

Lessons from 18 Months of EU FSR Enforcement

17 April 2025

The [EU Foreign Subsidies Regulation](#) (the “FSR”) is a landmark piece of legislation that has made certain qualifying M&A transactions subject to a mandatory notification requirement to the European Commission (the “Commission”) since 12 October 2023. Designed to address the distortive effect of subsidies from “foreign” (i.e. non-EU) governments ([see also the previous Debevoise Update](#)), it significantly expanded the enforcement capabilities of the Commission by creating a further layer of review for both large M&A transactions and public procurement awards above a certain value, as well as empowering the Commission to launch investigations on its own initiative.

In this Update we summarise the lessons of the first eighteen months.

- **More deals caught than expected:** While the Commission initially expected to review around 30-40 deals annually, as of mid-January 2025 it had received around 150 notifications. Despite this high level of activity, there has been limited transparency in relation to both the Commission’s review and its process, with only one published decision.
- **Burden on private equity firms:** The FSR is catching a lot of private equity activity. EU statistics show that approximately one-third of all notifications received in the first 100 days of the FSR included an investment fund as a notifying party. There is no suggestion this will have abated. The Commission has acknowledged the particular burden this is placing on private equity firms, but we do not anticipate any steps being taken to mitigate this before mid-2026.
- **Timing:** The statutory FSR timeline was designed to mirror that of the EU merger control regime, which made good procedural sense given most transactions will be subject to parallel assessment. Overall timing of the review has improved as the FSR has bedded in; however, it remains challenging to align the two processes and for simplified merger filings it can take a month or two longer before also getting FSR clearance.

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- **Outcomes/remedies:** To date, the Commission has only opened one in-depth Phase II review. The conditional decision concerned the acquisition of parts of PPF Telecom Group (“PPF”, a European telecommunications operator) by the Emirates Telecommunications Group Company (“e&”, a UAE telecoms operator controlled by the Emirates Investment Authority, a sovereign wealth fund). Interestingly, the Commission was not concerned by the acquisition itself but rather about the potential post-transaction effects on the telecoms market. The combination of an unlimited state guarantee from the UAE combined with access to preferential financing was considered problematic because it insulated the acquirer from risk and thus distorted competition. The Commission still cleared the deal, but subject to several behavioural commitments designed to “ringfence” the parties’ EU activities from the effect of subsidies granted outside of the EU. This should be encouraging for businesses engaged in large M&A deals as it indicates that, in certain circumstances, it may be possible to avoid more costly and complex structural remedies.
 - **Proactive enforcement:** Many expected that the Commission’s approach to enforcement would focus, in the first instance, on M&A activity, and that it would only launch its own investigations once it had greater experience in applying the new regulation. The Commission defied these expectations by launching two *ex officio* investigations in the first year of FSR enforcement. In April 2024, the Commission launched an investigation into two Chinese suppliers of wind turbines in Spain, Greece, France, Romania and Bulgaria, who were suspected of benefiting from Chinese state subsidies. Then, later that same month, the Commission conducted dawn raids at the premises of Chinese security scanner company Nuctech in the Netherlands and Poland. Both investigations are ongoing but, at this stage, they serve as an important reminder of the wide discretion the Commission has. Such investigations can be particularly challenging for businesses because, in contrast to the comparatively fast (when compared to anti-dumping investigations) timelines when a notification is required, there is no fixed timeline which the EU Commission must follow once an *ex officio* investigation is commenced.
 - **Focus on China:** Enforcement has been closely aligned with the political priorities of the Commission. In particular, there has been a focus on Chinese companies (particularly, Chinese state-owned enterprises), with both of the Commission’s own initiative investigations (see above) involving Chinese companies as well as the majority of in-depth public procurement investigations having a Chinese nexus. The first of those was into CRRC, a state-owned rolling stock company bidding to supply electric “push-pull” trains in Bulgaria; two further investigations were opened in relation to consortia tendering to construct a photovoltaic (solar) park in Romania. In all cases the bidders withdrew from the process leading the China Chamber of Commerce to the EU to complain that the FSR has “*introduced significant and*

destabilizing uncertainty for Chinese businesses operating in Europe". However, the Commission's focus has not been exclusively looking for potential Chinese subsidies (see e.g. e&/PPF Telecom Group discussed above). All businesses that receive financial support from non-EU governments (regardless of nationality) should remain alert to the potential implications under the FSR.

- **2026 Guidance:** The Commission is required to publish guidance addressing certain technical concepts, including the ability to call-in below threshold deals/tenders, by 13 January 2026. The Commission published a call for evidence on 5 March 2025 seeking feedback from Member States, stakeholders and the public on the main objectives, scope and context of the guidance. Once published, those are expected to become a critical reference point for firms navigating their obligations under the FSR. The Commission is expected to continue to tread a fine line between addressing the distortive risks presented by non-EU financial contributions and ensuring the EU market continues to be competitive and open. Contrary to calls from some stakeholders, it appears unlikely the guidance will contain sector-specific definitions of "distortion" under the FSR, instead preferring to adopt a general interpretation applicable to all industries. There will be a parallel review of the enforcement and implementation of the FSR, which should be published by 14 July 2026 and which may be of more practical help for businesses.

The FSR is now a firmly established element of the EU's regulatory regime even if much of the process is still evolving, and parties can expect the Commission's proactive enforcement of this Regulation will continue in years to come. Therefore, while we wait for the Guidance to be published in January 2026, businesses and legal advisors should remain alert to developments in the Commission's practical enforcement and closely monitor emerging trends as the Commission builds up a body of reasoned decisions.

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