

Houthoff Q&A

Foreign Subsidies Regulation

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Material aspects

1. Scope

1.1. *What is the aim of the Foreign Subsidies Regulation and what tools does it introduce to achieve this?*

1.1.1. The Foreign Subsidies Regulation (**FSR**)¹ aims to address distortions of competition in the internal market caused by subsidies granted by non-EU states. The FSR empowers the European Commission (**Commission**) to investigate foreign financial contributions and assess whether they constitute distortive foreign subsidies. It does so mainly through: (i) mandatory notification of certain mergers and acquisitions (**concentrations**) and large public procurement procedures, (ii) "call-in" powers for non-notifiable concentrations and contracts and (iii) ex officio reviews of other market situations. Where distortions are found, the Commission may impose redressive measures, accept commitments or, in extreme cases, prohibit a concentration or the award of a contract.

1.2. *How does the FSR differ from EU State aid control?*

1.2.1. The FSR differs from EU State aid control in scope. EU State aid rules regulate aid granted by EU Member States and rely on prior notification and approval focused on compatibility with the internal market. The Foreign Subsidies Regulation, by contrast, targets financial contributions already granted by non-EU states to undertakings active in the EU.

1.3. *Which companies fall within the scope of the FSR?*

1.3.1. All companies engaging in economic activities on the internal market, regardless of whether the company is private or publicly owned, fall within the scope of the FSR. Therefore, the FSR applies to both foreign companies operating in the EU and EU-based companies. The actual applicability of the FSR depends on whether all material conditions are met.

1.4. *Which markets and/or economic sectors does the FSR apply to?*

1.4.1. The FSR applies to all economic sectors and markets in the EU, including sectors that are of strategic interest and certain critical infrastructures.

1.5. *Which activities are covered by the FSR?*

1.5.1. The FSR targets all economic activities on the EU internal market, regardless of where a company is based. In the context of the FSR, the concept of "economic activity" encompasses:

1. offering goods and services in the internal market;
2. purchasing goods and services in the internal market and using them to offer goods or services to customers in or outside the internal market;
3. acquiring control of a company established in the EU (see further § 3); and
4. participating as a company in a public procurement procedure in the EU (see further § 4).

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

1.6. Does the FSR apply to companies not active on the internal market?

- 1.6.1. The geographical scope of the FSR is limited to undertakings engaged in an economic activity on the EU internal market. Accordingly, the FSR does not apply where a company (and its corporate group) is not involved in any economic activity in the EU internal market and does not intend to enter it. The Commission can, however, request European companies to provide information stored in third countries by a parent company.²

2. The concept of 'foreign subsidies'

2.1. What is a foreign subsidy?

- 2.1.1. A support measure qualifies as a foreign subsidy if the following four cumulative criteria are met:
1. the measure qualifies as a financial contribution within the meaning of the FSR (§ 2.2);
 2. the financial contribution is provided by a third country (§ 2.3);
 3. the financial contribution confers a benefit on one or more undertakings active on the EU internal market (§ 2.4-2.4); and
 4. the financial contribution is limited to one undertaking or industry or to a limited group of undertakings or industries (i.e. is selective in nature, § 2.7).
- 2.1.2. A foreign subsidy can take various forms, and the term does not necessarily refer only to actual subsidies in the colloquial sense. Whether an act entails a 'foreign subsidy' is determined on a case-by-case basis, taking into account all relevant circumstances, including in particular the legal and economic environment of the third country involved.

2.2. Which measures may qualify as a financial contribution within the meaning of the FSR?

- 2.2.1. The determination of whether a measure constitutes a financial contribution is not dependent upon its form. This means that, besides the direct transfer of funds, a financial contribution may comprise the transfer of financial liabilities or assets, the provision or purchase of goods or services otherwise than in accordance with normal market conditions, and the conferral of other financial advantages by indirect means, for example through the forgiveness of debt and compensation for financial burdens imposed. The concept of financial contribution further covers the forgoing of State revenue, for instance through the granting of special or exclusive rights or through exemptions from the ordinary tax regimes of third countries.

2.3. When is a financial contribution considered to be granted by a third country?

- 2.3.1. A financial contribution can only qualify as a foreign subsidy if it is provided by a third country, which includes all countries that are not EU Member States. A financial contribution can be provided by a third country either in a direct or indirect manner. The character of the granting entity itself is not the decisive factor for the question of whether a financial contribution is provided.
- 2.3.2. On this basis, any contribution which can be attributed to the third country qualifies as a financial contribution. First and foremost, this includes contributions by the government (be it national, regional or local) and public authorities of third countries. Second, contributions by private entities which are attributable to any third country government are also caught by the FSR.

² As confirmed in case C-720/24 P(R) *Nuctech* EU:C:2025:205.

2.3.3. The test for determining whether a financial contribution is attributable to a third country is whether the entity granting the financial contribution is under the direct or indirect control of a third country government. All relevant elements must be taken into account in this assessment. These include, in particular, the characteristics of the entity and the legal and economic environment in the third country, including the government's role in the economy. Companies should thus note that it is not always necessary for a financial contribution to have originated directly from the resources of a third country; other measures by private or quasi-public entities may also qualify as a financial contribution.

2.4. *When does a financial contribution confer a benefit?*

2.4.1. As a general rule, a financial contribution confers a benefit to a company if it could not have been obtained under normal market conditions.

2.4.2. The FSR's concept of a 'benefit', including the wording and indicators used to identify one, echoes the concept of an 'economic advantage' in the context of State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (**TFEU**). The first Commission decisions under the FSR confirm that it is applying a similar analytical framework.

2.4.3. The Commission assesses the existence of a benefit by comparing the financial contribution to normal market conditions. In the *e&/PPF Telecom Group* decision, for example, it did so by applying comparative benchmarks such as the investment practice of private investors, financing rates obtainable on the market and the normal market price for certain special and exclusive rights.³

2.4.4. In the absence of directly comparable benchmarks, generally accepted assessment methods could be applied to establish alternative benchmarks. In this regard, it seems likely that certain methods employed by the Commission and the Court of Justice of the European Union (**CJEU**) to determine the existence of an economic advantage within the meaning of the EU State aid rules will be used. One such example is the Market Economy Operator (**MEO**) test, which entails assessing whether a private operator of a comparable size operating in normal conditions of a market economy in similar circumstances could have been prompted to provide the same financial contribution.

2.4.5. The FSR provides limited guidance on the assessment of a benefit. It follows from State aid law that a financial benefit is not likely to apply where government contracts are concluded following a competitive, transparent and non-discriminatory tender procedure. Moreover, as illustrated by the *ADNOC/Covestro* case, companies should be wary of tax advantages, e.g. in the form of tax exemptions, as these may confer a benefit.⁴

2.4.6. Transfer pricing (i.e. the pricing of intra-group transactions) involving entities which have received financial contributions attributable to a third country, can confer a benefit if it does not take place under normal market conditions. This could result in a group entity which is active on the EU internal market receiving a benefit from an entity established in a third country. In the *e&/PPF Telecom Group* decision, this issue was addressed by appointing a monitoring trustee to verify whether intra-group transactions were conducted at "arm's length" (i.e. on market terms).

2.5. *When does a financial contribution not confer a benefit?*

2.5.1. In principle, financial contributions provided exclusively for non-economic activities do not confer a benefit and therefore do not constitute a foreign subsidy. Non-economic activities are those which do

3 Commission Decision of 24 September 2024, Case FS.100011 – *e&/PPF Telecom Group*.

4 Commission Decision of 14 November 2025, Case FS.100156 – *ADNOC/Covestro*.

not involve the offering of goods or services on a market; in particular, the exercise of public powers is not considered an economic activity. In the context of the FSR, an undertaking engages in an economic activity if it: (i) offers goods or services in the internal market; (ii) purchases goods or services in the internal market and uses them to offer goods or services to customers inside or outside the internal market; (iii) forms a concentration in the EU; or (iv) participates in an EU public procurement procedure.

- 2.5.2. Exceptionally, even financial contributions provided exclusively for non-economic activities may qualify as foreign subsidies if such contributions are indirectly used to subsidise the undertaking's economic activities. Therefore, companies must remain vigilant of the risk that compensation or other financial benefits resulting from the allocation of special or exclusive rights for non-economic activities may qualify as foreign subsidies if the compensation or rights also confer competitive advantages in relation to their economic activities.

2.6. *From which moment can a benefit be deemed to have been granted?*

- 2.6.1. The moment the beneficiary or group of beneficiaries obtains the entitlement to the foreign subsidy is decisive for the application of the FSR. Importantly, the actual disbursement of the foreign subsidy is not a necessary condition for the FSR to apply.

2.7. *Are all benefits covered by the term 'foreign subsidy'?*

- 2.7.1. No, only selective benefits are covered. This means that the benefit is granted to one or more undertakings or industries. This condition is akin to the requirement of selectivity under EU State aid rules.
- 2.7.2. The selective nature of the benefit can be determined either *by law* or *in fact*. A selective nature may be present by law if a specific group of one or more undertakings or industries receive a benefit in comparison to others because of a specific regulation or government decree. A selective nature may be present in fact if a benefit follows from the factual involvement of the third country, e.g. through the direct provision or purchase of goods or services at a higher price than the actual market price.

2.8. *Does the FSR prohibit all foreign benefits?*

- 2.8.1. No, the FSR does not prohibit companies from receiving foreign subsidies. The FSR only sets out a framework to prevent foreign subsidies from distorting the EU internal market. To that end, the Commission may impose redressive measures, require commitments from companies to remedy a distortion of the EU internal market caused by the foreign subsidy, or in extreme cases prohibit a concentration or the award of a contract (see further § 6 for an overview of the measures and commitments that the Commission may impose or require).

2.9. *When does the Commission consider a foreign subsidy to cause a distortion of the internal market?*

- 2.9.1. A foreign subsidy is considered to distort the internal market when it:
1. can improve the competitive position of a company; and
 2. in doing so, potentially or actually negatively affects competition in the internal market to an 'appreciable extent' (see further § 2.13); this, in turn, requires that the
 - a. foreign subsidy impacts the behaviour of the subsidised company; and

- b. that the identified behaviour impacts the competitive dynamics of a market to the detriment of other economic actors in the internal market.
- 2.9.2. No actual impact of the foreign subsidy need be demonstrated; it is sufficient that negative effects are liable to arise, or are even merely capable of arising. Moreover, it is not necessary to show that the subsidy is the only cause of the distortion, nor that the distortion is of a serious nature.
- 2.9.3. The Commission takes various elements into account in its assessment. These include, but are not limited to, the amount and nature of the foreign subsidy (e.g. a grant, loan, credit facility, debt consolidation or refinancing loan), the characteristics (e.g. frequency or recurrence) and dynamics of competition on the market concerned, the activities of the beneficiary and the purpose of the foreign subsidy. Foreign subsidies granted to small and medium-sized enterprises (**SMEs**) are less likely to cause a distortion than foreign subsidies to large companies.
- 2.9.4. There are five categories of foreign subsidies which the Commission considers are most likely to distort the internal market:
1. a foreign subsidy granted to a company at risk of insolvency, i.e. which is likely to go out of business in the short or medium term without any subsidy;
 2. a foreign subsidy in the form of an unlimited guarantee for the debts or liabilities of a company;
 3. an export financing measure contrary to the OECD Arrangement on officially supported export credits;
 4. a foreign subsidy which directly facilitates a concentration; and
 5. a foreign subsidy which enables a company to submit a valid but unduly advantageous bid in a tender.
- 2.9.5. If a foreign subsidy falls within one of these categories, the Commission is not required to carry out an in-depth assessment of the effects of the foreign subsidy to establish that it causes a distortion of the internal market. A company can rebut this legal presumption of distortion by putting forward sufficient evidence that, although the foreign subsidy falls within one of these categories, it does not distort the internal market in the specific circumstances at hand.
- 2.10. *What are targeted and non-targeted foreign subsidies and why is the difference important?***
- 2.10.1. In its assessment of whether a foreign subsidy is liable to improve the competitive position of a company, the Commission distinguishes between two types of subsidies:
1. targeted foreign subsidies: subsidies that directly or indirectly support a company's economic activities on the internal market; and
 2. non-targeted foreign subsidies: other types of subsidies.
- 2.10.2. Targeted foreign subsidies are deemed to improve a company's competitive position and therefore generally require limited further analysis. Examples include subsidies conditional on EU investments or acquisitions, subsidies granted to support manufacturing, distribution or service provision in the EU, and any other subsidies that the Commission determines a company will use for its economic activities in the internal market.
- 2.10.3. Non-targeted foreign subsidies include general support measures that the beneficiary is free to use across global operations. Although not linked to EU economic activities, these subsidies can still improve the company's competitive position through a practice called 'cross-subsidisation' – that is, they free up resources that can then be used to support EU activities. In that case, the Commission assesses whether

resources can realistically move within the group, considering a non-exhaustive set of factors including corporate links, financing structures, subsidy design and conditions, regulatory constraints, and the financial health of the subsidised entity.

2.11. How does the Commission assess the distortive effect of a foreign subsidy in the context of mergers and acquisitions?

2.11.1. In the context of M&A transactions, the Commission assesses whether subsidies:

1. distort the acquisition process; and
2. are liable to affect the future behaviour of the target.

2.11.2. A subsidy may distort the acquisition process where it enables a company to offer more attractive terms than other companies, such as a higher purchase price, superior financing structures or alternative transaction perimeters. As a result, companies might be outbid or deterred from making certain investments. Subsidies may also distort the target's future operating or investment decisions, for example by enabling aggressive pricing, expanded capacity, or risk-taking that rivals cannot replicate.

2.12. How does the Commission assess the distortive effect of a foreign subsidy in the context of public procurements?

2.12.1. In the context of public tenders, the Commission assesses whether foreign subsidies enable a bidder to submit an unduly advantageous tender. The Commission follows three steps for assessing distortions in public procurement procedures:

1. First, the Commission investigates whether the tender is "advantageous". This concept may relate to price, quality, warranties, delivery terms, innovation, financial robustness or other award criteria. The Commission may conclude that a tender is advantageous by comparing the tender's terms to those of other (comparable) bids, the contracting authority's estimates, or a counterfactual version of the subsidised tender absent the subsidy. It can also base its decision on other available information.
2. Second, the Commission assesses whether the advantage for the beneficiary is "undue". An advantage is undue when it stems from the subsidy and cannot be justified by objective, legitimate factors, such as cost-effectiveness or novel technical solutions. The foreign subsidy does not need to be the sole cause of the tender's advantageous nature, as long as it could potentially have impacted the tender's terms to an appreciable extent.
3. Third, the Commission examines the actual or potential negative effect of the subsidised tender. Negative effects may arise not only where the subsidised bidder wins, but also where rival bidders are discouraged from participating or cannot compete on an equal footing.

2.12.2. For the purposes of FSR public procurement notifications, the "notifying party(ies)" comprise the economic operator (or group of economic operators) submitting the tender, as well as any main subcontractors and main suppliers covered by the notification obligation. Unless otherwise specified, the term "notifying party(ies)" also includes the tenderer's subsidiaries without commercial autonomy and its holding companies. In addition, subsidies granted elsewhere in the broader corporate group may still render a tender unduly advantageous if they indirectly support the bid, including through cross-subsidisation (see on cross-subsidisation § 2.10.3).

2.13. Which foreign subsidies are considered not to distort the internal market?

- 2.13.1. As mentioned under § 2.9.1, a foreign subsidy can only be considered distortive if its actual or potential negative effects on the internal market are appreciable. For the sake of predictability, the Commission has set out several "safe harbours" covering foreign subsidies that are considered not liable to distort the internal market and therefore, in principle, fall outside the Commission's in-depth assessment. These safe harbours include foreign subsidies:
1. that fall under de minimis amounts (i.e. EUR 200,000 per third country or EUR 4 million in total over any three-year consecutive period);
 2. granted as compensation for damage caused by natural disasters or exceptional occurrences;
 3. that address market failures for activities taking place exclusively outside the EU;
 4. that are insignificant in amount in relation to the company's actual or potential activities within the internal market; or
 5. that address purely non-economic or social objectives.
- 2.13.2. Finally, the Commission has indicated that, in the long term, it may introduce block exemptions for certain foreign subsidies similar to those that currently exist for certain categories of State aid. Block exemptions are legal instruments that automatically declare certain categories of conduct or aid compatible with EU law, provided predefined conditions are met.

2.14. Can a distortion of the internal market be justified by positive effects of the foreign subsidy?

- 2.14.1. Where the Commission finds that a foreign subsidy distorts the internal market, it may conduct a balancing test to weigh the subsidy's positive effects against its negative effects; it must do so if it intends to impose redressive measures (see further § 6.1). The balancing test may benefit a company where the positive effects are substantial, as it could dissuade the Commission from imposing redressive measures or lead to less onerous conditions being attached. Note, however, that for subsidies in the categories "most likely to distort the internal market" (§ 2.9.4), positive effects are unlikely to tip the balance.
- 2.14.2. In the recent *ADNOC/Covestro* case the Commission accepted commitments that included sustainability-related intellectual property sharing, illustrating how remedies can both address distortions and align with EU policy objectives such as sustainability and innovation.

2.15. What factors does the Commission take into account in the balancing test?

- 2.15.1. The positive effects taken into account in the balancing test will be based on the evidence submitted by Member States, individuals and/or companies during the investigation period. The positive effects must be specific to the foreign subsidy, meaning the subsidy leads to a change in the behaviour of the recipient. Companies can demonstrate this specificity through a counterfactual analysis, showing what would have occurred in the absence of the foreign subsidy.
- 2.15.2. The Commission examines whether a subsidy enables the development of a subsidised activity within the EU – that is, whether the subsidy makes the activity possible or triggers a change in its development. It also considers wider policy objectives such as environmental or climate protection, energy and defence security, the advancement of social standards and the promotion of research and development.
- 2.15.3. The Commission considers only positive effects stemming from the subsidy itself – not, for example, those arising from a transaction or subsequent commercial integration. The test does not entail a mechanical checklist but a case-by-case qualitative assessment in which the Commission considers several elements, including:

1. the nature and intensity of the positive effects, such as the development of the subsidised economic activity or contributions to recognised EU policy objectives;
 2. the timing of the positive effects, i.e. how soon and how reliably they are likely to occur;
 3. the severity of the distortion, taking into account the amount, purpose, conditions and form of the subsidy, and the characteristics of the affected market; and
 4. whether any negative effects go beyond what is necessary to achieve the alleged positive effects (proportionality).
- 2.15.4. The balancing test will in any event not result in an outcome that is worse for the notifying party under scrutiny than it would have been had the balancing test not been applied.
- 2.15.5. Further, the Commission may also assess the positive effects of several foreign subsidies cumulatively in the balancing test, where those effects are interconnected. This mirrors the Commission's existing ability to aggregate negative impacts of multiple foreign subsidies.
- 2.15.6. Companies involved in M&A likely to attract in-depth scrutiny are advised to gather information and evidence on the potential positive effects of any foreign subsidies at an early stage. Parties asserting positive effects, including EU Member States, bear the burden of proof under the balancing test.

Procedural aspects

3. Notification requirement for concentrations

3.1. *What is understood to be a 'concentration' under the FSR?*

- 3.1.1. The concept of concentration under the FSR is similar to the concept under EU merger control rules: a concentration is a change of control of an undertaking. A change of control is understood to occur in three main situations: (1) a merger of two previously independent undertakings or parts thereof, (2) the acquisition of control in an undertaking and (3) the creation of a joint venture (**JV**) performing all the functions of an autonomous economic entity on a lasting basis.
- 3.1.2. There are some very limited exceptions where a concentration is deemed not to arise, which include the acquisition of control by an agent of the public authorities pursuant to the law of a Member State relating to liquidation, bankruptcy, insolvency, cessation of payments, compositions or analogous proceedings.

3.2. *What thresholds must be met for notification to be required?*

3.2.1. Notification is necessary only if the concentration meets the following combined thresholds:

1. Turnover:
 - a. In the case of a merger: at least one of the parties involved is established in the EU and has an aggregate turnover of at least EUR 500 million.
 - b. In the case of an acquisition of control: the target undertaking is established in the EU and has an aggregate turnover of at least EUR 500 million.
 - c. In the case of the creation of a JV: the JV is established in the EU and has a turnover of at least EUR 500 million in the EU. Only the turnover of the JV itself has to be considered; this is different from notification under the EU merger control regime, where the turnover of the initial parent company is relevant as well.

2. Foreign subsidies:

- a. The companies involved received financial contributions amounting in total to at least EUR 50 million in the three years preceding the concentration.

3.2.2. The Commission may request a company to notify a concentration which does not meet the above notification thresholds if it considers that a review is needed given the concentration's impact in the EU.

3.3. *How should the turnover of a concentration be calculated under the FSR?*

3.3.1. The turnover of the company concerned and that of its subsidiaries or parent companies should be added together. Like under EU merger control rules, only the turnover of the parts that are acquired as part of the concentration should be taken into account in this calculation, and multiple transactions within two years must be regarded as being part of the same, single concentration.

3.3.2. When the concentration concerns the creation of or acquisition of control in a JV, only the turnover of the JV itself is relevant. The FSR differs from EU merger control rules on this point. Consequently, when a new JV is established, the turnover threshold will not be met because it does not yet have any turnover of its own. This may be otherwise if the JV concerns the change from sole to joint control of a pre-existing undertaking.

3.3.3. For the calculation of the aggregate turnover, all sales of products and services from the preceding year within the EU – after deduction of sales rebates and VAT – should be taken into account. Other calculation standards apply for the calculation of turnover for banks and insurers.

3.3.4. All foreign financial contributions count in the calculation of the turnover for the purposes of the notification threshold – even contributions which are exempted from disclosure in the form FS-CO (see further § 3.8).

3.4. *Are concentrations below the notification threshold free from scrutiny?*

3.4.1. A notifiable concentration must be notified to the Commission prior to its implementation. If, however, the notification threshold is not met, then the concentration can in principle be implemented without prior notification. The Commission can nonetheless intervene by exercising its call-in power to require prior notification of a below-threshold transaction (see further § 5.2). If the Commission uses this power, the concentration is subject to the same scrutiny as a concentration that meets the notification thresholds.

3.5. *Which party must notify the concentration?*

3.5.1. The notification obligation rests on both parties in the case of a merger. In the case of acquisition of control, the acquiring party is responsible for notification. For the creation of a JV, this obligation rests on the parent undertakings.

3.6. *Can a party pre-notify a concentration?*

3.6.1. It is possible to initiate pre-notification contact by submitting a case team allocation request with basic information on the concentration to the functional email address of the Foreign Subsidies Registry of the Directorate-General for Competition (**DG COMP**), i.e. comp-fsr-registry@ec.europa.eu. A template for such requests is available on DG COMP's website. There are no specific time limits for engaging in pre-notification contact.

3.6.2. As part of the pre-notification contact, a party is encouraged to submit a draft notification. The Commission will review the draft notification, leading to a preliminary overview of the information the Commission would require the party to submit as part of the actual notification.

3.7. How should a notification be submitted?

3.7.1. Notification takes place by completing and submitting the form FS-CO, which is attached as Annex I to the Implementing Regulation, together with any supporting documents. Notifications should be submitted digitally through the EU Send secure document exchange platform, which requires prior registration and documents to be signed with a Qualified Electronic Signature (**QES**) complying with the Regulation on electronic identification and trust services (eIDAS). Only in exceptional circumstances, where the Commission agrees that digital submission is not feasible, may notifications be submitted by hand delivery or registered post to the Foreign Subsidies Registry at DG COMP in Brussels.

3.8. What information must be provided to the Commission?

3.8.1. Information which the form FS-CO always requires includes a summary of the concentration, details on the ownership and control before and after completion of the concentration, and turnover and notification thresholds. A notification must include the stipulated information on the foreign financial contributions received, i.e. on all measures which qualify as a financial contribution provided by a third country.

3.8.2. The information requirements for foreign financial contributions depend on their qualification:

1. Detailed information must be provided for foreign financial contributions of at least EUR 1 million which fall within one of the categories likely to distort competition and were received by a notifying party or target in the three years prior to the concentration. Section 5 of the form FS-CO contains specific questions that must be answered to determine whether a foreign subsidy falls within one of these categories and sets out the information and documents which must be provided.
2. For other foreign financial contributions which equal or exceed EUR 1 million, an overview of the various types of financial contributions suffices. Table 1 of the form FS-CO provides instructions on the provision of such information.
3. Information on foreign financial contributions of less than EUR 1 million and on several specific categories related to transactions at arm's length does not need to be included.

3.8.3. Where a notifying party fails to provide the information (additional or otherwise) that is necessary for the Commission to assess whether a foreign financial contribution confers a benefit, the Commission may proceed on the basis of the information available and assume that the contribution confers a benefit. In the *e&PPF Telecom Group* decision, for example, such an approach was taken.

3.8.4. If the notifying parties provide information for the purposes of the balancing test, they should ensure that information and supporting documentation on the potential positive effects is provided for every notifiable foreign subsidy. The Commission can always request further information (whether or not at a later stage in the procedure) if necessary.

3.9. Can I obtain a waiver of the obligation to submit certain information?

3.9.1. Notifying parties may request the Commission to waive the submission of certain information during the pre-notification phase. The Commission prefers parties to submit such requests as part of the draft notification, enabling it to review the waiver request alongside the draft notification. The Commission

will consider a waiver request where the requesting party demonstrates that: (1) the information is not reasonably available; or (2) the information is not reasonably necessary for the Commission's assessment. A waiver does not preclude the Commission from requesting that information at a later stage.

3.10. What happens after notification?

- 3.10.1. The notifying parties cannot implement a concentration until the Commission has taken a decision on the effects of the foreign subsidies on the internal market (**standstill obligation**). Following a complete notification, the Commission has 25 working days to take a decision to initiate an in-depth investigation or allow the implementation. In practice, the Commission tends not to render a decision within the 25 working-day window, upon the expiry of which a concentration may be implemented.
- 3.10.2. If considered necessary on the basis of its preliminary review, the Commission may initiate an in-depth investigation into the effects of the foreign subsidy. This investigation may take up to 90 working days. This period can be extended by no more than 20 working days in total.
- 3.10.3. The Commission may, exceptionally, suspend the time limits during its investigation if it finds that the notifying parties are refusing to comply with a request for information or submit to a Commission inspection. Where the Commission concludes that the notification contains incomplete, incorrect or misleading information, the review period commences only upon receipt of complete information. Engaging in pre-notification discussions with the Commission significantly reduces the risk of such delays.

3.11. Are there any exceptions to the standstill obligation?

- 3.11.1. The concentration may not be implemented prior to the lapse of the time periods for the completion of the investigation or the adoption of a final Commission decision. An exception to this standstill obligation applies for the implementation of a public bid or a series of securities transactions. The Commission may also grant a derogation from this standstill obligation upon request: a company can apply for such a derogation at any time pre- or post-transaction.

4. Notification requirement for public procurement procedures

4.1. What is the procedure for notification of participation in a public procurement procedure?

- 4.1.1. For public procurement procedures, the contracting authority or entity is responsible for notification. Companies must submit to the contracting authority or entity a notification or declaration of any foreign financial contributions received. The contracting authority or entity must then submit this notification to the Commission without delay. If the Commission considers the notification incomplete, it will contact the contracting authority and the notifying company directly, requesting completion of the notification within 10 working days.
- 4.1.2. Once the Commission receives a complete notification, it conducts a preliminary review within 20 working days. Where duly justified, the Commission may extend this time limit once by 10 working days. The Commission assesses whether the foreign subsidy enables participation in a tender with an unduly advantageous bid (§ 2.12.1) in relation to the works, supplies or services concerned. The assessment is limited to the public procurement procedure in question and considers only foreign subsidies granted during the three years prior to notification.

- 4.1.3. The Commission may initiate an in-depth investigation if it considers this necessary within the preliminary review time limit. An in-depth investigation into the effects of the foreign subsidy on the internal market may take a maximum of 110 working days, extendable once by 20 working days. The Commission may suspend these time limits if a request for information or a Commission inspection has not been complied with.
- 4.1.4. The procedure differs for multi-stage tenders. The Commission has 20 working days to examine the complete notification. During this initial period, the Commission does not complete the preliminary review; once the 20 working days elapse, the preliminary review suspends until submission of a final tender or, in a restricted procedure, a tender. After the company submits a tender or final tender containing a complete updated notification, a new 20-day period commences for the Commission to decide whether to initiate an in-depth investigation. The Commission has a total of 90 working days from receipt of the completed updated notification to close any ensuing in-depth investigation, extendable once by 20 working days in exceptional cases.
- 4.1.5. The public procurement procedure may continue during the Commission investigation until the contract award. If the Commission prohibits the contract award to the company involved, the contracting authority must reject that company's bid. The Commission will permit the contract award if it finds that the company's bid did not benefit from a foreign subsidy distorting the internal market. If the Commission does not decide within the applicable time limits, the contract may also be awarded.
- 4.1.6. Where a contracting authority or entity elects to award the contract to a party other than the one under investigation, it may do so without impediment. In practice, the commencement of a preliminary review in a tender procedure often prompts the company concerned to withdraw its bid.

4.2. When is notification to a contracting authority required?

- 4.2.1. A company participating in a public procurement procedure must notify the contracting authority or entity of financial contributions from non-EU countries if the following two thresholds are met:
 - 1. The estimated contract value of the public procurement procedure is equal to or more than EUR 250 million; and
 - 2. the company has received foreign financial contributions of, in total, at least EUR 4 million from a single non-EU country in the three years prior to the notification.
- 4.2.2. If the contract is divided into lots, the additional threshold applies that the aggregate value of the lots for which the company applies must also be at least EUR 125 million.
- 4.2.3. For the purposes of calculating whether the threshold of EUR 4 million is met, the Commission also considers foreign financial contributions granted to subsidiary companies without commercial autonomy, to holding companies, and to the main subcontractors and suppliers involved in the same procedure. For these purposes, "main" subcontractors and suppliers are those whose participation ensures key elements of contract performance or whose economic share exceeds 20% of the tender value.

4.3. What if the notification thresholds are not met?

- 4.3.1. If the notification thresholds are not met, then instead of a notification the company must submit a declaration to the contracting authority or entity of all foreign financial contributions received and confirm that these do meet the notification thresholds.

- 4.3.2. The contracting authority or entity may not rely solely on the submission of a declaration to the effect that no notification is necessary and must inform the Commission without delay if it suspects that notifiable foreign subsidies may be involved in a public procurement procedure. If no notification or declaration has been submitted, the company must, upon request of the contracting authority or entity, submit the required document(s) within 10 working days at the risk of having the request to participate in the tender rejected.
- 4.3.3. Irrespective of whether the notification thresholds are met, the Commission may require notification of foreign financial contributions prior to contract award where it suspects that an undertaking has benefited from such contributions (see further § 5.2). In that event, the standard procedure, including deadlines, is applicable (§ 4.1).
- 4.3.4. The moment at which the participants in a public procedure must submit their declaration or notification depends on the type of procedure. In an open public procurement procedure, they must submit their notification or declaration only once, together with the tender. In a multi-stage procedure, they must submit the notification or declaration twice: first, together with the request to participate, and second, as an updated notification or declaration together with the final tender.

4.4. How should a notification be submitted?

- 4.4.1. Notification takes place by completing and submitting the form FS-PP, which is attached as Annex II to the Implementing Regulation, together with the information which must be sent with this form.

4.5. What information must be provided to the Commission?

- 4.5.1. The information requirements of the form FS-PP differ between notification and declaration of foreign financial contributions. In any case, the form FS-PP always requires information on the notifying parties (Section 2) and on the public procurement procedure (Section 1). When the European Single Procurement Document (**ESPD**) is used, the tender information should be imported from the ESPD in accordance with Section 1 of the form FS-PP.

Notification

- 4.5.2. A notification must also include an explanation of the fact that the tender is not unduly advantageous (Section 4) and information on foreign financial contributions received (Section 3). Detailed information must be provided on foreign subsidies of at least EUR 1 million which fall within one of the categories likely to distort competition. Section 3 of the form FS-PP contains specific questions to this end. Other foreign subsidies which equal or exceed EUR 1 million must be included in an overview per country in accordance with Table 1 of the form FS-PP, save for the exceptions listed there (under B.6). It is advisable for the notifying party to ensure that information and supporting documentation on the potential positive effects of foreign subsidies (Section 5) are provided as well. Moreover, the Commission can always request further information at a later stage in the procedure if necessary.

Declaration

- 4.5.3. In the case of a declaration, Sections 3, 4 and 5 of the form FS-PP can be left blank, and Section 7 must be completed instead. Here, the notifying party or parties must declare that they have not received any foreign financial contributions which are notifiable under Chapter 4 of the Regulation on public procurement procedures and must list all foreign financial contributions of at least EUR 1 million received in the three years preceding the declaration. Contributions below this threshold but above the

de minimis threshold (i.e. EUR 200,000 over a consecutive three-year period) can be declared per country in aggregate without the need to specify their values.

4.6. *When and how can parties pre-notify?*

4.6.1. There are no specific time limits for engaging in pre-notification contact. Pre-notification is voluntary but encouraged by the Commission, and preferably done on the basis of a draft form FS-PP. Parties can contact the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (**DG GROW**) at grow-fsr-pp-notifications@ec.europa.eu if they have questions on the pre-notification of public procurement procedures.

4.7. *What happens if parties do not comply with the notification obligation?*

4.7.1. If companies participating in a public procurement procedure fail to disclose a notification or declaration, the contracting authority or entity must, after giving the company 10 working days to complete their application, declare the tender irregular and inform the Commission thereof.

4.7.2. If the Commission finds that a notification is incomplete, it will also directly request the company itself to complete the notification within 10 working days. If the notification remains incomplete despite this request, the Commission will adopt a decision declaring the tender irregular. In that decision, it requests the contracting authority or entity to adopt a decision rejecting the irregular tender as well. Contracts awarded on the basis of irregular tenders can be declared void by national courts.

5. **Ex officio market investigations and call-in powers**

5.1. *What is an ex officio investigation and when may the Commission start it?*

5.1.1. An ex officio procedure allows the Commission to start investigations on its own initiative into any market situation involving potentially distortive foreign subsidies. Contrary to the Commission's call-in powers (see § 5.2), its ex officio powers are not confined to concentrations or public procurement procedures. The procedure may concern any economic activity in the internal market. Moreover, it is not tied to thresholds and is not limited to ex ante review, i.e. it may be exercised after a transaction has been completed or a contract has been awarded.

5.1.2. The Commission may open a preliminary review where it has indications that a foreign subsidy may distort the internal market. The threshold at this stage is relatively low: the Commission needs indications, not proof. Information triggering an ex officio review may come from any source, including media reports, competitors, private parties, market intelligence or Member States. Member States are under an obligation to inform the Commission where they suspect the existence of distortive foreign subsidies.

5.1.3. If, following the preliminary review, the Commission identifies sufficient indications of a distortive foreign subsidy, it will adopt a decision to open an in-depth investigation. This investigation enables the Commission to conduct a full distortion analysis, apply the balancing test, and ultimately adopt redressive measures where necessary. Where an in-depth investigation is opened, the Commission should "endeavour" to adopt a final decision within 18 months. In practice, the Commission has exercised this power less frequently than anticipated.

5.2. *When will the Commission call in a below-threshold concentration or public procurement?*

- 5.2.1. In addition to its ex officio powers, the Commission may "call in" non-notifiable concentrations prior to implementation and procurement bids prior to the award of the contract. If a concentration or bid is called in, it is deemed a notifiable concentration or public procurement which cannot be finalised before the Commission has given its approval (see § 3.10 and § 4.1 respectively).
- 5.2.2. The Commission must provide evidence that there are sufficient indications that foreign subsidies may have been granted which actually or potentially have a negative impact on the EU internal market. To assess this potential negative impact, the Commission relies on a non-exhaustive list of factors. These include, in particular, the strategic or important character of the economic activity involved, the presence of critical assets or critical infrastructure, the involvement of innovative or emerging technologies, patterns of acquisitions or participation in procurement procedures, and any contextual information that may indicate a distortion.
- 5.2.3. The Commission may also consider whether suspected subsidies fall within the categories that are most likely to distort the internal market. Conversely, where the Commission can establish with sufficient certainty that the total amount of suspected foreign subsidies does not exceed EUR 4 million over the relevant three-year period, or that the subsidies are intended to make good damage caused by an exceptional occurrence or natural disaster, it will generally refrain from requesting notification.

Below-threshold concentrations

- 5.2.4. The Commission may require prior notification of a concentration that does not meet the notification thresholds where it suspects that foreign subsidies were granted to one or more of the undertakings concerned during the three years preceding the transaction.
- 5.2.5. Any request must be made before the concentration is fully implemented. In this context, "implementation" refers to the point at which the transaction results in a lasting change of control, rather than to preparatory or interim steps.

Below-threshold public procurement procedures

- 5.2.6. Before the award of a contract, the Commission may request notification where it suspects a company has benefited from foreign subsidies in the three years preceding its tender or request to participate. The same is true where a notification or declaration was previously submitted and either:
1. the Commission closed a preliminary review without adopting a decision but subsequently receives new information leading it to suspect the notification or declaration was incomplete; or
 2. the notification or declaration was not transferred to the Commission.
- 5.2.7. While the Commission is expected to consider the need to limit disruption to procurement procedures, including how close the process is to contract award, there is no fixed cut-off date preventing a call-in prior to award.

5.3. *What investigative powers does the Commission have during the course of an investigation?*

- 5.3.1. The principal investigative powers of the Commission include the power to (i) request information and (ii) perform inspections.

Requests for information

- 5.3.2. The Commission may request all information it considers necessary for its investigation. The principle of proportionality limits the scope of information that may be requested. Such requests may also concern information stored outside the EU.⁵ As part of a request for information, the Commission may also conduct voluntary interviews. Where an interview takes place outside the EU, the relevant third country's government must consent to the interview. The Commission may also request information directly from a third country.
- 5.3.3. The Commission may also collect information on concentrations and public procurement procedures that are subsequently subject to a prior notification request.

Inspections

- 5.3.4. The Commission may conduct inspections within the EU, as well as outside the EU if the relevant third country government authorises the inspection. During an inspection – better known as a dawn raid – the Commission exercises extensive powers closely resembling those under the Merger Regulation.⁶ If necessary with the assistance of police or other enforcement authorities, the Commission may:
1. enter premises, land and vehicles owned by the company or association of companies;
 2. review all business records, regardless of format, access any accessible information, and make or request copies or extracts of the information;
 3. interview representatives and staff to obtain explanations of information relevant to the inspection's subject matter and purpose, and record their responses;
 4. seal the business premises and records as needed during the inspection.
- 5.3.5. Refusal to cooperate, breach of a seal affixed during an investigation or the provision of false information can lead to serious fines (see § 8).

6. Decision types

6.1. What decisions can the Commission take and do these differ between the notification procedures and the ex officio investigation?

- 6.1.1. The Commission can take a no-objection decision if it finds that there is no foreign subsidy involved that actually or potentially distorts the internal market. It can do so in the course of a 'standard' notification procedure as well as following an ex officio investigation. If the Commission takes a no-objection decision, no specific action by the company concerned is required.
- 6.1.2. If the Commission considers the foreign subsidy to result in an actual or potential distortion of the internal market, the company in question can offer commitments to the Commission. Commitments can be offered in the course of both an ex officio and a notification procedure. Alternatively, the Commission may impose redressive measures. Commitments and redressive measures must be proportionate to the actual or potential distortion and can be structural or behavioural.
- 6.1.3. The Commission may impose various redressive measures, including (but not limited to) the following:

5 This was accepted by the CJEU in a request for interim measures in the *Nuctech* case. The main proceedings are still ongoing at the time of writing this Q&A.

6 See Article 20 of Regulation (EU) 1/2003.

1. Structural measures, which include requiring companies to divest certain assets, dissolve a concentration or replace certain subcontractors;⁷
2. Behavioural measures, which aim to mitigate the effects of the foreign subsidy. These measures include requiring the company to reduce its market presence, e.g. by temporarily restricting commercial activity; to offer market access under fair, reasonable and non-discriminatory terms to infrastructure acquired or supported by the subsidy; to refrain from making certain investments; to repay the foreign subsidy with interest; or to adapt its governance structure.

6.2. *How will the Commission respond to commitments offered?*

- 6.2.1. The Commission can accept commitments by taking an official decision, which will have a binding effect on the companies concerned. If the Commission does not accept the commitments, it may impose redressive measures. Moreover, in a notification procedure, the Commission can take the decision to prohibit a concentration or tender bid if it finds that the proposed commitments are insufficient or ineffective to remedy the distortion of the internal market. In practice, the Commission has generally been willing to accept remedies offered.

6.3. *What kind of reporting and transparency obligations can be imposed on a company?*

- 6.3.1. The Commission may impose reporting and transparency requirements as it considers appropriate. In particular, these requirements may include the obligation to inform the Commission of financial contributions or the participation in concentrations or public procurement procedures during a specified time period. In the *e&PPF Telecom Group* case, for example, the commitments required the appointment of an independent trustee to ensure that transactions between the subsidised and non-subsidised parts of the company would be conducted on market terms.

6.4. *Can the Commission impose interim measures?*

- 6.4.1. The Commission has the power to impose interim measures in the course of an ex officio investigation into alleged foreign subsidies if it has 'sufficient indications' of the existence of (i) a distortive foreign subsidy and (ii) a risk of serious and irreparable damage to competition on the internal market. The Commission can also impose interim measures when a company breaches the notification and standstill obligations for concentrations. The Commission may not take interim measures with regard to the outcome of past public procurement procedures.

7. Rights and obligations of companies

7.1. *To what extent can the information disclosed in procedures under the FSR be used in other investigations?*

- 7.1.1. The information acquired by the Commission cannot be disclosed or transferred to other procedures without the consent of the information provider. However, the Commission may publish statistics and reports, e.g. on its enforcement activity, provided the information does not allow the identification of specific parties.

⁷ See, for example, Commission Decision of 21 April 2026, Case FSP.103117 – *Portugal CRRC*.

7.2. *Will a company under investigation be able to submit its observations before the Commission takes and publishes a decision?*

- 7.2.1. Companies do not have the opportunity to submit observations before the Commission has adopted a decision to formally initiate an in-depth investigation. The Commission adopts this decision on the basis of its findings in the preliminary procedure. The Commission publishes a summary of a decision to formally initiate an in-depth investigation in order to allow interested parties to express their views.
- 7.2.2. During the in-depth investigation, the Commission must grant the company under investigation the opportunity to submit observations before it takes any decision to prohibit the concentration or the award of the contract, impose redressive measures or accept commitments. Moreover, the Commission may not base its decision on grounds other than those on which the company has been able to exercise its rights of defence by submitting its observations.
- 7.2.3. One exception to the right to submit observations before the Commission adopts a final decision is where the Commission intends to adopt interim measures. In that case, the Commission can confine itself to granting the opportunity to the company under investigation to submit observations as soon as possible following the decision. The company is entitled to receive access to the Commission's file, to prepare its observations.

7.3. *To what extent does the company under investigation have access to the Commission's file?*

- 7.3.1. The company under investigation must request access to file itself, upon which the Commission will provide it with non-confidential versions of the documents in the file.
- 7.3.2. The company's right of access to the Commission file does not extend to internal documents of the Commission, Member States and third countries, including competition authorities and contracting authorities, or to correspondence between these parties.
- 7.3.3. The right of access does include documents submitted by information providers, without any redactions for confidentiality. However, the Commission will disclose these documents only under terms of disclosure that aim to safeguard the protection of business secrets and other confidential information. These terms include setting up a clean team which may view the information only for defence purposes under the FSR.

8. Compliance & Risks

8.1. *What actions should I take to ensure compliance with the requirements and obligations that the FSR introduces?*

In general, companies should consider implementing a system to keep track of information on financial foreign contributions received on an ongoing basis, so that this information will be readily available in the event of a future notifiable concentration or public procurement procedure. As set out in § 2, the concept of foreign financial contribution should be interpreted broadly.

M&A

- 8.1.1. In the context of mergers, companies should prepare valuation and funding evidence to demonstrate market conformity and anticipate potential remedies, such as neutralising guarantees or adapting governance arrangements; where non-EU state-linked support has been received, parties should proactively document the purpose, scope and intended use of that support, including, where relevant, that it bears no connection to EU economic activities.

8.1.2. In practice, this means considering at an early stage whether non-EU financial contributions (whether targeted or non-targeted) could influence deal terms or confer an advantage over rival bidders, and ensuring that valuation materials and acquisition financing arrangements, particularly where non-EU state-linked lenders are involved, can be presented as commercially grounded and supported by a robust evidentiary record.

Public procurement

8.1.3. In public procurement, bidders should benchmark their offers against market norms and maintain clear documentation of cost structures to justify pricing, while equally ensuring that any non-EU financial contributions are transparently recorded and can be credibly shown not to have influenced the tender.

8.1.4. Companies should also assess the likelihood of call-in requests for transactions below the notification thresholds, particularly in strategic (sensitive) sectors or where there is a pattern of subsidised activity.

Ex officio

8.1.5. Since the FSR's entry into force in 2023, the Commission has already actively used its ex officio powers to address systemic concerns, including through dawn raids and requests for information (§ 5.3). Companies are advised to collect data on foreign financial contributions received. They should carry out a risk assessment of the involvement of these contributions in concentrations and participation in public procurement procedures since 12 July 2020, the date from which the Commission's power to start ex officio investigation extends.

8.2. Which sanctions can the Commission impose and when?

8.2.1. The Commission has the power to impose substantive fines for non-compliance with a final Commission decision (e.g. a commitments decision, decision imposing redressive measures, decision ordering interim measures or prohibition decision) or for a breach of the notification obligation. The Commission may also impose fines for intentional or negligent non-compliance with its investigative powers, including information requests or inspections. Additionally, the Commission may fine undertakings for circumventing the notification requirement. Where the Commission suspects such circumvention, it may require the undertaking concerned to provide additional information.

| Type of non-compliance | Possible sanctions |
|---|--|
| Non-compliance with a final Commission decision | - A periodic penalty payment of a maximum of 5% of the average daily aggregate turnover of the undertaking in the preceding financial year. |
| Non-compliance with Commission inspection or information request | - A fine of a maximum of 1% of the aggregate turnover of the undertaking in the preceding financial year. - A periodic penalty payment of a maximum of 5% of the average daily aggregate turnover of the undertaking in the preceding financial year. |
| Breach or circumvention of the notification or standstill requirement | - A fine of a maximum of 10% of the aggregate turnover of the undertaking in the preceding financial year. |

8.3. Are the Commission's powers subject to any limitation periods?

- 8.3.1. The Commission may initiate an ex officio investigation and exercise its powers of inspection and information request within ten years of the grant of a foreign subsidy. Any such action interrupts the limitation period and causes it to start anew.
- 8.3.2. A three-year limitation period applies to the imposition of fines and periodic penalty payments, running from the date of the infringement or, where the infringement is continuing or repeated, from the date on which it ceases. The Commission has five years from the date of its decision to enforce any fine or periodic penalty payment imposed. Proceedings before the CJEU suspend the limitation period; enforcement action by the Commission or a Member State restarts it.