there has, until now, been no comprehensive EU mechanism preventing subsidies granted by non-EU countries from providing an unfair advantage to companies doing business in the EU's internal market.
- The FSR does not prohibit foreign subsidies. It also does not introduce a review and approval mechanism for the granting of foreign subsidies. Instead, the FSR empowers the Commission to review and remedy the effects caused by foreign subsidies in the EU. To this effect, the FSR introduces three separate Commission review tools: two notification-based tools enabling the Commission to investigate both large M&A transactions defined as "*concentrations*" and tenders in public procurement procedures if certain thresholds are met, and a general tool allowing the Commission to investigate any situation potentially involving foreign subsidies on its own initiative ("*ex officio*").
- The Commission's *ex officio* powers came into effect on July 12, 2023 and are now fully operational. Concentrations and public procurement tenders that meet the FSR's thresholds must be notified starting as of October 12, 2023. The notification obligation applies if a transaction agreement was signed or a tender procedure initiated on or after July 12, 2023, unless the transaction is implemented or the tender contract is awarded by October 12, 2023.
- Under each of the three tools, the Commission will assess if the parties involved received a foreign subsidy that distorts the EU internal market. A "foreign subsidy" is defined as a financial contribution provided by a non-EU country that confers a benefit on a company active in the EU and is limited to one or more undertakings or industries. If the Commission establishes the presence of a foreign subsidy that distorts the EU internal market, it can prohibit the concentration or contract award and also impose a wide variety of measures to redress the distortive effects, unless such distortive effects are counterbalanced by positive effects on the development of the relevant subsidized economic activity in the EU or other positive effects in relation to the relevant policy objectives.
- The amount of information to be submitted under the required forms when notifying concentrations and public procurement tenders has been reduced compared to earlier draft forms that sparked hefty criticism from industry, but collecting the required information will still be cumbersome and time consuming.

¹ Regulation (EU) 2022/2560 of the European Parliament and of the Council of December 14, 2022 on foreign subsidies distorting the internal market.

- Best-practice FSR compliance means many companies will need to implement new internal tracking systems for financial contributions they receive from non-EU countries.
- The substantive risk and timing implications resulting from the FSR will affect the negotiation of transactions and should be assessed even for transactions that do not meet the mandatory notification thresholds.

Three Commission Review Tools Introduced by the FSR

The FSR introduces three review tools that are distinct from the EU Merger Regulation (EUMR) and other existing EU or Member State policy tools.

M&A transactions

The FSR introduces a mandatory notification-based regime for above-threshold **M&A transactions that lead to a “concentration.”** The notion of a concentration is defined in the FSR in line with the definition used in the EUMR and notably excludes acquisitions of minority interests that do not confer joint control (by virtue of the right to approve business plans, etc.), which are therefore not notifiable under the FSR.

The FSR’s Notification Regime for Concentrations		
Procedure	Triggering Thresholds	Timeline
<ul style="list-style-type: none"> • Mandatory notification to the Commission on a template Form (the Form FS-CO) • Suspensory regime = obligation to postpone closing until Commission clearance has been obtained • DG COMP is responsible within the Commission 	<p>Mandatory notification if two conditions are met:²</p> <ul style="list-style-type: none"> • At least one of the merging undertakings (in the case of a concentration in the form of a merger), or the acquired undertaking (in the case of a concentration in the form of an acquisition) or the joint venture (JV) (in the case of a concentration in the form of the creation of a JV) (i) is established in the EU³ and (ii) generates a turnover of ≥ €500 million in the EU • The acquirer(s) and the acquired undertaking (in the case of an acquisition), or the merging undertakings (in the case of a merger) or the undertakings creating a JV and the JV (in the case of the creation of a JV) were granted combined aggregate financial contributions in the last three years of ≥ €50 million from non-EU countries <p>Call-in power regarding concentrations falling below the thresholds:⁴</p> <ul style="list-style-type: none"> • The Commission may request the prior notification (resulting in a suspension obligation) of a below-the-thresholds concentration before implementation where it suspects that foreign subsidies have been granted to the undertakings concerned in the three years prior to the concentration. 	<ul style="list-style-type: none"> • Pre-notification contacts with DG COMP until formal notification • Phase I review: 25 working days from complete notification • Phase II review: additional 90 working days (plus 25 working days if commitments are offered) • Additional extensions possible under certain conditions

The first part of the notification threshold test — relating to EU presence and sales — will only be met by companies with large European operations. Importantly, in acquisitions, it is the target (on a group-wide basis, but without the seller) and, in transactions creating a JV, it is the JV (not counting the JV’s parents) that must be established in the EU and generate EU turnover of at least €500 million. The second part of the test — requiring non-EU financial contributions of at least €50 million for the parties combined in the last three years — presumably will be met by a significant number of international

² Article 20(3) of the FSR.

³ A company is “*established in the EU*” not only if it is itself incorporated in the EU, but also, for example, if it is based outside of the EU but has a subsidiary or permanent business establishment in the EU. See response to Q5 of the Commission’s [Q&A](#).

⁴ Article 21(5) of the FSR.

companies that are involved in transactions that meet the first part of the test. Foreign financial contributions granted to the acquirer or the JV parent entities count for the second part of the test.

The Commission estimated that fewer than 50 concentrations per year will meet the FSR's filing thresholds. Invariably, notifiable concentrations under the FSR will also meet the filing thresholds under the EUMR or Member State merger regimes, so that parallel merger control and FSR filings and clearance procedures will be required in these cases. In many transactions, Member State foreign direct investment/national security filings will also be required.

The Commission's call-in powers for concentrations falling below the notification thresholds can be activated on mere suspicion that the companies involved have received foreign subsidies in the last three years. Even if the Commission is unlikely to call in a significant number of concentrations, the possibility of this happening in many transactions leads to timing and substantive risks that may need to be considered when drafting transaction agreements.

Public procurement procedures

The FSR introduces a mandatory notification-based tool for certain large **tenders in public procurement procedures in the EU**.

The FSR's Notification Regime for Large Public Procurement Procedures		
Procedure	Triggering Thresholds	Timeline
<ul style="list-style-type: none"> Mandatory notification on a template Form (the Form FS-PP) to the tender authority, which will pass on the file to the Commission Suspensory regime = obligation to postpone the contract award until Commission clearance has been obtained DG GROW is responsible within the Commission 	<p>Mandatory notification if two conditions are met:⁵</p> <ul style="list-style-type: none"> The estimated value of the public procurement procedure is ≥ €250 million (where the procedure is divided into lots, the following threshold applies: the aggregate value of the lot(s) for which the bidder is bidding is ≥ €125 million) The bidding party (including its subsidiaries and its main subcontractors and suppliers)⁶ was granted aggregate financial contributions in the last three years of ≥ €4 million from a non-EU country (no aggregation of financial contributions from different non-EU countries) <i>Note:</i> if the €250 million threshold is exceeded but a bidding party falls below the €4 million threshold, it still must submit a "declaration" to the tender authority in which it must declare all non-EU financial contributions received and confirm they are under the €4 million threshold (see S.7 of the Form FS-PP). Certain national defense-related procurement tenders are exempted from the notification obligation. <p>Call-in power regarding public procurement procedures falling below the thresholds:⁷</p> <ul style="list-style-type: none"> The Commission may request the notification (resulting in a suspension obligation) of a below-the-thresholds public procurement procedure before the award of the contract where it suspects that foreign subsidies have been granted to the bidding parties in the three years prior to the submission of the tender or request to participate in the public procurement procedure. 	<ul style="list-style-type: none"> Pre-notification contacts with the Commission until formal notification Preliminary review:⁸ 20 working days from complete notification (may be extended by 10 working days in "duly justified cases") In-depth investigation: 110 working days from complete notification (may be extended by 20 working days in "duly justified exceptional cases")

⁵ Article 28(1) of the FSR.

⁶ For the purposes of the FSR, "a subcontractor or supplier shall be deemed to be main where their 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." (Article 29(5) of the FSR).

⁷ Article 29(8) of the FSR.

⁸ Different review periods apply for multi-stage procurement procedures.

Ex officio investigations

The third tool empowers the Commission to investigate **all other market situations** in the EU on its own initiative (“*ex officio*”). Examples are implemented concentrations or awarded public procurement contracts, or situations where an EU subsidiary of a non-EU-country parent entity benefited from favorable State-supported financing in the non-EU country of the parent entity allowing the EU subsidiary to set up factories in the EU, thereby gaining an edge over competitors in the EU that lack such support.

The FSR’s General Investigation Tool ⁹		
Procedure	Triggering Event	Timeline
<ul style="list-style-type: none"> No mandatory notification, but the Commission can investigate DG COMP is responsible within the Commission 	<ul style="list-style-type: none"> There are no specific thresholds. The Commission may review, <i>ex officio</i>, situations where it suspects a distortive foreign subsidy. The Commission can investigate subsidies granted up to 10 years before the initiation of the investigation (but not earlier than July 2018). Companies can approach the Commission with information. However, there is no formalized complaint procedure under the FSR and no formal requirement for the Commission to answer complaints. 	<ul style="list-style-type: none"> No deadline The Commission can impose interim measures in relation to subsidies under investigation before taking a final decision

With some limitations, *ex officio* investigations under the FSR can be carried out in parallel with, or instead of, measures available under other legal instruments that seek to protect against negative effects of subsidies granted by non-EU countries. Notably, the FSR applies separately from (“*without prejudice to*”) Regulation 2016/1037, an established EU trade defense mechanism allowing the imposition of countervailing duties on subsidized imports of goods into the EU.

Not least due to the limited number of Commission staff available for FSR enforcement, the Commission is expected initially to focus on handling notifications and activate the *ex officio* investigation mechanism only in a highly selective manner.

The Commission’s Substantive Assessment under the FSR

Under all three tools, the Commission’s substantive assessment involves the following steps: (i) assess whether a foreign financial contribution granted to a company active in the EU constitutes a “*foreign subsidy*” within the meaning of the FSR; (ii) assess whether the foreign subsidy distorts the EU internal market; and (iii) if it does, balance the distortion’s negative effects with any positive effects of the foreign subsidy on the development of the relevant subsidized economic activity and other broader positive effects.

i. Existence of a Foreign Subsidy

A foreign subsidy is defined in Article 3(1) of the FSR as a financial contribution provided directly or indirectly by a non-EU country, which confers a benefit on an undertaking engaging in an economic activity in the EU and is limited, in law or in fact, to one or more undertakings or industries. The main elements of this definition are discussed below.

Financial contribution

The term “*financial contribution*” has deliberately not been defined. The FSR merely provides examples of financial contributions, which makes the concept very broad. It includes, *inter alia*:¹⁰

⁹ Article 9 of the FSR.

¹⁰ Article 3(2) of the FSR.

- The transfer of funds or liabilities (e.g., capital injections, grants, loans, loan guarantees, fiscal incentives, the setting off of operating losses, debt rescheduling, etc.)
- The foregoing of revenue (e.g., tax exemptions or the granting of special or exclusive rights without adequate remuneration)
- The provision, or purchase, of goods and services

Provided directly or indirectly by a non-EU country

A financial contribution provided directly or indirectly by a non-EU country includes financial contributions provided by:¹¹

- A country's central government and public authorities at all other levels
- A public entity whose actions can be attributed to the non-EU country, taking into account elements such as the characteristics of the entity and the legal and economic environment prevailing in the country in which the entity operates, including the government's role in the economy
- A private entity whose actions can be attributed to the non-EU country, taking into account all relevant circumstances

Which confers a benefit to an undertaking engaging in an economic activity in the EU

Under Recital (13) of the FSR, a financial contribution should be considered to confer a benefit on an undertaking if it could not have been obtained under normal market conditions.

The existence of a benefit should be determined on the basis of comparative benchmarks, for example:

- The investment practice of private investors
- Financing rates obtainable on the market
- A comparable tax treatment
- The adequate remuneration for a given good or service

If no directly comparable benchmarks are available, existing benchmarks could be adjusted or alternative benchmarks could be established based on generally accepted assessment methods.

Examples of situations where a financial contribution provided by a non-EU country probably leads to a benefit are:

- A state-owned bank located in a non-EU country provides a loan with preferential interest rates to a company
- An EU company invests in a new business in a non-EU country and benefits from a corporate tax exemption in that country

And is limited, in law or in fact, to one or more undertakings or industries

The benefit must be conferred on one or more undertakings or industries, i.e., it must be selective and not be available to all companies or industries.

The concepts of financial contribution, benefit, and selectivity are inspired by the EU State aid rules that include similar concepts. It can be expected that questions of interpretation will often be resolved in line with the solutions adopted under the EU State aid rules. However, the need to consider the elements of a subsidy in the context of the prevailing circumstances in a non-EU country, whose economies are often subject to significant state influence, can be expected to lead to novel questions and difficulties.

¹¹ Article 3(2) of the FSR.

ii. Presence of a Distortion

Under Article 4(1) of the FSR, a foreign subsidy is distortive where it “*is 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.*”

The reference to negative effects on competition should not be misunderstood as an adoption, by the FSR, of competition law concepts of anti-competitive behavior under a consumer welfare standard. Instead, the focus is on distortions of the competitive process through unfair advantages for individual companies.

When assessing the existence of a distortion of the internal market in the context of a review of a concentration, the Commission’s assessment will be limited to the concentration concerned. Similarly, in public procurement procedures, only distortions affecting the public procurement procedure in question would be relevant.¹² Presumably, in an *ex officio* investigation, the Commission will focus on the foreign subsidy’s distortive effects on the activity in question.

The Commission will consider the following indicators when establishing a distortion, but other factors can be relevant as well:

- The amount of the foreign subsidy
- Its nature
- The size of the undertaking and the markets or sectors concerned
- The level and evolution of economic activity of the undertaking in the EU
- The purpose and conditions attached to the foreign subsidy, as well as its use in the EU

The FSR characterizes the following types of foreign subsidies as *most likely* to be distortive (Article 5 of the FSR), so that the Commission can find a distortion to result from these types of subsidies without having to assess the indicators mentioned above in detail, unless the company provides evidence suggesting that the subsidy is not distortive:

- Subsidies to an ailing company, unless there is a viable restructuring plan that includes a significant own contribution by the company (Article 5(1)(a) of the FSR)
- Unlimited guarantees (i.e., without any limitation as to its amount or duration) (Article 5(1)(b) of the FSR)
- Export financing not in line with the OECD Arrangement on officially supported export credits (Article 5(1)(c) of the FSR)
- Subsidies directly facilitating a specific concentration (Article 5(1)(d) of the FSR)
- Subsidies enabling an unduly advantageous tender (Article 5(1)(e) of the FSR)

For subsidies that are not defined as most likely distortive, the FSR does not provide clear guidance as to how to weigh the different factors that are relevant for a finding of a distortion. In many cases, there will be no direct link between the subsidy and the situation reviewed by the Commission. For example, if a foreign parent entity receives tax breaks for an investment into a new production plant in the third country, it is unclear how the Commission will assess the effects of such tax breaks when assessing the participation of an EU-based subsidiary of that foreign parent company in an EU public procurement procedure or in an acquisition of an EU-based company. The Commission has announced that it intends to start clarifying the concepts of distortion and of the balancing test by July 2024, with formal guidelines to follow by 2026.¹³ In the meantime, companies will face significant uncertainty when internally assessing the risk that the Commission may find that a subsidy distorts the internal market.

¹² Articles 19 and 27 of the FSR.

¹³ See the [Commission’s Q&A on the Foreign subsidies Implementing Regulation and notification forms](#), July 10, 2023.

Articles 4(2) and (3) of the FSR defines two *de minimis* thresholds, which are helpful in creating some degree of legal certainty:

- A foreign subsidy *shall not* be distortive where its total amount does not exceed €200,000 per non-EU country over any consecutive period of three years¹⁴
- A foreign subsidy is considered *unlikely* to be distortive where its total amount does not exceed €4 million over any consecutive period of three years

Moreover, Article 4(4) of the FSR provides that a foreign subsidy *may be considered not* to be distortive if it is aimed at “*making good the damage caused by natural disasters or exceptional occurrences.*”

iii. Balancing Test

If the Commission establishes the presence of a foreign subsidy that is distortive, it may carry out a “*balancing test.*”¹⁵

This test considers whether distortive effects of a foreign subsidy are mitigated by positive effects on the development of the relevant subsidized economic activity in the EU. Article 6(1) of the FSR clarifies that other positive effects may also be relevant, such as the broader positive effects in relation to the relevant policy objectives, in particular those of the EU (e.g., environmental protection, promotion of research and development, etc.).

These positive effects can completely neutralize the distortive effects of the foreign subsidy or inform the nature and level of redressive measure or commitments.

Until sufficient Commission practice evolves on these balancing factors and the Commission issues guidelines on the issue, there will remain a high degree of uncertainty as to the practical relevance of balancing factors for the outcome of a decision. This will make the outcome of a Commission investigation less predictable for companies.

The Commission’s Enforcement Powers Under the FSR

Decisions and redressive measures/commitments

Following a notification, the Commission can allow or prohibit closing of the concentration or the award of the contract. If companies offer commitments that modify the notified transaction or tender, the Commission can allow the concentration or contract award to go forward subject to such commitments.

At the end of an *ex officio* investigation, the Commission can adopt a “*no objection decision,*” impose redressive measures, or formally accept commitments offered by the company under investigation.

Redressive measures and commitments can be structural or behavioral. They may consist in, for example, access commitments for infrastructure acquired or supported by the foreign subsidies, reducing capacity or market presence, refraining from certain investments, the publication of R&D results, the divestment of certain assets, requiring the parties to dissolve the concentration, the repayment of the foreign subsidy to the granting country, or requiring the parties to adapt their governance structure. Commitments and redressive measures “*shall be proportionate and fully and effectively remedy the distortion.*”¹⁶ The Commission can impose far-reaching reporting and transparency requirements in this context.

Significantly, the FSR empowers the Commission to adopt decisions “*on the basis of the facts available*” if companies or foreign governments fail to provide information requested by the Commission or otherwise do not sufficiently cooperate

¹⁴ €200,000 is the threshold currently set in Article 3(2), first subparagraph of Regulation (EU) 1407/2013, which Article 4(3) of the FSR refers to.

¹⁵ Article 6 of the FSR.

¹⁶ Article 7(3) of the FSR.

with the Commission’s investigation.¹⁷ In these cases, the Commission will be able to reach substantive decisions even if the facts cannot be established with a degree of certainty that is normally required.

Implementation of the FSR is subject to the WTO rules as well as any commitments under the EU’s trade and investment agreements.

Fines

Failure to comply with the FSR can lead to significant penalties, which are similar to those under the EUMR:

- Fines of up to 10% of the aggregate turnover of the undertaking in the preceding financial year for failure to comply with the notification requirements for concentrations and tenders in public procurement procedures, failure to comply with remedies imposed by the Commission, or early implementation
- Fines of up to 1% of the aggregate turnover of the undertaking in the preceding financial year for procedural faults, e.g., for submitting incorrect, incomplete or misleading information or not respecting the deadlines imposed, or not submitting to lawful inspections
- Periodic fines of up to 5% of the average daily aggregate turnover of the undertaking in the preceding financial year for each working day of non-compliance with any redressive measures or with any identified procedural fault

Preparing for the FSR — Key Takeaways for Companies

Given the requirement of new filings, companies should prepare for the possibility that they may need to file. This requires both maintaining data on financial contributions and considering the effects on transaction agreement drafting and timelines.

Preparing for the FSR	
Collection of data on financial contributions from non-EU countries	<ul style="list-style-type: none"> • Large companies are well advised to implement and keep updated on a running basis internal data gathering systems that list and quantify on a group-wide basis all “<i>financial contributions</i>” received from non-EU countries (including contributions from state and local governments), ideally since July 2020 or even July 2018. This information will be useful: <ul style="list-style-type: none"> ◦ To assess if a pending or future transaction or public procurement tender meets the FSR’s mandatory notification thresholds and prepare the notification forms ◦ To notify future transactions or public procurement tenders that fall below the mandatory thresholds but that get called in for review by the Commission ◦ To respond to the Commission in a timely manner in <i>ex officio</i> investigations, e.g., in the case of a complaint from competing bidders • Sufficient information should be collected and stored about each financial contribution, enabling the company to assess and demonstrate whether the financial contribution involves a subsidy.
Implications for M&A transactions	<ul style="list-style-type: none"> • When planning transactions, companies will need to assess not only filing obligations and substantive risk under merger control and foreign direct investment/national security rules, but also under the FSR. • If the transaction requires an FSR filing, companies should: <ul style="list-style-type: none"> ◦ Assess the resulting impact on the deal timeline ◦ Include appropriate closing conditions, cooperation obligations, and risk sharing provisions in the transaction agreement • Even if the filing thresholds are not met, the Commission may request notification of a below-the-thresholds transaction before implementation where it suspects that foreign subsidies have been granted to the parties in the three years prior to the transaction: <ul style="list-style-type: none"> ◦ Transaction agreements may need to reflect the resulting timing and substantive risk.

¹⁷ Article 16 of the FSR.

	<ul style="list-style-type: none"> • The Commission can launch <i>ex officio</i> investigations into already implemented transactions. • The FSR may present an opportunity for companies to challenge third parties' M&A transactions.
Implications for public procurement procedures	<ul style="list-style-type: none"> • If a bidder has to notify, the timing and substantive uncertainty could create a disadvantage for the bidder if competing bidders do not have to notify. • If the €250 million threshold is met, but not the €4 million threshold: <ul style="list-style-type: none"> ◦ The bidding party must still submit a "<i>declaration</i>" listing all financial contributions received from non-EU countries and confirm that they are below the €4 million filing threshold. • The Commission may request notification of any below-the-thresholds public procurement procedure before the award of the contract where it suspects that foreign subsidies have been granted to the bidding party in the last three years prior to the submission of the tender or request to participate in the public procurement procedure. • The Commission can launch <i>ex officio</i> investigations into already awarded contracts. • The FSR may present an opportunity, e.g., for competing bidders, to challenge public procurement processes.

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Annex 1 — Commission Investigative Powers and Procedural Rules

The procedural set-up and Commission powers under the FSR have been broadly modeled after the rules that apply in the competition law context.

The Commission can gather information by issuing information requests to the parties involved, other undertakings, EU Member States, and third countries (although the FSR does not grant the Commission the power to impose fines on third countries that do not respond or provide incorrect or misleading information); interviewing persons who consent to such interview; and conducting inspections (dawn raids) at the undertaking's premises in the EU. Different from its investigative powers under competition law, the FSR allows the Commission to also carry out inspections at company premises outside of the EU but only if the relevant third country has been notified and raises no objection.

The FSR [Implementing Regulation](#) (IR)¹⁸ provides detailed rules on:

- The procedures for notifications of concentrations and foreign financial contributions in public procurement procedures
- Investigations by the Commission, including time limits for parties to submit comments following the opening of an in-depth investigation, as well as details on certain investigation tools of the Commission, e.g., interviews, oral statements, and the treatment of information from contracting authorities and others
- The procedures for the submission of commitments by companies to address preliminary concerns raised by the Commission
- The submission of observations by companies under investigation
- The procedures to be followed by the Commission for the use of information acquired pursuant to the FSR, and how confidential information is to be identified and protected
- Access to the Commission's file by companies under investigation, and rights of defense more generally
- The calculation of time limits for the provision of information and submission of commitments, as well as on the circumstances under which time limits may be suspended
- The transmission and signing of documents

¹⁸ Commission Implementing Regulation (EU) 2023/1441 of July 10, 2023 on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market.

Annex 2 — Notification Forms

The IR contains two annexes with template notification forms for (i) concentrations — **Form FS-CO** (Annex I) and (ii) foreign financial contributions in public procurement procedures — **Form FS-PP** (Annex II). The tables below summarize the information requirements of the Forms FS-CO and FS-PP.

Notifications of concentrations must be made directly to the Commission. Notification for public procurement procedures must be submitted to the tendering entity or authority, which will pass on the form to the Commission.

The forms must be submitted in one of the EU's official languages. For public procurement procedures, the form must be submitted in the language of the procurement procedure to which it relates; where the original language of the procurement procedure is not one of the EU's official languages, a translation into the language of the proceedings should be provided. Supporting documents must be submitted in their original language; if the original language of a document is not one of the EU's official languages, a translation of the language of the proceedings should be provided.

Where, in public procurement procedures, the €250 million threshold is exceeded but a bidding party falls below the €4 million threshold, it still must submit a “*declaration*” listing all non-EU financial contributions received and confirm they are under the threshold in the manner described by Section 7 of the Form FS-PP on a single form to the contracting authority or contracting entity in charge of the relevant public procurement procedure.

The Commission may agree to waive information requirements during pre-notification discussions provided the parties give adequate reasons why the relevant information is (i) “*not reasonably available*” (where appropriate and to the extent possible, the parties should provide “*best estimates for the missing data*” or indicate where the Commission could obtain this information) or (ii) “*not necessary*” for the Commission’s examination of the case (e.g., the parties could argue that information regarding foreign financial contributions to entities not active in related markets or foreign financial contributions not directly benefiting the notifying parties or their controlling entities, is not necessary for the Commission’s assessment).

The Form FS-CO, to be used for notifiable concentrations, features similarities to the Form CO that companies must use to file concentrations under the EUMR, but there are also important differences. Accordingly, there are some, but not very significant overlaps in the information requirements for transactions that require notifications under both the EUMR and the FSR.

The two forms require significantly more detailed information about foreign subsidies that belong to the categories of “*most likely to be distortive*” subsidies. Less information has to be provided for other types of foreign subsidies.

Information Requirements of Form FS-CO for Concentrations (Annex I to the IR)	
S. 1	Description of the concentration <ul style="list-style-type: none"> Executive summary, i.e., summary information about the parties, acquisition process, nature of the concentration (merger, JV, etc.), strategic and economic rationale, and parties’ activities
S. 2	Information about the parties <ul style="list-style-type: none"> Names, role in the concentration, contact details, representatives, nature of business
S. 3	Details of the concentration, ownership, and control <ul style="list-style-type: none"> Nature of the concentration, economic rationale of the concentration, transaction value and enterprise value of the target, sources of finance (debt or equity) used to fund the transaction, acquisitions of control made in the last three years that were notified to the Commission (FSR/merger control) or under EU Member State merger control rules

<p>S. 4</p>	<p>Notification thresholds</p> <ul style="list-style-type: none"> • EU turnover in the last financial year of the merging companies, the target or the JV (threshold: EU revenues \geq €500 million) • Whether the companies involved in the concentration were granted, from non-EU countries, combined aggregate financial contributions in the three financial years prior to the concentration of \geq €50 million
<p>S. 5</p>	<p>Foreign financial contributions</p> <ul style="list-style-type: none"> • Detailed information on non-EU financial contributions of individual amount \geq €1 million granted in the three years preceding the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest, <i>to the notifying parties, the target, or the JV</i>, that fall within one of the four categories of contributions considered as “<i>most likely to be distortive</i>” (i.e., contribution granted to an ailing undertaking outside a viable restructuring plan, unlimited guarantees, certain export financing, and support for a specific concentration). <ul style="list-style-type: none"> ◦ The following information will need to be provided for each such foreign financial contribution: <ul style="list-style-type: none"> – Form of the contribution – Granting country/entity – Amount of the contribution – Purpose and economic rationale – Conditions attached to the contribution and its use – Main elements and characteristics of the contribution – Whether the contribution confers a benefit – Whether it is limited to certain undertakings or industries – Other specific information depending on the “<i>most likely to be distortive</i>” category the financial contribution falls into • Overview of foreign financial contributions of individual amount \geq €1 million granted in the three years preceding the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest, <i>to the notifying party(ies)</i>, that do not fall within the “<i>most likely to be distortive</i>” categories above, using the Commission’s template table (Table 1 in Annex I): <ul style="list-style-type: none"> ◦ Financial contributions must be grouped per non-EU country and then per type ◦ Only those countries where the estimated aggregate amount of all financial contributions granted in the past three years is \geq €45 million should be included ◦ Information to be included in the table: <ul style="list-style-type: none"> – Granting country – Type of financial contribution – Brief description of the purpose of the financial contribution and the granting entity – Estimated aggregate amount of financial contributions granted per country in the last three years using the following ranges: “€45 to €100 million,” “€100 to €500 million,” “€500 to €1,000 million,” “more than €1,000 million” ◦ Exceptions: the following types of foreign financial contributions do not need to be reported at all: <ul style="list-style-type: none"> – 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 (types of) undertakings) – Tax relief for avoidance of double taxation in line with bilateral or multilateral agreements, as well as unilateral tax relief for avoidance of double taxation applied under national tax legislation to the extent they follow the same logic and conditions as bilateral or multilateral agreements – Provision/purchase of goods/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) – In the case of acquisitions of control or creations of JVs by an investment fund subject to Directive 2011/61/EU or equivalent third-country legislation, contributions granted to other investment funds (or their portfolio companies) managed by the same investment company but with a majority of different investors measured according to their entitlement to profit, provided that there are no or limited economic and commercial transactions (e.g., the sale of assets, loans, credit lines, or guarantees) between the funds

<p>S. 6</p>	<p>Impact on the internal market of the foreign financial contributions in the concentration</p> <ul style="list-style-type: none"> • Details regarding the following: <ul style="list-style-type: none"> ◦ Whether the transaction occurs in the context of a structured bidding process and, if so, details on the bidding process/profile of the other candidates ◦ Parties' activities in the EU and relevant EU/worldwide revenues ◦ For "<i>most likely to be distortive</i>" financial contributions, an explanation as to whether and how the financial contribution may improve the parties' competitive position in the EU ◦ Whether the concentration triggered merger control notifications in the EU (at EU or national level) or other regulatory filings in the EU (such as FDI screening filings) and an indication of the status of these proceedings ◦ Contact details for the target's five largest competitors in the EU, and any other competitor contact details provided in the context of any merger control filings in the EU (at EU or national level)
<p>S. 7</p>	<p>Possible positive effects (if applicable)</p> <ul style="list-style-type: none"> • Description of the possible positive effects of the foreign subsidies on the "<i>development of the subsidized economic activity in the EU</i>" or of "<i>broader positive effects in relation to the relevant policy objectives</i>" (in particular of the EU), and indication as to when and where those effects have or are expected to take place
<p>S. 8</p>	<p>Supporting documentation</p> <ul style="list-style-type: none"> • Documents relating to the financial contributions that fall within the "<i>most likely to be distortive</i>" categories • Documents prepared by or for or received by any member of the board of management, the board of directors, or the supervisory board: <ul style="list-style-type: none"> ◦ Documents discussing the purpose, use, and economic rationale of the financial contributions that fall within the "<i>most likely to be distortive</i>" categories (and the same documents prepared by or for or received by the granting entity if available) ◦ Documents on the rationale of the concentration (including documents where the transaction is discussed in relation to potential alternative acquisitions) ◦ Due diligence reports on the target prepared by external advisors, as well as any documents discussing the transaction value • Links to (or copies of) the parties' most recent annual accounts or reports
<p>S. 9.</p>	<p>Attestation</p> <ul style="list-style-type: none"> • Signed attestation that the information provided in the Form FS-CO, and the documents attached thereto, are true, correct, and complete and that the notifying party or parties are aware of the relevant FSR provisions on fines and periodic penalty payments

Information Requirements of Form FS-PP for Public Procurement Procedures (Annex II to the IR)

<p>S. 1</p>	<p>Description of the public procurement</p> <ul style="list-style-type: none"> • Link to the published document calling for competition in this procedure on Tenders Electronic Daily (TED) as well as any other platforms, and summary of the public procurement procedure — see information requirements of Part I of Annex 2 of the European Single Procurement Document (ESPD) (possibility to use the ESPD to provide the information requested by this section)
<p>S. 2</p>	<p>Information about the notifying party(ies)</p> <ul style="list-style-type: none"> • Information required by Part II of Annex 2 of the ESPD (possibility to use the ESPD to provide the information requested by this section)
<p>S. 3</p>	<p>Foreign financial contributions</p> <ul style="list-style-type: none"> • Detailed information on non-EU financial contributions of individual amount \geq €1 million granted in the three years preceding the notification to the notifying parties that fall within one of the four categories of contributions considered as "<i>most likely to be distortive</i>" (i.e., contribution granted to an ailing undertaking outside a viable restructuring plan, unlimited guarantees, certain export financing, and contribution enabling submission of an unduly advantageous tender). <ul style="list-style-type: none"> ◦ The following information will need to be provided: <ul style="list-style-type: none"> – Form of the contribution

	<ul style="list-style-type: none"> – Granting country/entity – Amount of the contribution – Purpose and economic rationale – Conditions attached to the contribution and its use – Main elements and characteristics of the contribution – Whether the contribution confers a benefit – Whether it is limited to certain undertakings or industries – Whether it is granted only for operating costs exclusively linked with the public procurement at stake – Other specific information depending on the “<i>most likely to be distortive</i>” category the financial contribution falls into <ul style="list-style-type: none"> • Overview of non-EU financial contributions of individual amounts \geq €1 million granted in the three years preceding the notification to the notifying parties that do not fall within the “<i>most likely to be distortive</i>” categories above, using the Commission’s template table (Table 1 in Annex II): <ul style="list-style-type: none"> ◦ Financial contributions must be grouped per non-EU country and then per type ◦ Only those countries where the estimated aggregate amount of all financial contributions granted in the past three years is \geq €4 million should be included ◦ Information to be included in the table: <ul style="list-style-type: none"> – Granting country – Type of financial contribution – Brief description of the purpose of the financial contribution and the granting entity – Estimated aggregate amount of financial contributions granted per country in the last three years using the following ranges: “€45 to €100 million,” “€100 to €500 million,” “€500 to €1,000 million,” “more than €1,000 million” ◦ Exceptions: the following types of foreign financial contributions do not need to be reported: <ul style="list-style-type: none"> – 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 (types of) undertakings) – Tax relief for avoidance of double taxation in line with bilateral or multilateral agreements, as well as unilateral tax relief for avoidance of double taxation applied under national tax legislation to the extent they follow the same logic and conditions as bilateral or multilateral agreements – Provision/purchase of goods/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)
<p>S. 4</p>	<p>Justification for absence of unduly advantageous tender</p> <ul style="list-style-type: none"> • Where the notifying parties have received a financial contribution that enables an undertaking to submit an unduly advantageous tender (Article 5(1)(e) of the FSR), they can provide the Commission with information that demonstrates that the tender is not unduly advantageous directly or indirectly due to the financial contribution received, in particular regarding: <ul style="list-style-type: none"> ◦ 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 ◦ Compliance with obligations regarding subcontracting
<p>S. 5</p>	<p>Possible positive effects (if applicable)</p> <ul style="list-style-type: none"> • Description of the possible positive effects of the foreign subsidies on the “<i>development of the subsidized economic activity in the EU</i>” or of “<i>broader positive effects in relation to the relevant policy objectives</i>” (in particular of the EU), and indication as to when and where those effects have or are expected to take place

S. 6	Supporting documentation <ul style="list-style-type: none">• Documents relating to the financial contributions that fall within the “<i>most likely to be distortive</i>” categories• 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 financial contributions that fall within the “<i>most likely to be distortive</i>” categories (and the same documents prepared by or for or received by the granting entity if available)• Links to (or copies of) the most recent annual accounts or reports of the notifying party(ies)• Where relevant, supporting documents for the three years preceding notification for the absence of an undue advantage of the tender (see S. 4 above), e.g., tax declarations, business plans, and market research underlying the decision to participate in the public procurement procedure
S. 7	Declaration <ul style="list-style-type: none">• Bidding parties falling under the €4 million filing threshold (see Table A above) do not need to submit the full Form FS-PP but must fill in S. 7 of the Form FS-PP (in addition to S. 1, S. 2, and S. 8) containing the following statement:<ul style="list-style-type: none">◦ “None of the notifying parties have received foreign financial contributions notifiable under Chapter 4 of Regulation (EU) 2022/2560.”• The declaration should list all foreign financial contributions received in the last three years preceding the declaration, except that:<ul style="list-style-type: none">◦ Financial contributions < €1 million but ≥ €200,000 can be declared in the aggregate by country with a brief description, using the Commission’s template table (Table 2 in Annex II)◦ Financial contributions < €200,000 do not need to be reported
S. 8	Attestation <p>Signed attestation that the information provided in the Form FS-PP, and the documents attached thereto, are true, correct, and complete and that the notifying party or parties are aware of the relevant FSR provisions on fines and periodic penalty payments</p>

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