Linklaters

EU Foreign Subsidies Regulation

Strategic and agency insights Commercially minded



The EU Foreign Subsidies Regulation ("FSR") has introduced another layer of regulatory oversight for businesses operating in the EU. The FSR brings suspensory notifications for certain M&A transactions and public procurement procedures. Like for merger control and foreign investment, expert advice and forward-planning is critical to manage these regulatory processes and avoid delays.

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Linklaters presented the most advanced and customisable solution for FSR preparation with excellent lawyers with relevant state aid experience.

Chambers Global 2025, Competition: EU: Belgium

Band 1

Competition Law

Chambers Global 2026

The Global Elite

Global Competition Review 2025

What is it?

The FSR grants the European Commission powers to address distortive effects of non-EU subsidies on the EU market. The last year has shown that the Commission is not afraid to use these new powers, and that the FSR has teeth. Under the FSR, the EC has been given three tools:

M&A

A mandatory notification for deals where the EU turnover of the target (for acquisitions), the joint venture or one of the merging parties (for mergers) is €500m or more and the companies involved have received at least €50m in combined foreign financial contributions from non-EU countries.

Public procurement

A mandatory notification for tenders where the estimated contract value is €250m or more and the bidder has received foreign financial contributions of at least €4m in one non-EU country.

A catch-all tool

A general power for the Commission to investigate all other market situations where there may have been foreign subsidies from non-EU countries.

Companies and businesses with operations outside the EU need to understand the extent of "foreign financial contributions" they have received from non-EU countries, and whether these could amount to a "subsidy". This is critical to determine: (i) whether a notification will be required; and (ii) whether those filings will be of a technical nature or will require an assessment of the impact of the subsidy on the EU internal market.

The FSR can lead to delayed deal timetables, additional red tape and reduced deal certainty. The FSR may also affect the attractiveness of certain bidders.

What does this mean for business?

- The FSR affects any company – including EU-based companies – that has received foreign financial contributions from non-EU countries. Identifying and quantifying such contributions in a large organisation is a challenge, but is necessary where filings are triggered. The concept of "foreign financial contribution" is broad and can include, for example, capital injections, grants, loans, guarantees, tax reliefs, and the sale or purchase of goods or services. Some of these measures will need to be disclosed even if on market terms.
- Once a notification is made, the Commission will assess whether the foreign financial contributions entail a "subsidy" and whether it has a negative effect on the EU market. If so, it will assess the negative effects of the subsidy against its positive effects. This will be a balancing test similar to the EC's assessment under EU State aid rules.
- The catch-all tool gives the Commission broad powers to investigate any other market situation in which foreign subsidies may be distortive. The Commission also has the possibility to "call-in" M&A transactions and public procurements that fall below the thresholds and do not require up-front notification. Companies therefore need to bear in mind this residual enforcement risk.
- Should the EC ultimately determine that a foreign subsidy distorts the EU internal market under the FSR it has wide-ranging powers to seek redressive measures. These include ordering repayment of subsidies, imposing behavioural commitments (e.g. arm's length dealings within a group or changes in governance) or in cases with significant concerns unwinding a transaction.

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Linklaters has an absolutely world-class team.

Chambers Global 2025, Global: Multijurisdictional

Foreign Subsidies Regulation at Linklaters

Being prepared is key for dealing with the FSR, whether your organisation has received foreign financial contributions and may need to engage in a notification process, or wants to complain against the impact that a foreign subsidy has had on competition in your markets. We can offer:

Pragmatic strategies

Preparedness is the best tactic. We deliver you the "tip" to ensure readyness, while understanding the "entire iceberg" to provide context and identify future risk areas.

Wealth of experience

We are advising on the most complex and strategic FSR matters. Our global team is also one of the world's leading practices across the spectrum of the elements on which the FSR builds (State aid, merger control, foreign investment, public procurement, and trade defence). We have an award-winning reputation for innovation and excellence.

Practical and focused information gathering

Collecting the data required as part of any FSR notification is a challenge, and an efficient data collection process will be key to control deal timetables, long-stop dates and execution risk. We offer different solutions, including a market leading online platform that offers a single joint data collection process.

Efficient approach

We offer clients a one-stop shop for handling foreign subsidies, foreign investment and merger control filings: a single, central point of contact, providing efficiencies and transparency.

Close to the Commission's thinking

We have on-the-ground expertise in Brussels, with senior lawyers having excellent links with the decision makers at the Commission. Combined with our global footprint we can support you through any challenges and opportunities which the FSR may bring to your organisation.

Leading expertise

Our FSR advisory experience includes:

Pioneering ex-officio investigations

- Chinese player in renewable energy: advising on the Commission's ex-officio investigation into the energy sector, including discussing scope of RFIs and advocacy as well as liaising with economists.

Cutting edge M&A Cases

- Covestro: advising Covestro in relation to the public takeover by ADNOC, the first ever full takeover of a German blue-chip by a state owned company from the Middle East raising a large number of novel questions (procedurally and substantively) and which involved material engagement with the European Commission at various levels and which was recently cleared subject to a novel set of conditions.
- Carrier: advising on the FSR notification in relation to the sale of its commercial refrigeration business to a Chinese buyer, following a complex pre-notification phase. The case is the only unconditional phase 1 clearance for a Chinese investor.
- Global telecom player: advising on approved FSR notification in relation to sale of a key subsidiary to a state-linked acquirer.
- Sovereign wealth fund in UAE: advising on several FSR notifications, raising various complex questions, and ultimately receiving unconditional clearance.
- Cerberus: advising on the acquisition of VeloBank alongside the European Bank for Reconstruction and Development and the International Finance Corporation, and the interplay between FSR and State aid considerations due to the bridge bank status and State aid restrictions.

Solid portfolio of Public Procurement Cases

- E.ON: advising in relation to CCS project in Denmark.
- Portfolio companies of sovereign wealth fund in UAE: advising on several FSR notifications in pharma and energy sectors.
- Chinese player in renewable energy: advising on the Commission's investigation into an ongoing tender process, including on legality of issued RFIs.
- Multiple notifications under the public procurement tool in the utilities, energy and transport industries.

One of a kind, market leading data collection tool

- Multiple clients, including AustralianSuper, Axa, BNPP, Cerberus, Crédit Agricole, Macquarie, Mutares, Nestlé, OTPP, PSP, Triton: acting as their FSR counsel on developing a tailored FSR methodology and setting up internal processes for information gathering.
- Private equity funds: advising on the preparation (including information gathering) for numerous FSR filings.
- Authority in the postal sector: acting as their FSR counsel on developing a tailored FSR methodology, including as authority under the public procurement tool and setting up internal processes for information gathering.

Trusted advisor to global players

- Multi-national investment bank: advising on the implications and potential disclosure obligations under the FSR.
- Multiple global financial sponsors: advising on the implications of the FSR, including on their internal processes for information gathering linked to the FSR disclosure obligations.
- A Chinese State linked investment group: advising on the implications and disclosure obligations under the FSR.

Dawn raid experience

- A major healthcare company: advising in a large-scale dawn raid, raising a range of procedural and policy issues including related escalation.
- A large global company in the fashion sector: advising on EC and U.S. DOJ antitrust investigations after dawn raids at several market participants. After two years the investigations were closed with no action against our client.
- International transport and logistics service company: advising on a dispute with the European Commission and on various dawn raids.
- Major player active in the sugar market: advising on collecting IT evidence triggered by a large scale, four day European Commission dawn raid.

Pragmatic advisory in M&A Cases

- Allianz and Omers in relation to their joint investment in Tank & Rast Group, the leading service provides on German highways.
- Fosun in relation to sale of Hauck Aufhäuser Lampe to ABN Amro, forming the third-largest German private banking group.
- Mutares in relation to acquisition of Serneke Sverige, a leading Swedish construction and project development group.
- Novo Holdings in relation to its acquisition of Catalent a global contract development and manufacturing organisation.
- Macquarie: advising on its acquisition, alongside BCI, of Renewi, a leading waste-to-product company.
- Axa, BNPP and Crédit Agricole: filing their very first notifications.
- Several private equity funds: advising on their FSR filings, including detailed questions from the Commission of the scope and application of the "fund exemption".

Additional resources

Foreign Subsidies webpage

Our dedicated website on the EU Foreign Subsidies regulation.

LinkingCompetition

Insights, commentary and news from our dedicated antitrust lawyers around the globe.

ForeignInvestmentLinks

Our dedicated global blog for foreign investment updates.

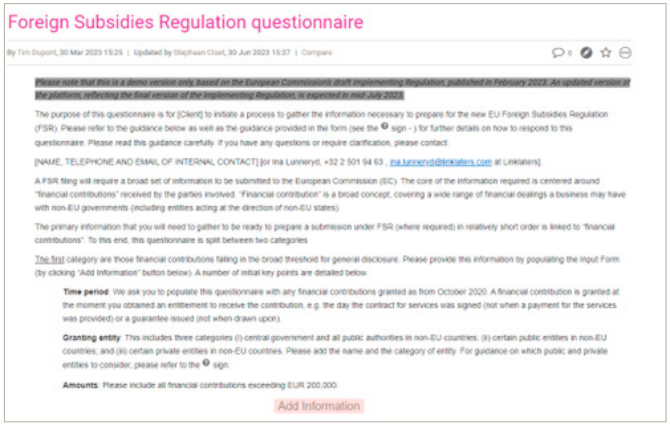
Global Antitrust and Foreign Investment Group webpage

Our dedicated website page that shows our global expertise.

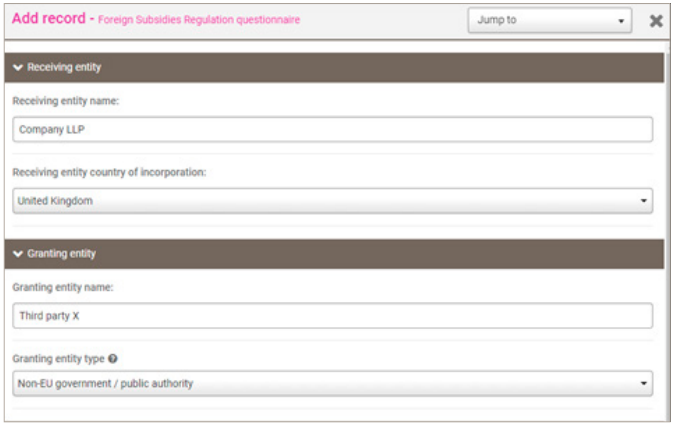
Our FSR platform offers an efficient and pragmatic data collection process, ensuring:

- **A single joint data collection process:** Instead of multiple files, we offer a seamless consolidated process across various entities and geographies, making the platform particularly useful for groups with global footprints.
- **Up-to-date guidance:** We offer integrated guidance, thereby ensuring that your team always has direct access to tailored and updated instructions.
- **Efficient control:** You can easily check who provided a certain datapoint, and limit access based on the client's approach to confidentiality.
- **Innovative design and technology:** Our platform is simple to navigate and delivers streamlined information gathering and output to comply with the EC's notification requirements.
- **A tailored approach:** The content can be tailored to our client's preferred approach and risk profile.
- **Efficiency:** Having information stored in a central source and kept up-to-date (including with acquisitions/disposals) leads to significant efficiency gains.
- **Strategic expertise:** Our platform combines our in-depth FSR experience with M&A regulatory expertise.

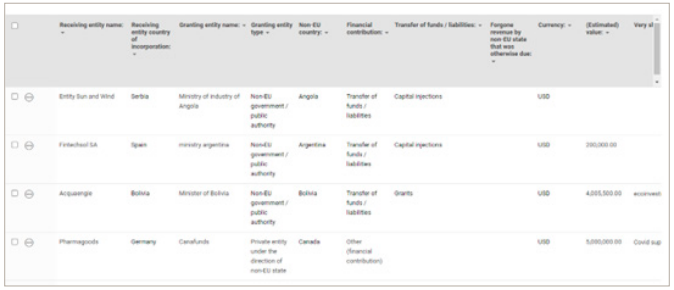
1. Landing page



2. Information gathering form



3. Table summarising data provided



Five reasons to choose our FSR platform

1. Efficient online data collection process.
2. Integrated and up-to-date practical guidance.
3. Tailored to your business's needs and risk profile.
4. Centralised data collection across entities and geographies.
5. Facilitates peer-review while protecting information flows (as needed).

Key contacts

Please click on the contacts name to view their bio.



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