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Clean, Just and Competitive Transition

Study on the Simplification and Review of the **Foreign Subsidies Regulation (FSR)**

Final Report

Prepared by LE Europe data+law universität wien

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Study on the Simplification and Review of the Foreign Subsidies Regulation (FSR)

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Executive Summary

LE Europe has been commissioned by the European Commission Directorate-General for Competition (DG COMP) and the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) to conduct this study on the simplification and review of the EU Foreign Subsidies Regulation (FSR).

Article 52 paragraph 2 of the FSR provides that the Commission shall review, each three years, its practice of implementing and enforcing this Regulation. Within this framework, the study has the objective to:

- identify potential aspects of the FSR and its Implementing Regulation (FSIR) that could be **simplified**; and
- **review** the Commission's practice of implementing and enforcing the FSR.

The analysis consists of:

1. a survey with legal practitioners and contracting authorities on their initial experience with the FSR and potential simplifications;
2. a document review on the developments in international relations regarding third countries' subsidy control systems; and
3. an analysis of the Commission's case practice.

This study analyses the Commission's case practice only up until June 2025, and was conducted before the adoption of FSR Guidelines in January 2026 as well as other important FSR developments such as the adoption of the commitment decisions in Case FS.100156 and in Case FSP.103177, and the opening decisions in Cases FS.100143 and FS.100068.

Legal practitioners' and contracting authorities' experience with the FSR

Scope of this chapter

This chapter analyses stakeholder experiences of the Foreign Subsidy Regulation (FSR), drawing on surveys with legal practitioners (57 respondents) and contracting authorities (3 respondents). It evaluates how the FSR regime operates in practice, identifying compliance frictions and exploring avenues for simplification. The contracting authority survey is not representative of all contracting authorities, as it is based on a very small sample size.

Separate surveys have been conducted with legal practitioners on their experience with concentration cases (37 respondents) and public procurement cases (20 respondents). Unless mentioned otherwise, the findings apply to both samples.

Practical experience and administrative impact

While the overarching objectives of the FSR are generally understood, the findings indicate that its implementation has introduced considerable administrative requirements. A significant majority of respondents (77%) report that the required information collection necessitates substantial internal administrative and legal resources. Consequently, 85% of respondents reported experiencing delays in transaction or procurement timelines due to FSR requirements. Stakeholders reported there to be mostly minor delays, defined in the survey as delays "easily managed within the overall schedule", or moderate extensions "of several weeks". It should be noted that the survey does not explicitly ask for timelines and delays due to parallel procedures, internal planning, or case specific attributes. As such, the reported delays reflect the respondent's perceptions.

Stakeholders generally view direct communication with the European Commission as constructive, particularly during the pre-notification phase. However, there is a distinct call for enhanced legal certainty: 55% of respondents perceive existing guidance as insufficient or unclear on key points – without a statistically significant difference between concentration and public procurement cases. Conversely, interactions with contracting authorities in public procurement are often described as challenging (79%), potentially due to differing degrees of awareness of FSR procedures among contracting authorities.

Substantive aspects and legal certainty

The broad definition of a 'foreign financial contribution' (FFC) is identified as a primary source of difficulty, with 72% of respondents rating the wide variety of measures covered as an 'extremely significant' challenge. Stakeholders have indicated that the requirement to collect data across global operations may result in a compliance effort that Notifying Parties perceive as out of balance with the risk of market distortion, in some cases. Reporting requirements that stakeholders perceive as unduly burdensome include the obligation to report transparent, non-preferential agreements. Furthermore, interpreting and applying substantive assessment criteria can be difficult for Notifying Parties.

The EUR 500 million EU turnover threshold for concentrations is generally accepted as clear and appropriate. However, there is a strong consensus that thresholds for the value of the FFCs are set too low, a view held by 81% of respondents regarding the EUR 50 million concentration threshold and 74% regarding the EUR 4 million procurement threshold. Similarly, 72% of respondents argue that the EUR 1 million reporting threshold for individual contributions captures immaterial amounts.

Views on simplification

Reflecting these challenges, there is widespread support among stakeholders for procedural simplification. Key proposals supported by a large majority of respondents include:

- **Clarifying key concepts**, such as 'distortion' and 'benefit', to provide greater legal certainty;
- **Narrowing the scope** of reportable contributions towards those most likely to distort the internal market;
- **Raising notification thresholds** regarding foreign financial contributions;
- **Shortening the look-back period** for reporting by Notifying Parties from three years to one year; and
- **Introducing streamlined processes**, such as a 'short form' concentration notification and a one-time annual declaration system for regular procurement participants.

Experience of contracting authorities

Contracting authorities report challenges with bidder compliance, where complex forms and definitions frequently result in incomplete filings and procedural delays. Both practitioners and authorities highlight the inefficiency of requiring repetitive submissions from regular bidders. It should be noted that the analysis of contracting authorities' view is based on a very small sample size (3) and is, therefore, not representative of all contracting authorities.

Additionally, contracting authorities supported proposals for direct filing of notifications to the Commission and automatic completeness.

Developments in international relations regarding third countries' subsidy control systems

Scope of this chapter

This chapter examines "developments in international relations regarding third countries' subsidy control systems" as referred to in Article 52 of the FSR.

The analysis focuses on Canada, China, Japan, Switzerland, Türkiye, the United Arab Emirates, the United Kingdom and the United States (Key Jurisdictions). Other jurisdictions with EU bilateral trade or investment agreements are covered at an overview and aggregate level.

Bilateral commitments towards the EU

An assessment of subsidy-related obligations in EU bilateral trade agreements with non-EEA partners (1973–2021) shows substantial variation in scope and comprehensiveness, but also identifiable patterns.

- The most extensive commitments are found in agreements with neighbouring countries and accession candidates. These include the Western Balkans, Türkiye, the Eastern Partnership states (Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine) and the United Kingdom. A smaller group of high-income partners such as Canada, Japan, Singapore and South Korea also accept comparatively far-reaching obligations.
- Notification requirements appear across nearly all agreements and form the baseline of subsidy-related disciplines. Additional transparency duties (e.g., publication requirements) arise primarily in agreements where some degree of future regulatory convergence is expected. Dispute-settlement mechanisms are common across agreement types and therefore do not indicate deeper alignment. Only a limited number of partners commit to domestic enforcement bodies or dynamic rule updates. Obligations to withdraw incompatible subsidies appear mainly where WTO disciplines are incorporated.

There is no clear evidence that the adoption of the FSR has shaped the design of later EU agreements, as only one agreement (EU–MERCOSUR) has been concluded post the FSR adoption.

Subsidy practices in key jurisdictions

Trends in WTO and GTA data

Analysis of WTO Article 25.2 SCM notifications (2021–2025) and Global Trade Alert data (2008–2024) shows shifts in the number of reported subsidy schemes and interventions, though interpretation is limited by reporting gaps, the exclusion of services from WTO notifications and data that count measures rather than their value. No change in state behaviour linked to the implementation of the EU FSR is observable to date. Instead, existing patterns appear to continue.

Multilateral efforts on subsidy control

Multilateral subsidy disciplines remain limited and efforts to strengthen them progress slowly:

- *Overall*: The SCM Agreement and GATT provide mechanisms only for goods-related subsidies; negotiations on services under the GATS mandate have not advanced.
- *Fisheries*: The Agreement on Fisheries Subsidies entered into force in 2025 after more than twenty years of negotiations. It requires a second negotiation stage and includes a sunset clause that signals the fragility of the agreement.

- *Agriculture*: Despite early frameworks such as the Agreement on Agriculture and the 2015 Nairobi Decision eliminating export subsidies, negotiations remain stalled on major issues including trade-distorting domestic support, public stockholding and subsidy issues around the production of cotton. Overall progress remains limited.

Country-by-country analysis

Bilateral commitments

Canada, Japan, Switzerland, Türkiye and the United Kingdom have subsidy-related bilateral commitments with the EU in varying degrees. China, the United Arab Emirates (so far) and the United States do not.

Domestic legal developments

China, Switzerland, Türkiye and the United Kingdom have created or advanced domestic review systems addressing the provision of subsidies.

The analysis examines China's Fair Competition Review Regulations, Switzerland's Subsidy Oversight Act, Türkiye's Law No. 6015 on Monitoring and Supervision of State Support, and the United Kingdom's Subsidy Control Act 2022. Canada, Japan, the United Arab Emirates and the United States have not made comparable attempts to introduce domestic subsidy control regimes.

As the analysis shows, none of the Key Jurisdictions currently operate a comprehensive State aid system involving an independent *ex ante* screening comparable to the EU State aid regime. The United Kingdom represents the closest approximation, but its framework does not provide for equivalent *ex ante* control.

Overall assessment

Developments in third-country subsidy control regimes have been gradual since the adoption of the FSR. This finding bears on regulatory architecture.

Review of the Commission's case practice – concentration cases

Scope of this chapter

This chapter reviews how the Commission has implemented and enforced the FSR in concentration cases since notification obligations were introduced in the period between October 2023 to June 2025. This analysis therefore predates the adoption of the FSR Guidelines in January 2026 as well as the adoption of the commitment decision in Case FS.100156 in November 2025.

A review of the Commission's approach is in line with Article 52 paragraph 2 of the FSR which requires periodical reporting and review of the FSR and its implementation. The chapter analyses the application of Articles 3, 4, 5, 6, 9, 20 and 25 on the basis of (i) a representative sample of 90 concentration cases and (ii) an in-depth case study of the only transaction in which the Commission initiated and closed an in-depth investigation into a concentration until June 2025. From herein this will be referred to as "the case study".

The analysis of the 90-case sample differentiates between cases where the acquirer was an investment fund and cases where the acquirer was of another type, reflecting the distinct features typically associated with investment fund structures.

Articles 25 – Procedural rules

Article 25 sets out the procedural rules for the Commission's review, providing the Commission with 25 working days from receipt of formal notification to conduct its preliminary review. In the sample, which is restricted, all cases were closed within the

25-working-day deadline, indicating that the Commission adheres to the statutory time limit. The Commission, however, indicated that the pre-notification process in which the parties first file a draft notification to the Commission represents a more suitable indicator for the start of the interaction with the notifying parties and the analysis of the case. Assessing the working days spent on a case in pre-notification, i.e., following the receipt of the draft notification indicates a decrease since introduction of the FSR: the median time to review fell from 61 working days for cases notified between September 2023 and March 2024 to 49 working days for cases notified between October 2024 and April 2025. This corresponds to a decrease in the time required for pre-notification from 36 working days to 24 working days, a decrease of around 33%.

Articles 20 – Notification thresholds

Article 20(3) establishes the jurisdictional notification thresholds for concentration under the FSR. Notification is required when:

- EU-wide turnover is in excess of EUR 500 million (for the target in acquisitions, at least one of the merging undertakings in mergers, or the joint venture itself in joint ventures)
- Combined aggregate FFCs of the parties to the transaction are in excess of EUR 50 million over the last three years prior to the signing of the transaction.

When establishing whether the threshold for notification is met, the notification form requires that the notifying party confirms that the jurisdictional thresholds are met.

While the data does not allow a comprehensive analysis, there does not appear to be a trend in the turnover specified in notification over time. However, based on analysis of the sample, it appears that a 20% increase in the threshold regarding turnover from EUR 500 million to EUR 600 million would decrease concentration notifications by 16%; while a 50% increase would decrease notifications by 36%.

Article 21 stipulates that the Commission retains the power to call-in transactions which do not meet notification thresholds if they suspect that foreign subsidies have been granted in the previous 3 years. In the 90-case sample however, there were no examples where the Commission exercised these powers. All cases met the jurisdictional notification thresholds.

Potential article 5 foreign subsidies – those most likely to distort the internal market

The purpose of Article 5 is to identify those FFCs which are most likely to be distortive foreign subsidies. The Commission's case practice indicates that this objective is pursued through an evidence-based and effects-driven methodology. Across cases where Article 5 FFCs were analysed, the Commission consistently assessed whether the relevant FFC conferred a benefit by drawing on evidence provided by the parties as well as external sources. For example, for Article 5(1)(d) direct transfers such as capital commitments, and loans, which directly facilitated the transaction at stake, the Commission compared whether terms were "pari passu" with private investors or typical market terms. Similarly, for Article 5(1)(b) unlimited guarantees, the Commission drew on both external evidence (including reports from reputable credit rating agencies, comparator financial benchmarks) and internal evidence (for instance, parties' legal documentation) to assess whether any guarantee existed and constituted a foreign subsidy. This approach supports predictability for the notifying parties, while enabling the Commission to carry out a thorough assessment.

One pattern which emerged from the case review is that when the acquirer is an investment fund, Article 5 FFCs are reported considerably more frequently than when the acquirer is not a fund. In 69% of investment fund acquirer cases (27 cases out of

39 acquirer fund cases) Article 5 FFCs were reported, compared to 12% of non-investment fund acquirer cases (6 cases). This higher frequency for investment funds appears to be driven by the capital commitments provided by the Limited Partners ('LPs') of the investment funds, which are associated with investors which have ownership links non-EU countries. These investments are seen as attributable to non-EU countries, and directly facilitating the transaction under Article 5 (1)(d) of the FSR. However, in all 27 fund acquirer cases, these LPs capital commitments were found not to constitute subsidies as they did not confer benefit because they were made "pari passu" with terms agreed with private investors or that available on the market.

Given that Article 5 is intended to identify the FFCs that are presumed to distort the internal market, and no Article 5 FFCs reported by the investment funds, to date, were found to constitute a subsidy, we consider that, there is a degree of tension between the intended scope of Article 5 and some of the FFCs, which fall under it in practice. This, however, does not imply that these types of FFCs (or any other FFCs) could still be distortive to the internal market, if found to constitute subsidies. Consistent with this conclusion, in September 2025 (but after the June 2025 cut-off for this study), the Commission clarified in the FSR Q&A 26 guidance that investments made by attributable LPs are no longer to be disclosed as Article 5 FFC, under Section 5 of the Form FS-CO, under the provided conditions. These FFCs are to be disclosed only in Table 1 of the Form FS-CO, alongside a description of the investment (including whether it is passive, pari passu with private investors, or grants control or influence). This should reduce the frequency of Article 5 FFCs disclosed by investment funds. Previously, funds often categorised these as Article 5(1)(d) given the potential for such investments to be viewed as potentially facilitating the concentration. This change should lessen the administrative burden on notifying parties and the Commission, while retaining the ability to identify potentially problematic commitments based on their description in Table 1 (e.g., those which give control, or are not made at pari passu terms). Had this adjustment been in place during the period reviewed, there would have been fewer than 5 cases in the 90-case sample where fund acquirers reported Article 5 FFCs, rather than 27 cases.

Whilst many Article 5 FFCs discussed in the sample appeared not to constitute foreign subsidies, unlimited guarantees may be among the more relevant Article 5(1) categories. Unlimited guarantees were discussed infrequently amongst the 90-case sample (fewer than 5 cases, all involving non-fund acquirers). In the study case (as discussed below), the Commission identified an unlimited guarantee which constituted a distortive foreign subsidy.

The Commission's assessment of non-Article 5 FFCs

As with Article 5 FFCs, the Commission's assessment of non-Article 5 FFCs again reflects an evidence-based and effects-driven methodology. In particular, the Commission assessed whether FFCs such as capital contributions, loans, or purchases conferred a benefit by comparing these against those available in the market or from private lenders and investors.

Similar to the Article 5 analysis, clear differences emerge depending on whether the acquirer is an investment fund or not. When the acquirer was an investment fund, non-Article 5 FFCs disclosed in the Form FS-CO were not the FFCs of the acquiring fund itself but other funds managed by the same entity, the fund's portfolio firms, or the parent entity managing the fund. Most often, these FFCs were excluded from further assessment on the basis that they were not linked to the transaction. Where portfolio firms received FFCs, the Commission usually concluded that the contributions had been absorbed at the portfolio firm level and would not be passed on to the acquiring fund or used to finance the acquisition. Similarly, FFCs granted to other

funds were generally excluded where those funds did not participate in financing the transaction and therefore could not be linked to the concentration.

When the acquirer was not a fund, non-Article 5 FFCs fell within each of the categories of Article 3(2) except for fewer than 5 cases. These consisted of loans, capital commitments, grants, tax breaks and procurement of goods and services.

With reference to tax measures, in particular under Article 3(2)(b), it is notable that in many cases, the Commission did not explicitly rule on whether these constituted foreign subsidies. Instead, they excluded them from further assessment based on the absence of a link to the concentration. A consistent approach and further clarification on the necessity of a link between an FFC and a transaction (or tender) could be useful, particularly in relation to tax measures.

Across the 90-case sample, it is notable that almost all non-Article 5 FFCs discussed fell within one of the Article 3(2) categories, with only a small number of cases referencing contributions outside Article 3(2). This suggests that Article 3(2) is relatively comprehensive in capturing the types of foreign financial contributions likely to arise.

Article 4 – Distortion in the Internal Market

At the time of the study, there were only a few cases in which foreign subsidies in the concentration were considered. The sample for the application of Article 4 of the FSR by the Commission was thus limited. The Commission has clarified that the application of Article 4 depends on the complexity of the cases and in its initial practice it could be ruled out, in cases, in which the identified subsidies had no link to the concentration. In the sample of 90 concentration cases, therefore, there were fewer than 5 cases in which a foreign subsidy in the concentration required an Article 4 assessment in addition to the in-depth investigation in the case study involving e&. Given this small sample size, the conclusions should be interpreted with caution.

The Commission's case practice indicates a two-step approach to Article 4. This is apparent both in the cases in the sample that required an Article 4 assessment and in the case study involving e&. The Commission first assesses whether a foreign subsidy is liable to improve the competitive position of an undertaking in the internal market. It then considers whether any such improvement is likely to have an actual or potential negative effect on competition in the internal market. In all cases within the 90-case sample (which excludes the in-depth case study) where a foreign subsidy in the concentration was identified, the Commission concluded at the first step that the subsidy was not liable to improve the undertaking's competitive position. The assessment, therefore, did not proceed to the second step in any cases within the sample.

By contrast, the e& case study provides the only example in the scope of this study of the Commission applying Article 4 in full. In that case, the Commission examined potential interactions between different forms of foreign subsidies. It concluded that their combined effect could allow the post-transaction entity to benefit significantly from favourable financing and to exhibit a reduced aversion to financial risk. The Commission found that this could improve the undertaking's competitive position and, in turn, negatively affect competition in the internal market. While based on a single case, this suggests that the Commission considers both individual subsidies and their combined effects when assessing whether a foreign subsidy is likely to be distortive.

Article 9 – Ex officio reviews

Article 9 provides the Commission with ex officio powers – the authority to investigate on its own initiative market situations where there are indications of possible distortive foreign subsidies. The Commission has launched three such investigations since the

introduction of the FSR which are in the public domain. These entities were active in the wind, security equipment, and nuclear sectors. As all cases are ongoing, the assessment in this chapter relies solely on publicly available information. Nonetheless, the scope of the cases and the procedural steps taken (including the use of dawn raids) suggest that the Commission utilises its ex officio tools where concerns arise.

Conclusion

This section reviews the Commission's application of the FSR in concentration cases from October 2023 to June 2025. Much of the analysis was completed in 2025 before the introduction of the FSR Guidelines in January 2026. The analysis is based on a representative sample of 90 cases and a case study of the only in-depth investigation closed within the period. Across the sample, FFCs reported by parties were rarely found to constitute foreign subsidies in the concentration, and it was even less frequent that foreign subsidies were found to distort the internal market. Patterns also differ systematically depending on whether the acquirer is a fund or not, both in the types of FFCs reported and in the Commission's assessment.

Overall, the findings suggest that the current framework is effective in identifying potentially problematic cases. Going forward, the Commission may also want to consider adjustments which might improve efficiency and reduce the burden on the parties and the Commission in implementing the regulation without limiting the Commission's ability to identify potentially distortive foreign subsidies.

While the analysis outlines the approach taken by the Commission up until June 2025, the Commission's practice in past cases is not binding for future cases and may change based on learnings and revisions to the FSR Guidelines. The FSR Guidelines will continue to be the main reference point for the interpretation of the FSR.

Review of the Commission's case practice – public procurement cases

Scope of this chapter

This chapter reviews, in line with Article 52(2) FSR, how the Commission has implemented and enforced the FSR in public procurement cases since notification obligations have entered into force in October 2023 until June 2025. The analysis covers:

1. cases with decisions to initiate an in-depth investigation,
2. cases with decisions declaring a tender irregular,
3. Article 28(1) threshold analysis across all procurement cases, and
4. a sample of 30 cases, for which no decision was adopted.

For the first category, the study examines the Commission's application of Articles 3, 4, 5, 6, 28(1) and (2) and 30 FSR. For irregularity decisions, it considers the application of Articles 28(1) and (2), 29 and 30 FSR. The findings draw on publicly available material and information provided by the Commission. Any case-specific details are based on information disclosed in the published summary notices. The analysis is conducted at an aggregate level, and any non-publicly available information is presented in a way that does not directly identify the specific case or involved parties.

Decisions to initiate an in-depth investigation

The analysis covers all three decisions to initiate an in-depth investigation, adopted by the Commission up until the study's cut-off date (June 2025), for which summary notices have been published. In each case, notifying parties withdrew after the opening of the in-depth investigation, which may indicate that concerns identified during the preliminary review correctly captured elements the FSR is designed to

deter. The initiation of an in-depth investigation itself may be sufficient to lead a bidder that may have benefitted from distortive foreign subsidies enabling the submission of an unduly advantageous tender to exit from the procedure and therefore to prevent a potential distortion of the internal market without requiring a full investigation to run its course.

Article 30 – Procedural rules

Across the three cases, the Commission met the statutory deadlines and did not use the possible extension of 10 working days under Article 30 FSR. However, a substantial portion of the assessment took place before the Article 30 deadlines formally began due to notifying parties' initially absent or incomplete filings and their misunderstandings of the scope of FSR obligations. Information requests with two-working-day deadlines, were often used to obtain information required for a complete submission. Some notifying parties requested additional time to respond, noting their need to collect and verify information across multiple entities with complex group structures. Incompleteness Decisions were a necessary tool in ensuring that the Article 30 preliminary review deadline begins only once all required elements are in place and the notifications are complete, as intended by the FSR. The need to issue information requests indicates that some economic operators may not fully understand the scope of their reporting obligations. Since the observed delays mostly arose from these gaps in their understandings, targeted guidance and training for economic operators and contracting authorities could therefore reduce early-stage bottlenecks.

Article 30(5) FSR on the timing around a decision closing an in-depth investigation was not tested due to the early withdrawals.

Article 28(1) and (2) – Notification thresholds

Across the three cases, notifying parties displayed significant and recurring misunderstandings of Article 29(1)(b) FSR, including confusion between individual and aggregate values, the mistaken belief that only distortive foreign subsidies required disclosure, and failures to include subsidiaries and holding companies. The Commission reconstructed ownership structures and identified unreported FFCs, including those granted to sister companies. Additional guidance, clearer language and training could help reduce systemic under-reporting and ease the Commission's administrative burden.

In addition, the contract values and FFC amounts in the three cases exceeded the relevant thresholds by a wide margin.

Article 5 – Foreign subsidies most likely to distort the internal market

None of the notifying parties identified any FFCs falling under Article 5 FSR. Nevertheless, the Commission found preliminary indications of potential Article 5(1)(c) and 5(1)(e) FFCs. Even when Article 5 was not explicitly mentioned, its underlying logic informed the Commission's assessment of unduly advantageous tenders. Because all three in-depth investigations were withdrawn early, there is no evidence yet on whether Article 5 FFCs, in practice, are a useful indicator for distortions or whether distortions might more systemically stem from other types of FFCs not captured by the Article 5 categories.

Article 3 – Existence of a foreign subsidy

The Commission applied Article 3 FSR in a consistent and structured manner. It identified a wide range of FFCs under Article 3(2), including grants, loans, guarantees, tax measures, public contracts and intra-group transactions and assessed benefit, specificity and attribution to a third country, in line with Article 3(1). The decisions referred to concepts such as "single economic unit". It also relied considerably on publicly available sources and had to repeatedly reconstruct factual elements such as

ownership structures and intra-group financial flows. Due to incomplete information, the Commission had to make cautious inferences, applying the 'best evidence available' approach under Article 16 FSR. More detailed guidance for economic operators on demonstrating that contracts are concluded at market terms, providing adequate detail on FFCs and substantiating commercial autonomy of subsidiaries could support more complete notifications at the initial submission stage.

Article 4 – Distortion in the internal market

The Commission applied Article 4(1) FSR indicators consistently across all decisions, focusing on whether the amount and nature of the FFCs could have improved notifying parties' competitive position, and enabled the submission of an unduly advantageous tender. Even when individual FFC details were incomplete, the Commission examined whether the potential foreign subsidies were substantial in relation to the estimated contract value and (in cases where bid information was available) whether notifying parties' offers were significantly lower than contracting authority's estimates or competing bids. It also assessed indications of intra-group financing and loss-making subsidiaries supported by State-owned parent companies. Considering these factors together, the Commission often concluded that distortions could not be excluded.

Article 6 – Balancing test

Notifying parties did not present arguments on positive effects and the Commission identified none. Moreover, the early withdrawal of the economic operators under investigation in all three cases prevented further application of Article 6 FSR in these three cases.

Decisions declaring a tender irregular

As of the cut-off date (June 2025), two decisions declaring a tender irregular have been adopted, both of which are covered in the analysis. In both cases, the Commission adopted Incompleteness Decisions. When the notifying parties subsequently refused to provide the requested information, the Commission declared the tenders irregular and instructed the contracting authorities to reject the respective offers.

Articles 29 and 30 – Procedural rules

In both cases, the procedural timelines appeared to be consistent with Articles 29 and 30 FSR. The Commission adhered to the 20-working-day limit for the preliminary review and did not use the optional 10-working-day extension. In multi-stage procedures, preliminary reviews were suspended and resumed in line with Article 30(6) and Recital 44 FSR. As the FSR does not set a fixed deadline between an Incompleteness Decision and an Irregularity Decision, the Commission's practice up to the adoption of the Irregularity Decisions was consistent with the rules laid down in Articles 29(4) and 30 FSR.

Articles 28(1) and (2) – Notification thresholds

Across both cases, the Commission confirmed that the contract values met the Article 28 thresholds. However, notifying parties' misapplication of Article 28(1)(b) contributed directly to the Commission's finding of incompleteness, as some notifying parties failed to list FFCs under Sections 7.2 and 7.3 of Annex II FSIR or omitted FFCs that exceeded the EUR 4 million threshold. The FFC amounts the Commission identified in both cases were substantially higher than the threshold.

Annex II FSIR – Types of information required by the Form FS-PP

Across the two cases, recurring shortcomings were observed in how notifying parties interpreted Annex II FSIR, including the omission of essential details regarding the received FFCs such as amounts, granting entities, purpose, conditions and use. In

some instances, notifying parties' refusals to provide requested information after information requests and Incompleteness Decisions were the determining factor in the Commission's Irregularity Decisions. The Commission also identified incorrect or misleading information in some submissions, including unjustified exceptions and objectively inaccurate statements. Four broad misinterpretations emerged, namely:

1. wrongly assuming that only FFCs received along the direct ownership line are relevant and overlooking that FFCs received beyond that line may still be examined in certain circumstances, as clarified in the draft FSR Guidelines,
2. asserting ring-fencing without substantiating evidence,
3. misreading exception rules, which only apply to purchases of goods and services, and
4. misunderstanding the relevant date for reporting amended or renewed FFCs.

These issues again underline the potential benefits of further guidance and targeted training.

Article 28(1)(a) threshold analysis across all procurement cases

Estimated contract values were analysed across all procurement cases (2,503 cases filed up to June 2025) to assess the suitability of the Article 28(1)(a) FSR threshold and the potential impact of hypothetical changes to that threshold. Due to data limitations, the suitability of the thresholds set out in Article 28(1)(b) and Article 28(2) could not be assessed.

The distribution of estimated contract values does not suggest a clear trend that would be linked to the threshold set out in the FSR. However, a comprehensive assessment would require information on the number and distribution of procurements that are not notified because they fell below the threshold.

The potential effects of increasing the contract value threshold were examined. The descriptive evidence suggests that increasing the Article 28(1)(a) FSR threshold from EUR 250 to EUR 500 million would lead to a non-negligible reduction of 41% in submission volumes.

Analysis of a sample of all procurement cases without decisions

Beyond the five decisions, the analysis also draws on a sample of 30 cases out of 2,503 notifications and declarations filed up to June 2025. The sampling approach was designed to balance the analytical relevance with a degree of representativeness. However, the sample is not statistically representative, and the findings should be interpreted with caution. Further details on the sampling methodology are provided in Section 5.4.1.

Insights from information requests

Deadlines for the reply ranged from two to eight working days, with some replies submitted late. Questions within the information requests consistently focused on ownership structures, details of notified FFCs, potentially notifiable FFCs not included in the forms, public contracts, financial statements, missing information and clarifications required to verify claimed exceptions. If the values of FFCs were not broken down individually, the Commission requested value breakdowns and also specific information for particular types of FFCs. The recurring need for information requests indicates gaps in economic operators' understanding of notification obligations and suggests that clearer guidance, training and integrating recurring

information requests' topics into the Form FS-PP may help reduce initially incomplete filings.

Insights from submissions

Across the cases in the sample, manual forms submitted were significantly longer than online forms submitted but often contained inconsistencies, such as missing sections or including sections that should not appear. Some empty notifications reported no notifiable FFCs, which may in some cases reflect exceptions that could be more clearly explained or indicate that a declaration could have been more appropriate. Section 1 of the manual form relied on ESPD cross-references, while the online form was more straightforward but lacked fields for key procurement information. Section 2 revealed notifying parties' uncertainty about distinctions between three types of entities: jointly participating economic operators, entities whose capacities were relied upon and subcontractors. Section 3 showed that FFCs granted to group entities were often missing. No notifying parties in the sample included an Article 5-type FFC and eight cases completed a Table 1 of Annex II FSIR. Sections 4 and 5 were consistently blank and Section 7 was incorrectly included in some notifications. Recurring misinterpretations and inconsistencies suggest that clearer guidance, more targeted questions and a more standardised or restricted template for manual submissions (and fields for online submissions) could be beneficial.

Conclusion

Overall, early public procurement case practice demonstrates that the Commission has applied the FSR in a structured, coherent and cautious manner. The main operational challenges arise not from the Regulation itself but from initially incomplete or incorrect submissions by economic operators. Improving guidance, clarifying wording and providing targeted training to economic operators and contracting authorities could improve initial completeness, reduce the Commission's administrative burden and enhance the functioning of the FSR in public procurement. In addition, standardising online and offline forms, and integrating targeted fields into the Form FS-PP, particularly those recurring in information requests, such as ownership structure, FFC details and evidence to justify exceptions, could help reduce the frequency of information requests and further streamline the Commission's preliminary review process.

1 Introduction

LE Europe has been commissioned by the European Commission Directorate-General for Competition (DG COMP) and the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) to conduct this study on the simplification and review of the Foreign Subsidies Regulation (FSR).

The FSR is the EU's framework for addressing distortions in the internal market caused by subsidies granted by non-EU governments or public bodies (referred to as 'third country' under the FSR). In force since 12 January 2023 and applying as of 13 July 2023, it equips the European Commission with new tools to review foreign financial contributions that may confer an unfair competitive advantage, including in concentrations, public procurement procedures, and through ex officio investigations. The Regulation complements existing EU State aid, merger control, and trade defence instruments.

Article 52 paragraph 2 of the FSR provides that the Commission shall review its practice of implementing and enforcing this Regulation. Within this framework, LE Europe has been commissioned to assess the need for the simplification and review of the Foreign Subsidies Regulation, with the objective to:

- First, identify potential aspects of the FSR and its Implementing Regulation that could be **simplified**.
- Second, **review** the Commission's practice of implementing and enforcing the FSR in particular with regard to the application of Articles 3, 4, 5, 6 and 9, and the notification thresholds set out in Article 20(3), Article 28(1) and (2) and Article 30 of the FSR. In the context of this review, the study also aims at reporting on developments in international relations regarding third countries' subsidy control systems.

The report is structured as follows:

- Section 2 presents the findings of a survey conducted with legal practitioners and contracting authorities aimed at identifying potential simplifications based on the stakeholders' experience with the FSR;
- Section 3 presents the findings from a document review aimed at identifying developments in international relations regarding third countries' subsidy control systems;
- Section 4 presents the findings from an analysis of the Commission's case practice.

2 Legal practitioners' and contracting authorities' experience with the FSR

2.1 Introduction

Surveys on concentration cases and public procurement cases have been conducted as part of this study with legal practitioners and contracting authorities. The surveys are meant to gather practical insights from stakeholders with direct experience in completing notification requirements under the FSR to help the Commission understand how the regulation works in practice, where it creates burdens, and how it could be simplified.

2.1.1 Overview

This section provides an evaluation of the practical application and substantive aspects of the FSR, based on feedback from stakeholders with direct experience of the FSR regime. The findings reveal that while the objectives of the FSR are understood, its practical application has created a significant administrative burden for businesses, which the majority of respondents feel is not justified by the Regulation's aims.

The analysis first examines the practical experience of stakeholders navigating the FSR framework (Section 2.2). While direct engagement with the Commission is generally viewed positively, the study finds that stakeholders perceive the existing guidance as insufficient (see Section 2.2.1) and report that the FSR regime significantly impacts transaction timelines and resource allocation (see Section 2.2.4). The analysis covers the effectiveness of communication channels, experience with Requests for Information (RFIs), and the overall impact on corporate administrative processes.

The analysis then assesses stakeholder perspectives on the substantive aspects of the FSR (Section 2.3). A central theme emerging from the analysis is the challenge posed by the definition of a "foreign financial contribution" ('FFC') that is perceived as overly broad (see Sections 2.3.1 and 2.3.4) and the FFC notification thresholds that are widely considered too low (see Section 2.3.3). Stakeholders also report significant difficulties in applying assessment criteria (see Section 2.3.2), completing the necessary forms (see Section 2.3.5), and utilising the available exceptions to meaningfully reduce their compliance burden (see Section 2.3.6).

Reflecting these challenges, the analysis identifies a strong consensus among stakeholders for simplifying the FSR (Section 2.4). Key proposals supported by a large majority of respondents include narrowing the scope of reportable foreign financial contributions, raising FFC notification thresholds,[1] shortening the three-year look-back period, and introducing streamlined processes such as a short-form notification for concentrations or an annual procurement notification (see Section 2.4.1).

Finally, the report presents findings from a targeted survey of contracting authorities (Section 2.5). These stakeholders report that the FSR imposes a notable administrative burden (see Section 2.5.1), frequently leading to delays in procurement schedules (see Section 2.5.2). These delays are primarily due to difficulties with incomplete or erroneous bidder filings. To address these operational frictions,

[1] This included raising the EUR 50 million FFC threshold, the EUR 250/125 million procurement contract value threshold, the EUR 4 million aggregate FFC threshold, the EUR 45 million cumulative FFC threshold, and the EUR 1 million FFC threshold. However, respondents were broadly happy with the level of the EUR 500 million EU turnover threshold.

respondents highlight a need for simplified notification forms and the introduction of mechanisms such as automatic completeness checks (see Section 2.5.4).

2.1.2 Description of the sample

Stakeholders were invited to complete one of two practitioner surveys, a concentration-specific survey and a procurement-specific survey, based on their expertise. In total, 37 responses were received for the concentration survey, and 20 for the procurement survey. A separate, targeted survey for contracting authorities received three responses. These responses provide useful indicative insights that complement the broader survey findings; but should not be interpreted as a representative view of all contracting authorities.

Concentration-survey respondents were primarily from law firms (70%), with the remainder representing in-house counsel (30%). Meanwhile, procurement-survey respondents consisted of an equal split of law firm members and in-house counsel (50% for each category).

Respondents to the concentration survey reported substantial experience with FSR notifications, with 68% having worked on more than two cases. However, experience with ex-officio investigations was more limited (24%), reflecting the fact that only two ex-officio investigations have been launched (prior to the survey fieldwork in mid-2025). The vast majority (86%) had experience with related activities such as pre-notification discussions or self-assessment of potential cases.

Similarly, respondents to the procurement survey were highly experienced, with 50% reporting involvement in five or more relevant notifications. Experience with preparing declarations, however, was more varied, with 60% reporting no experience in this specific area. These respondents had more familiarity with ex-officio cases (35%) than the concentration group, and 90% had engaged in pre-notification or self-assessment activities.

Across both practitioner surveys, respondents represented a wide variety of sectors. The most common sectors of experience included:

- electricity, gas, steam and air conditioning supply (30%);
- retail trade, except of motor vehicles and motorcycles (28%);
- manufacture of motor vehicles, trailers and semi-trailers (24%);
- manufacture of basic pharmaceutical products and pharmaceutical preparations (24%);
- financial service activities, except insurance and pension funding (24%);
- manufacture of food products (20%);
- manufacture of machinery and equipment not elsewhere classified (20%); and
- computer programming, consultancy and related activities (20%).

2.1.3 Reporting of figures

Unless explicitly mentioned, reported figures in the practitioner surveys refer to respondents from both the procurement and concentration samples. Questions that are specific to either the concentration or the procurement survey, and questions where responses meaningfully differed by these samples, are reported separately.

Similarly, reported figures are reported separately for law firm members and in-house counsels, where responses meaningfully differed. Figures are not reported separately if responses were not meaningfully differentiated.

Percentage figures are calculated using the total number of responses to the specific question, excluding non-responses, unless explicitly stated otherwise. The only general exclusion is the background questions presented in Section 2.1.2, where non-responses are presumed to equate to "No" for sectoral and case experience questions.

Tables show the percentage figures. The absolute number of responses are provided in brackets. Percentage figures for procurement-specific responses should be treated with additional caution due to the small sample size.

Results from the targeted survey of contracting authorities are reported separately in Section 2.5 and are excluded from the aggregate figures described above. Due to the small sample size, these findings present the absolute number of responses, rather than percentages, to avoid misleading statistical inferences.

Due to the relatively small sample size, the findings need to be interpreted with caution.

2.2 Practical Experience of the FSR

Unless explicitly mentioned, reported figures refer to respondents from both the procurement and concentration samples. Questions that are specific to either the concentration or the procurement survey, and questions where responses meaningfully differed by these samples, are reported separately.

Similarly, reported figures are reported separately for law firm members and in-house counsels, where responses meaningfully differed. Figures are not reported separately if responses were not meaningfully differentiated.

2.2.1 Existing guidance

Awareness of the relevant Commission guidance[2] **was high** among respondents, with only 4% of respondents indicating they were unaware or did not feel the need to consult the guidance. A small majority of stakeholders **critiqued the usefulness** of the Commission's guidance: while 41% of stakeholders found it helpful; 55% of them said it was insufficient or unclear on key points. Specific concerns of respondents were that:

- specific FAQs were not detailed enough (procurement survey respondents);
- guidance does not cover many situations [a variety of respondents];
- more frequent FAQ updates would be welcomed [a variety of respondents];
- guidance was overly broad and the terms do not correspond to actual finance definitions [a concentration-survey, in-house counsel respondent];
- no ability to sign up for alerts to changes to the FAQs [law firm members]; and
- the FAQs should be memorialised so previous iterations can be referenced, so that it is clear why stakeholders have taken specific actions [law firm members].

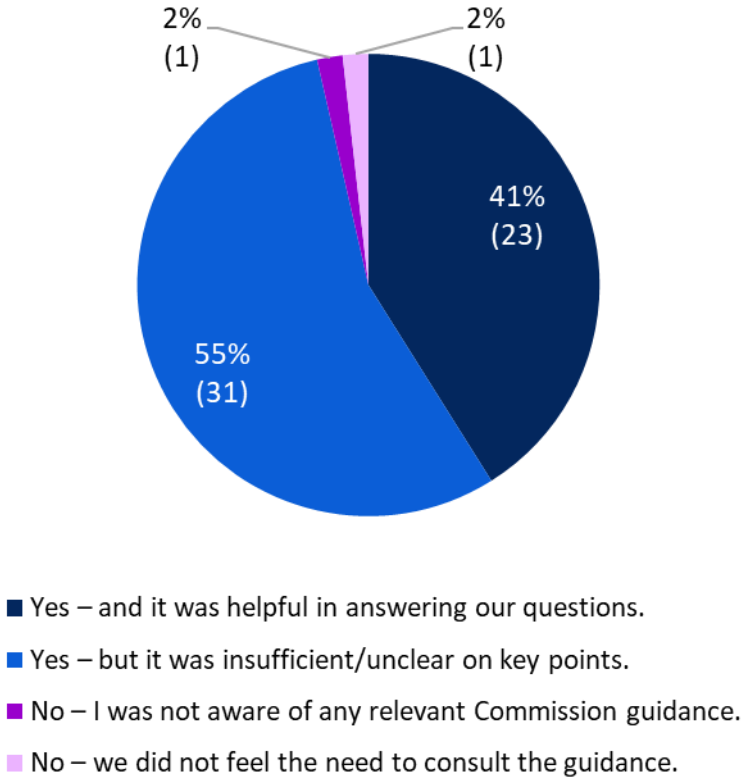
On the other hand, stakeholders praised the Commission's guidance in relation to:

- the allocation of a Case Team in advance of the case as helpful [a concentration-survey, in-house counsel respondent];

[2] For the purposes of this report, "Commission guidance" refers to the Commission's published materials, such as Q&A documents, the Commission Staff Working Document, and the FSR brief. The opinions analysed reflect survey responses collected in August and September 2025 and do not account for any subsequent updates to this guidance.

- the usefulness of the topics the Commission's FAQs addressed [a variety of respondents];
- the continued updating of the guidance documents was "very helpful" [a concentration survey respondent]; and
- the Commission's responsiveness to informal requests for guidance [a variety of respondents].

Figure 1 Awareness and helpfulness of relevant Commission guidance



Note: The original survey question was "Did you consult the Commission's published guidance (Q&A documents, Commission Staff Working Document, FSR brief, etc.) when preparing an FSR notification, during an ex officio procedure, when undertaking a self-assessment of potential cases, for pre-notification preparation and/or discussion with Commission?"

2.2.2 Communication with the Commission

While communication with the Commission was generally considered positive, respondents reported significant challenges when working with contracting authorities, citing a widespread lack of awareness regarding the new procedures.

Contacting the Commission

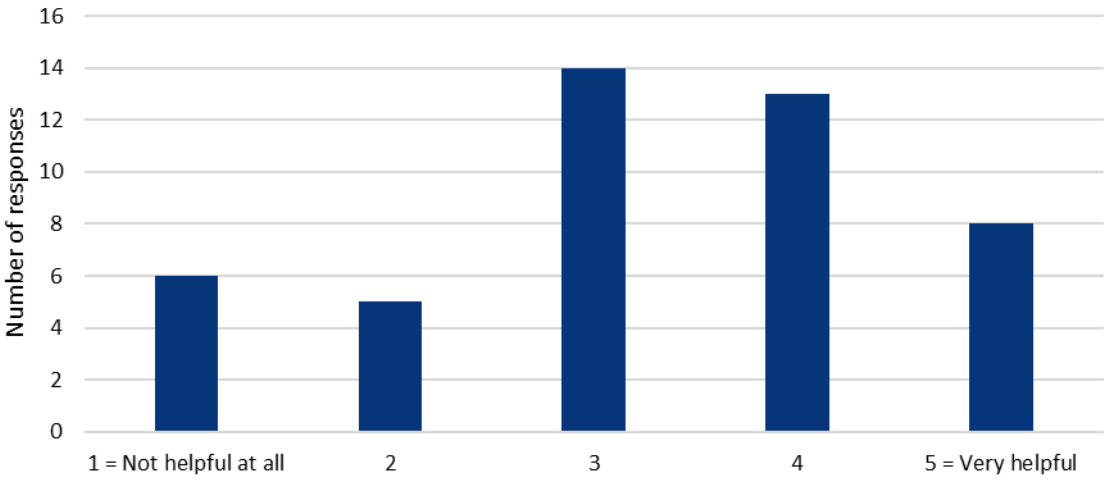
A minority of concentration-survey (39%) and a majority of procurement-survey respondents (67%) had submitted questions to the dedicated mailboxes on the DG COMP and DG GROW websites. The questions primarily concerned definitions and concepts (54% of question-submitting respondents across both surveys), procedural matters (27%), and jurisdictional matters (15%), with the remainder (2%) relating to other aspects. In-house counsel were marginally less likely to use the dedicated mailboxes (40% vs 53%). Additionally, law firm members were more likely to query definitions and concepts (78% of requests) than in-house counsel (0%), who primarily used the mailbox for jurisdictional and procedural matters.

Feedback on the **interactions with Commission officials was generally positive**. Respondents across both surveys described the engagement as "swift", "efficient", and "mostly on-point". However, some noted that **certain responses were unhelpful or were later revised**. One procurement-survey respondent noted "[DG GROW] is doing an outstanding [job] […] given limited resources". A suggestion was also made for the Commission to clarify its position on receiving general queries, as one respondent was hesitant to send them.

Working with the Commission and contracting authorities

Respondents were broadly supportive of the pre-notification phase.[3] While 46% found it helpful, 24% found it unhelpful, and 30% were neutral. **A key issue was the Commission's guidance on the level of information required**. 33% of respondents were advised to provide information in excess of the Notifying Parties' expectations, 28% were asked to provide the full information, and a further 36% received only limited guidance on the possibility of not submitting or submitting information in a summarised form in the notifications. In total, only one respondent reported that the guidance led to a significantly reduced filing burden. Law firm members were more likely to have been advised to provide information in excess of their expectations (40%) than in-house counsel (11%). However, both groups observed similar frequencies and impacts of guidance on the possibility of not submitting certain information in the filings.

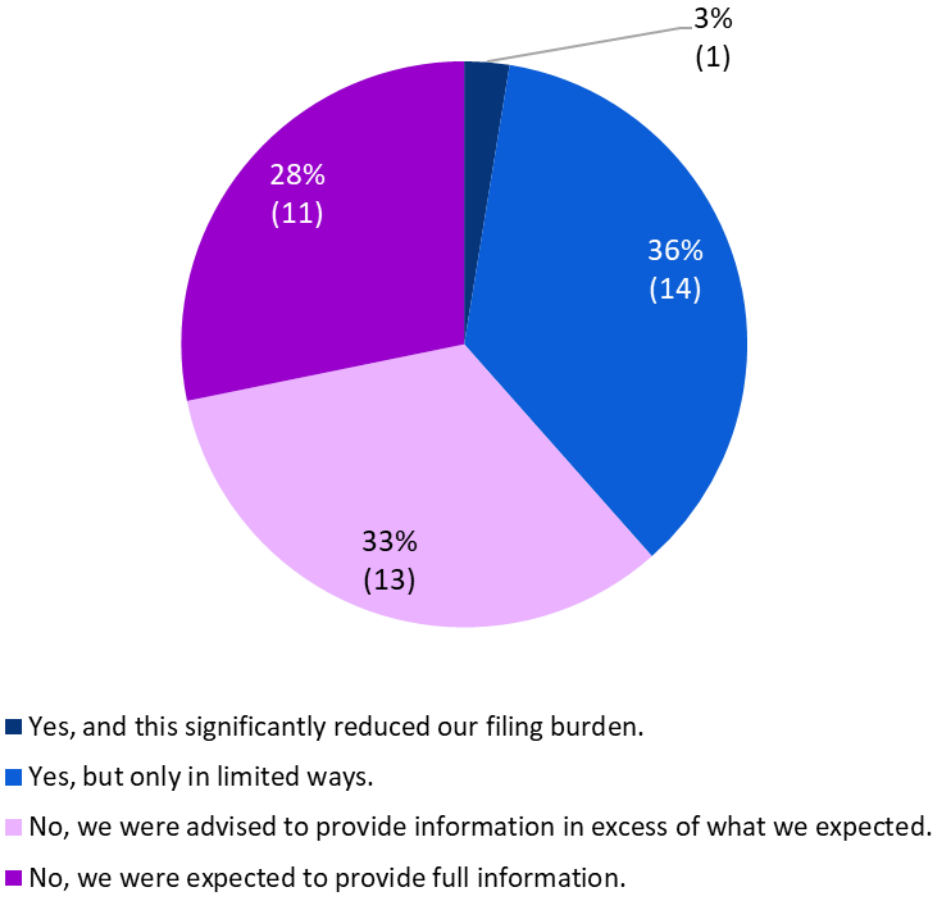
Figure 2 Helpfulness of the pre-notification phase



Note: The original survey question was "In your experience, how helpful has the pre-notification phase been in clarifying the scope and requirements of the notification?"

[3] The number of responses from procurement survey respondents was low for the pre-notification-specific survey questions. This low response rate is likely due to the nature of FSR procurement cases. Aggregated figures are presented across both survey types for these questions due to the low sample size of procurement responses and broadly comparable response patterns.

Figure 3 Impact of the Commission guidance on not providing certain information during pre-notification



Note: The original survey question was "Did the Commission services indicate during pre-notification that certain financial contributions or elements could be omitted or summarised?"

Overall, the communication with the Commission was viewed positively, with 61% of respondents providing positive feedback and only 16% offering negative ratings. Positive feedback was particularly high for:

- communication during pre-notification (69% positive);
- engagement with the case team (70% positive); and
- the Commission's responsiveness (57% positive).

Feedback on the clarity of the Commission's instructions was also more positive (46%) than negative (31%). However, it is notable that this area attracted a slightly higher proportion of negative ratings than other aspects of communication.

Table 1 Respondent experience with Commission communication

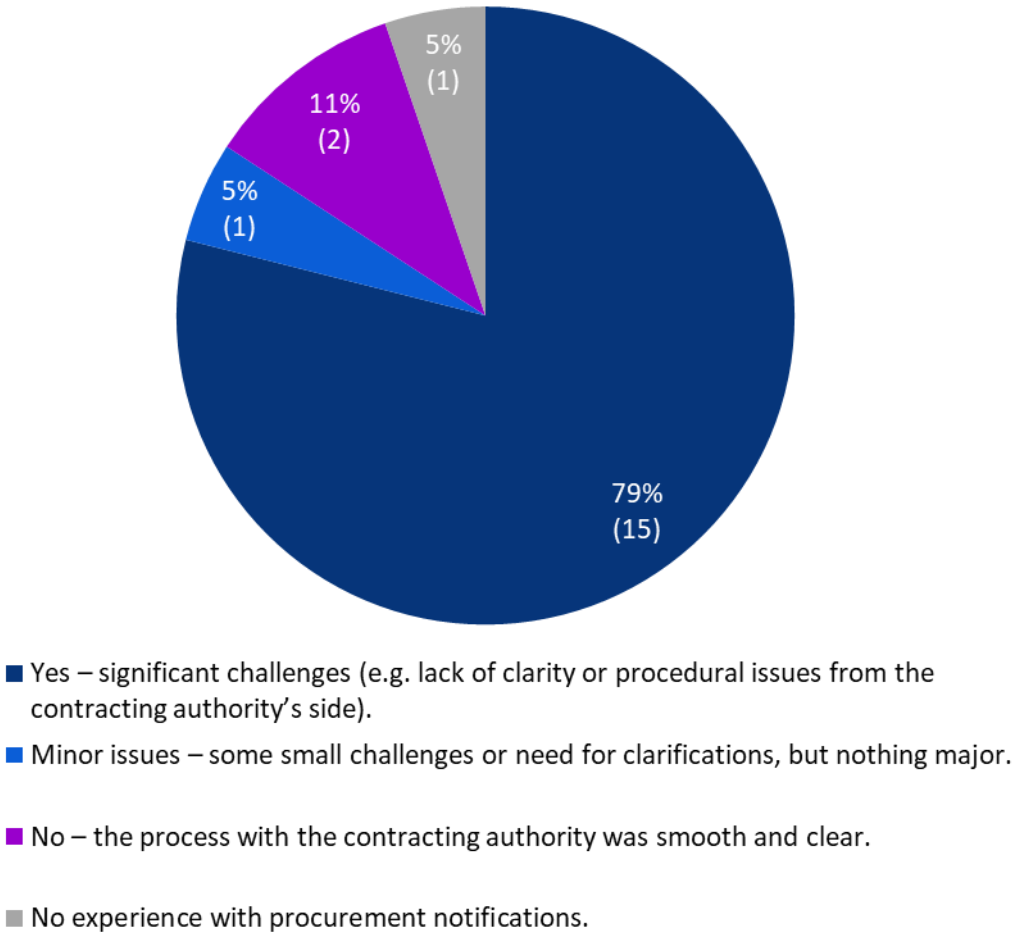
	1 = Very poor	2	3	4	5 = Excellent
Overall communication across the entire process	6% (3)	10% (5)	24% (12)	43% (22)	18% (9)
Communication during the pre-notification stage	2% (1)	5% (2)	24% (10)	50% (21)	19% (8)
Communication with the assigned case team during notification	2% (1)	9% (4)	19% (8)	49% (21)	21% (9)
Clarity of instructions and expectations	4% (2)	27% (13)	23% (11)	35% (17)	10% (5)
Responsiveness and speed of EC's replies	4% (2)	6% (3)	33% (16)	37% (18)	20% (10)

Note: The original survey question was "Please rate your experience with the Commission in each of the following dimensions:"

Procurement survey respondents reported **difficulties when working with contracting authorities** during public procurement notifications, with a large majority (79%) citing significant challenges. The primary cause was described as a "widespread" lack of awareness among authorities regarding the FSR's implementation, including its "scope", "impact", and "proper process".

This lack of knowledge led to several practical problems. A key consequence was procedural non-compliance, with some authorities reportedly unaware "of the mandatory use of the form FS-PP" and instead creating their own forms. Furthermore, some respondents noted that authorities would sometimes require a notification out of caution even when it was not necessary, simply because they "did not want to run the risk of the process being questioned". These issues "often" resulted in interpretations that conflicted with the Commission's guidance.

Figure 4 Challenges working with contracting authorities in procurement notifications



Note: The original survey question was "Have you encountered any challenges in working with contracting authorities during a public procurement FSR notification?"

2.2.3 Experience with responding to Requests for Information (RFIs)

Respondent feedback highlights that the burden of Requests for Information falls overwhelmingly on the pre-notification stage; more generally, RFI deadlines were largely considered appropriate. It should be noted that there are no statutory deadlines during the pre-notification phase.

The majority of concentration-survey respondents had experience with RFIs, which **were more common and numerous during the pre-notification stage** than during the preliminary review. For concentration cases, 92% of respondents received an RFI during a pre-notification stage; of these RFI recipients, no respondent reported that receiving an RFI was a rare occurrence. Additionally, 75% of the subgroup of pre-notification-stage RFI recipients received two or more RFIs per case during the pre-notification stage. However, **RFIs were relatively less frequently received at the preliminary review stage**; with 66% of the respondents. 48% of this subgroup of preliminary-review-stage RFI recipients reported that receiving an RFI was a rare occurrence during the preliminary review, while only 19% of the subgroup of RFI recipients received two or more RFIs per case during the preliminary review.

Table 2 Frequency of Requests for Information (RFIs) – Concentration responses

	No	**Yes – but only rarely**	**Yes – on average around 1 per case**	**Yes – on average around 2 per case**	**Yes – on average around 3 or more per case**
Have you received any Requests for Information (RFIs) in the context of an FSR case **during pre-notification**?	8% (3)	0% (0)	17% (6)	44% (16)	31% (11)
Have you received any Requests for Information (RFIs) in the context of an FSR case **during preliminary review** (Phase 1)?	34% (11)	31% (10)	22% (7)	13% (4)	0% (0)

Note: The original survey question was "Have you received any Requests for Information (RFIs) in the context of an FSR case?". The table presents only the responses of respondents with experience of concentration cases under the FSR.

RFIs were relatively less common for procurement cases across both stages**:** 60% of procurement respondents had never received an RFI during pre-notification, and 50% of procurement respondents had never received an RFI during preliminary review. Across both stages, the subgroups of RFI recipients mostly reported receiving RFIs only rarely in procurement cases: 50% of recipients during pre-notification and 63% of recipients during the preliminary review.

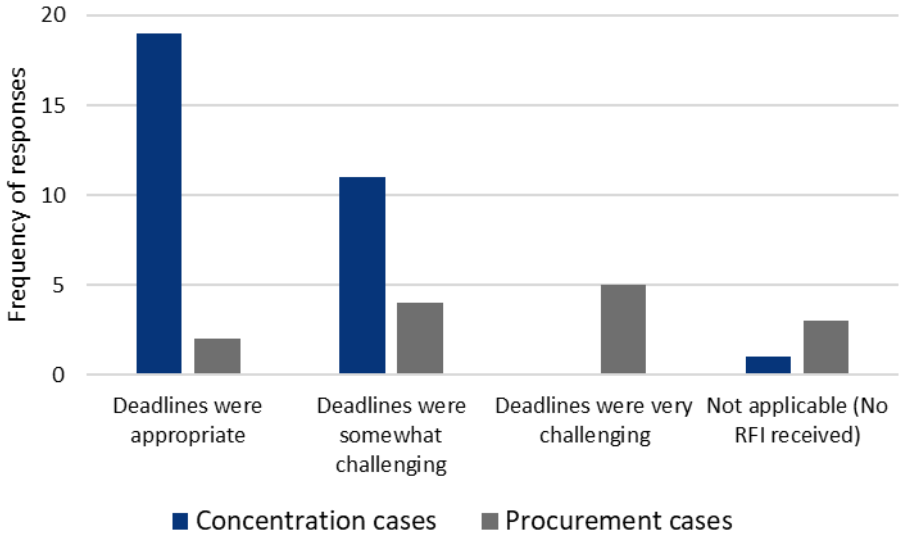
Table 3 Frequency of Requests for Information (RFIs) – Procurement responses

	No	**Yes – but only rarely**	**Yes – on average around 1 per case**	**Yes – on average around 2 per case**	**Yes – on average around 3 or more per case**
Have you received any Requests for Information (RFIs) in the context of an FSR case **during pre-notification**?	60% (9)	20% (3)	13% (2)	7% (1)	0% (0)
Have you received any Requests for Information (RFIs) in the context of an FSR case **during preliminary review** (Phase 1)?	50% (8)	31% (5)	6% (1)	6% (1)	6% (1)

Note: The original survey question was "Have you received any Requests for Information (RFIs) in the context of an FSR case?". The table presents only the responses of respondents with experience of procurement cases under the FSR.

Feedback on RFI deadlines[4] **was mostly positive for concentration cases but was more critical in procurement cases**.[5] For concentration cases, 63% of the RFI recipient subgroup considered the RFI deadlines (where applicable) were appropriate; however, a minority found them challenging (37% "somewhat challenging"). Only 18% of the RFI recipient subgroup considered RFI deadlines (where applicable) appropriate in procurement cases, with a majority finding them challenging (36% "somewhat" and 45% "very").

Figure 5 Views on RFI response deadlines



Note: The original survey question was "If you have received RFIs, what is your view of the deadlines given to respond?"

The subjects of RFIs were diverse. The most frequently cited topics across both surveys were:[6]

- the link of the FFC to the concentration (**67%** [of respondents with concentration experience only]);
- the classification of certain FFCs (**53%**);
- the information on potential additional FFCs (**40%**);
- the clarification on group structure or turnover (**40%**); and
- the market conformity of the FFCs (**40%**).

Other common subjects included benefit (**26%**), the granularity of data (**26%**), and attributability (**19%**). Respondents also provided further examples: queries on the bidding process, the funding of the transaction, the transaction process itself, and the application of exceptions.

[4] Respondents were not asked to clarify their view on RFI deadlines by different phases of FSR cases. Pre-notification cases do not have statutory deadlines, and responses are not expected to refer to this phase, but this is not explicitly captured in the survey.

[5] Respondents were queried about their overall experience with RFI deadlines. Procurement and concentration responses are not directly comparable due to the greater relative frequency of preliminary review phase RFIs for procurement cases and case-specific characteristics. Therefore, differentiated responses between concentration and procurement samples do not necessarily reflect a difference in the Commission's approach between procurement and concentration cases.

[6] Respondents were only asked for the main subject of Requests for Information received but were able to select multiple answer options.

Table 4 Main subjects of RFIs

	Yes	No
Classification of certain financial contributions	53% (30)	47% (27)
Information on potential additional FFCs not included in the submission	40% (23)	60% (34)
Market conformity of the FFC	40% (23)	60% (34)
Clarification on group structure or turnover	40% (23)	60% (34)
Benefit	26% (15)	74% (42)
Granularity or aggregation of data submitted	26% (15)	74% (42)
Attributability (i.e., whether a measure can be attributed to a foreign government), e.g., in the case of state-owned entities	19% (11)	81% (46)
Specificity	18% (10)	82% (47)
Additional information on potential distortive effects	9% (5)	91% (52)
Information relevant for the balancing test	5% (3)	95% (54)
Not applicable (No RFI received)	19% (11)	81% (46)

Note: The original survey question was "What were the main subjects of the RFIs received?"

2.2.4 Impact on administrative burden and timelines

Respondents reported that **the notification process imposes a substantial time and resource burden, with key activities often requiring more than five full-time equivalent ('FTE') days of preparation, the maximum within the survey**. Consequently, the vast majority of in-house counsel respondents had engaged external legal support, and most respondents had characterised the impact of the notification process as causing moderate to significant delays in their transaction and procurement timelines.

Time and resources

Respondents estimated that **most phases required "substantial" resources**, often exceeding five FTE days per case, excluding procurement-specific tasks. For activities applicable to most respondents, the proportion of respondents estimating a time commitment of more than five FTE days was as follows:

- 77% for the collection of information on their own FFCs;
- 75% for handling an ex officio investigation; and
- 42% for responding to Commission RFIs (with a further 16% estimating this took four to five days).

Separately, for the distinct subgroup of respondents with experience in concentration cases, **64% reported that the completion of Form FS-CO took more than five FTE days**. Results followed the pattern observed in the previous tasks asked to both participants with procurement and concentration experience.

In contrast, **most procurement-specific tasks were less resource-intensive**. A significant portion of respondents completed these tasks in two FTE days or fewer, including:

- submitting information on subcontractors' FFCs (50%);
- preparing a Declaration (60%);
- submitting information on suppliers' FFCs (46%).

These tasks were also less likely to take more than five FTE days (36%, 20%, and 38%, respectively). **The completion of Form FS-PP, however, was a notable exception**, requiring more than five FTE days for 41% of respondents, while only 29% completed it in two days or fewer.

Table 5 FTE days required for FSR notification tasks

	<1	1-2	3-4	4-5	>5
Collection of information about own FFCs	0% (0)	8% (4)	9% (5)	6% (3)	77% (41)
Responding to Commission RFIs	0% (0)	16% (7)	27% (12)	16% (7)	42% (19)
Handling an ex officio investigation	0% (0)	0% (0)	8% (1)	17% (2)	75% (9)
Completion of Form FS-CO	0% (0)	9% (3)	21% (7)	6% (2)	64% (21)
Submission of information about suppliers' FFCs	8% (1)	38% (5)	15% (2)	0% (0)	38% (5)
Submission of information about subcontractors' FFCs	7% (1)	43% (6)	14% (2)	0% (0)	36% (5)
Preparation of a Declaration	0% (0)	60% (6)	10% (1)	10% (1)	20% (2)
Completion of Form FS-PP	6% (1)	24% (4)	24% (4)	6% (1)	41% (7)

Note: The original survey question was "Approximately how many full-time-equivalent (FTE) legal and internal employee days were involved, on average, per FSR case in each of the following phases?"

Respondents' comments provided further context to the quantitative data, highlighting several key themes:

- Actual FTE days varied significantly based on case specifics, with complex cases requiring substantially more than the five-day maximum within the survey. Some comments referenced twenty or over one hundred FTE days.
- The burden was reported to be greater for in-house teams than for external counsel. This was not verifiable in the data due to the large number of respondents answering "more than five days" in both groups.
- The need to identify and select FFCs that may not impact the internal market, and the Commission reportedly raising the same questions across multiple tenders, were identified as creating additional work.
- One concentration-survey, law-firm member respondent observed that timelines had decreased as their organisation's experience with the FSR regime had grown.

Use of external support

The vast majority of in-house counsel respondents (76%) **engaged external legal support** to prepare their notification, with only 24% handling the process entirely in-house. In-house counsel respondents who had not employed external legal support were most commonly working on public procurement cases (80%), despite the overall

sample containing more concentration-specific, in-house counsel responses. A small portion of both law-firm and in-house counsel respondents (7%) had engaged economic consultants.

Legal expertise was primarily in state aid (65%) and foreign direct investment (54%). A notable portion of procurement-specific responses (35%) also used competition law specialists[7] compared to an identical 35% of procurement-specific responses using legal experts in public procurement, which was prompted. 92% of concentration-specific responses used merger-specific legal experts. Respondents also cited the engagement of local and EU law experts.

Table 6 Area of expertise of external legal support

	Yes	No
State Aid	65% (37)	35% (20)
Foreign Direct Investment	54% (31)	46% (26)
Mergers (Concentration survey only)	92% (34)	8% (3)
Public Procurement (Procurement survey only)	35% (7)	65% (13)

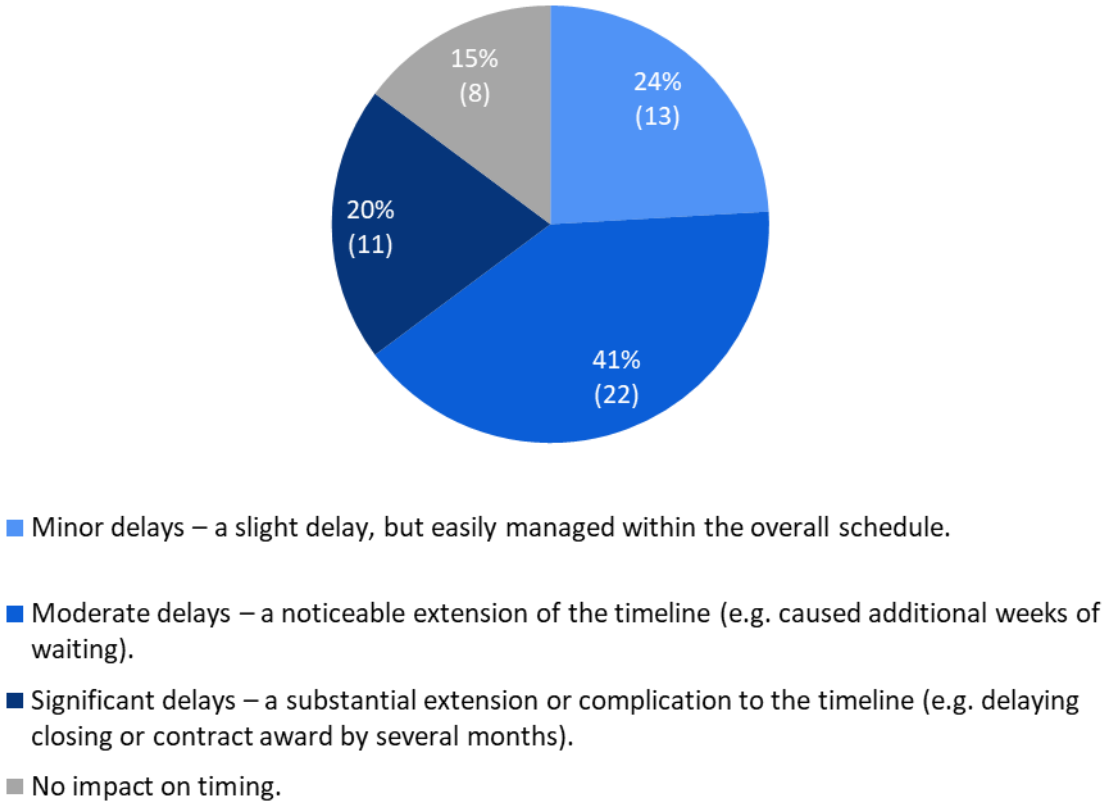
Note: The original survey question was "The FSR notification was handled by legal experts who practice in the area of:"

Assessment of impact

The **notification process was perceived to affect transaction and procurement timelines for 85% of respondents, with the impact ranging from minor to significant**. The most common outcome (41%) perceived was a moderate delay, described to respondents as a "noticeable extension" to the timeline, often amounting to several weeks. A further 24% reported minor delays, which were considered "slight" and "easily managed within the overall schedule". Conversely, 20% described significant delays, defined as a "substantial extension" that could postpone a contract award or transaction closing by several months. Only 15% of respondents reported no impact on their timelines. Whilst responses suggest that the notification process extended timelines in many instances, a portion of this additional time possibly ran concurrently with other regulatory procedures. Furthermore, these findings carry a degree of uncertainty as the data does not account for differences in internal planning, case-specific attributes, or how those schedules may have evolved over time.

[7] This was not an answer option provided to stakeholders. However, a large minority provided this information in a qualitative 'Other' box. It is possible that the actual number would have been higher if included as a distinct answer option.

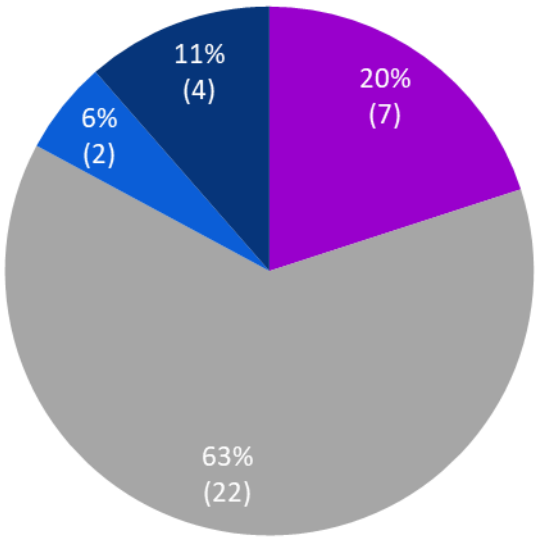
Figure 6 Impact on transaction and procurement timelines



Note: The original survey question was "How would you characterise the impact of the FSR notification process on your transaction or procurement timelines?"

A large majority of respondents (80%) with experience preparing Form FS-CO reported an **overlap with information already provided in merger control filings.** This figure includes 63% who found some duplication and 17% who identified a significant overlap (that did and did not facilitate the FSR notification). However, this **duplication did not necessarily reduce the notification burden**. Of those who reported a significant overlap, only one-third found that it actually facilitated the preparation process. Respondents explained that this is because the principal workload stems from the section of the notification form on FFCs, which is entirely new and non-duplicate information.

Figure 7 Overlap of the Form CO with Form FS-CO



- Very little – the FSR notification required mostly new or different information beyond the merger filing.
- Somewhat – there was some duplicate information, but also many additional details specific to FSR.
- Yes – there was significant overlap and this facilitated the FSR notification.
- Yes – there was significant overlap but this did not facilitate the FSR notification.

Note: The original survey question was "For transactions that required both an FSR notification and an EU Merger Control filing, did you find that preparing the FSR Form FS-CO involved significant duplication of information already provided in the merger control filing?"

2.3 Substantive Aspects of the FSR

Unless explicitly mentioned, reported figures refer to respondents from both the procurement and concentration samples. Questions that are specific to either the concentration or the procurement survey, and questions where responses meaningfully differed by these samples, are reported separately.

Similarly, reported figures are reported separately for law firm members and in-house counsels, where responses meaningfully differed. Figures are not reported separately if responses were not meaningfully differentiated.

2.3.1 Definitions

Respondents identified **significant and widespread challenges with the definition of an FFC** across every area surveyed.

Respondents were asked to rate challenges on a five-point scale. The endpoints of the scale were defined in the survey itself, where a score of one represents "no

significant challenges" and a score of five represents "extremely significant challenges". For clarity of interpretation in this report, the other scores are designated as follows: two ("minimally significant challenges"), three ("moderately significant challenges"), and four ("largely significant challenges").

The issues rated as most problematic were:

- The broad scope of the definition, covering a wide variety of measures (72% rated as an "extremely significant" challenge).
- Compliance difficulties for firms operating across multiple jurisdictions (68% rated as an "extremely significant" challenge).
- The requirement to assess indirect benefits or advantages (57% rated as an "extremely significant" challenge).

For each of these aspects, only **2%** of respondents reported minimal or no challenges.

Other aspects of the FFC definition also drew criticism. 61% of respondents found the general **lack of clarity and of precision** created extremely or largely significant challenges. Similarly, 47% cited extremely or largely significant challenges in determining **whether various complex transactions fell within its scope**. However, only a minority of respondents reported minimal or no challenges on these aspects: approximately 20% for both aspects.

Table 7 Challenges arising from the definition of an FFC

	1 = No significant challenges	2	3	4	5 = Extremely significant challenges
The definition of an FFC is generally unclear and/or imprecise	14% (8)	2% (1)	23% (13)	33% (19)	28% (16)
The definition of an FFC covers a wide variety of measures	0% (0)	2% (1)	9% (5)	18% (10)	72% (41)
The definition of an FFC requires firms to assess even indirect benefits or advantages that might arise	0% (0)	2% (1)	13% (7)	29% (16)	57% (32)
The definition of an FFC makes FSR compliance particularly challenging for firms dealing with multiple jurisdictions	0% (0)	2% (1)	7% (4)	23% (13)	68% (38)
The definition of an FFC makes it difficult to determine whether various complex transactions fall within scope	8% (4)	15% (8)	30% (16)	17% (9)	30% (16)

Note: The original survey question was "Please rate the extent to which you consider that significant challenges arise from the following aspects:"

In contrast, **other definitions within the FSR were viewed as less problematic but still caused challenges for a significant proportion of stakeholders**. Feedback on the definition of a "third country" was more evenly distributed across the five-point scale, with "no significant challenges" being the most common single response (29%). The definitions of "benefit" and "specificity" raised relatively more concern, with very few respondents (6% and 4% respectively) reporting no challenges. For these terms, responses were largely spread across the remainder of the five-point scale, with a slight concentration around the midpoint, indicating

moderate challenges. However, in-house counsel found the concept of "specificity" less clear and harder to apply than law firm members, contrasting with the uniformity of responses across the other concepts.

Table 8 Challenges arising from key FSR concepts

	Sample	1 = No significant challenges	2	3	4	5 = Extremely significant challenges
The concept provided by a "third country" is unclear and difficult to apply in practice	All	29% (16)	16% (9)	15% (8)	18% (10)	22% (12)
The concept of "benefit" is unclear and difficult to apply in practice	All	6% (3)	23% (12)	40% (21)	19% (10)	13% (7)
The concept of "specificity" is unclear and difficult to apply in practice	Law firm member	6% (2)	32% (11)	32% (11)	21% (7)	9% (3)
	In-house counsel	0% (0)	11% (2)	26% (5)	26% (5)	37% (7)

Note: The original survey question was "Rate the extent to which you consider that significant challenges arise from the following aspects:"

2.3.2 Applying assessment criteria

The limited guidance on determining when a foreign subsidy is distortive (Article 4) and on applying the balancing test (Article 6) were the most significant challenges reported by respondents. While the provisions on non-distortive subsidies were less problematic, respondents also highlighted considerable difficulties with the specific criteria for unduly advantageous tenders under Article 5.

Respondents were asked to rate challenges on a five-point scale. The endpoints of the scale were defined in the survey itself, where a score of one represents "no significant challenges" and a score of five represents "extremely significant challenges". For clarity of interpretation in this report, the intermediate scores are designated as follows: two ("minimally significant challenges"), three ("moderately significant challenges"), and four ("largely significant challenges").

Determining distortive effects (Articles 4 & 5)

Under the FSR, **Article 4 allows the Commission to assess whether a subsidy is distortive by using a non-exhaustive list of indicators**, such as its amount and nature, the company's market situation, and the purpose of the subsidy.

Article 5 lists categories of subsidies considered most likely to be distortive to the internal market. These high-risk subsidies include those granted to a failing company without a viable long-term restructuring plan, unlimited state guarantees, certain export financing measures, subsidies that directly facilitate a **concentration**

under FSR review, or those enabling an unduly advantageous bid for a public contract.

The **greatest concern regarding market distortion is related to the indicators in Article 4(1), which determine when a foreign subsidy is considered distortive.** A majority of respondents (54%) rated the limited guidance on Article 4(1) as creating extremely or largely significant challenges, while only 4% reported no significant challenges.

In contrast**, views on the categories of likely distortive subsidies in Article 5 were more divided.** Responses were distributed but mostly concentrated around "moderately challenging" (35%) and the extremes of "no significant challenges" (20%) or "extremely significant challenges" (22%).

Similarly, **the need for an effects-based judgment, hence requiring economic evidence, was also a source of concern**. While 41% of responses perceived moderate challenges, many (48%) rated this as a significant challenge.

Table 9 Challenges arising from guidance on distortive subsidies (Articles 4 & 5)

	1 = No significant challenges	2	3	4	5 = Extremely significant challenges
The indicators listed in Article 4(1) offer limited guidance as to the circumstances in which a foreign subsidy will be considered to distort the internal market.	4% (2)	14% (7)	28% (14)	36% (18)	18% (9)
The categories listed in Article 5 offer limited guidance as to the circumstances in which a foreign subsidy is most likely to distort the internal market.	20% (10)	12% (6)	35% (18)	12% (6)	22% (11)
Determining whether a foreign subsidy distorts competition requires an effects-based judgment, often involving economic evidence.	2% (1)	9% (4)	41% (19)	24% (11)	24% (11)

Note: The original survey question was "Rate the extent to which you consider that significant challenges arise from the following aspects:"

While respondents expressed mixed views on Article 5 in general, specific **concerns were raised regarding the "unduly advantageous tender" criterion in public procurement**. Respondents experienced moderately, largely, and extremely significant challenges from Article 5 providing limited guidance on applying the "enabling to submit" criterion (79%).

Respondents with procurement experience noted moderately, largely, and extremely significant challenges in determining:

- whether a tender was "advantageous" or not (92%);
- the "unduly advantageous" character of a tender (92%);
- the "undue" character of an advantageous tender (85%); and
- the deployment of evidence on factors that can justify the advantageous nature of the tender (92%).

Table 10 Challenges of the "advantageous" nature of a tender

	1 = No significant challenges	2	3	4	5 = Extremely significant challenges
Determining whether a tender is 'advantageous' or not. How the term 'advantage' is to be interpreted in this context; how might this advantage be quantified, for example.	0% (0)	8% (1)	31 % (4)	38 % (5)	23% (3)
Determining the 'unduly advantageous' character of a tender can involve assessing the extent to which various economic factors can sufficiently explain the advantageous nature of the tender.	0% (0)	8% (1)	31 % (4)	46 % (6)	15% (2)
The 'undue' character of an advantageous tender. Establishing a link between the advantage and the subsidy; and how strong the link between advantage and subsidy would have to be for the advantageous tender to be considered undue.	0% (0)	15 % (2)	23 % (3)	15 % (2)	46% (6)
Deployment of evidence on factors that can justify the advantageous nature of the tender.	0% (0)	8% (1)	25 % (3)	50 % (6)	17% (2)

Note: Original question was "Rate the extent to which you consider that significant challenges arise from the following aspects."

Respondents with procurement experience also noted **significant challenges from the approach by which the Commission will investigate whether the foreign subsidy enabled or likely enabled the economic operator to submit the unduly advantageous tender.** Mostly, respondents with procurement experience only found moderately significant challenges from:

- determining whether there is a difference between the contents of Article 5(1)(e) and Article 27 of the FSR (46%); and
- determining the extent to which a foreign subsidy enables the submission of a tender could involve assessment of a counterfactual scenario that is challenging to delineate (50%).

Assessing the impact of foreign subsidies on market concentrations was rated a moderately significant challenge by a majority (52%) of respondents with concentration experience, due to the difficulty of evaluating complex counterfactual scenarios.

Table 11 Challenges in applying Article 5 criteria

	1 = No significant challenges	2	3	4	5 = Extremely significant challenges
Article 5 provides limited guidance in applying the "directly facilitating" criterion.	6% (2)	15% (5)	26% (9)	26% (9)	26% (9)
Determining direct facilitation of market concentration could involve assessment of a counterfactual scenario that is challenging to delineate.	4% (1)	18% (5)	50% (14)	7% (2)	21% (6)
Article 5 provides limited guidance on applying the "enabling to submit" criterion.	0% (0)	13% (2)	20% (3)	47% (7)	20% (3)
Whether there is a difference between the contents of Article 5(1)(e) and Article 27 of the FSR ("unduly advantageous tender" vs "tender that is unduly advantageous").	15% (2)	15% (2)	46% (6)	15% (2)	8% (1)
Determining the extent to which a foreign subsidy enables the submission of a tender could involve assessment of a counterfactual scenario that is challenging to delineate.	0% (0)	8% (1)	50% (6)	33% (4)	8% (1)
The approach by which the Commission will investigate whether the foreign subsidy enabled or likely enabled the economic operator to submit the unduly advantageous tender in the public procurement procedure in question.	0% (0)	18% (2)	27% (3)	45% (5)	9% (1)

Note: The original survey question was "Rate the extent to which you consider that significant challenges arise from:"

Guidance on non-distortive subsidies

Under the FSR, Article 4 provides for situations where subsidies are not deemed to be distortive. A subsidy is deemed non-distortive if it is below a de minimis threshold, pursuant to Article 4(3), or is intended to repair damage from natural disasters or other exceptional occurrences, pursuant to Article 4(4).

Furthermore, Article 4(2) sets out a EUR 4 million threshold below which a subsidy is considered unlikely to be distortive.

The **guidance on categories of non-distortive subsidies (Articles 4(3) and 4(4)) was viewed as less problematic**, with responses distributed evenly across the scale. The guidance for subsidies unlikely to be distortive(Article 4(2)) was viewed even more positively: 38% of respondents reported no significant challenges for this category, with fewer responses perceiving moderate challenges. This created a majority recognising no significant or minimally significant challenges (63%).

Table 12 Challenges arising from guidance on non-distortive subsidies (Article 4)

	1 = No significant challenges	2	3	4	5 = Extremely significant challenges
The categories of non-distortive subsidies in Article 4(3) and 4(4) offer limited guidance.	21% (11)	23% (12)	31% (16)	12% (6)	13% (7)
The category of unlikely distortive subsidies in Article 4(2) ("...does not exceed EUR 4 million over any consecutive period of three years") offers limited guidance.	38% (20)	25% (13)	13% (7)	10% (5)	13% (7)

Note: The original survey question was "Rate the extent to which you consider that significant challenges arise from the following aspects:"

Positive effects and the balancing test

Under the FSR, Article 6 introduces a "balancing test". This test weighs the negative effects of a market distortion against the subsidy's positive effects on the development of the relevant economic activity.

Applying **the balancing test and demonstrating positive effects under Article 6 was a key area of concern**, with responses predominantly identifying moderately to extremely significant challenges. Significant challenges were reported regarding the clarity and application of several key concepts.

Table 13 Challenges in applying the balancing test (Article 6)

	1 = No significant challenges	2	3	4	5 = Extremely significant challenges
The notion of "Positive effects on the development of the relevant subsidised economic activity on the internal market" is unclear and difficult to apply in practice.	6% (2)	17 % (6)	28 % (10)	25 % (9)	25% (9)
The notion of "other positive effects of the foreign subsidy such as the broader positive effects in relation to the relevant policy objectives" is unclear and difficult to apply in practice.	6% (2)	11 % (4)	33 % (12)	22 % (8)	28% (10)
Demonstrating the inexistence of alternative sources of supply is challenging in practice.	0% (0)	17 % (5)	33 % (10)	23 % (7)	27% (8)
Article 6 offers no guidance on the methodology or approach to present or quantify these effects, e.g. whether qualitative descriptions suffice or economic data is expected.	0% (0)	3% (1)	33 % (12)	31 % (11)	33% (12)

Note: The original survey question was "Rate the extent to which you consider that significant challenges arise from the following aspects:"

These concerns were voiced despite most respondents having not used the balancing test, typically because their case did not involve a distortive subsidy. A few respondents dismissed the test as too vague, with one preferring remedies, if necessary. However, some who had previously invoked positive effects noted the process was highly case-specific.

Decisive influence

Finally, the **definition of "decisive influence" was largely seen as non-problematic** for the majority of respondents (**69%**), who reported minimal or no significant challenges. This trend was driven by the responses of law firm members, while in-house counsels' responses were more varied. A notable minority of in-house counsels (**47%**) considered it a significant source of difficulty, rating the definition as posing extremely or largely significant challenges.

Table 14 Challenges in determining decisive influence

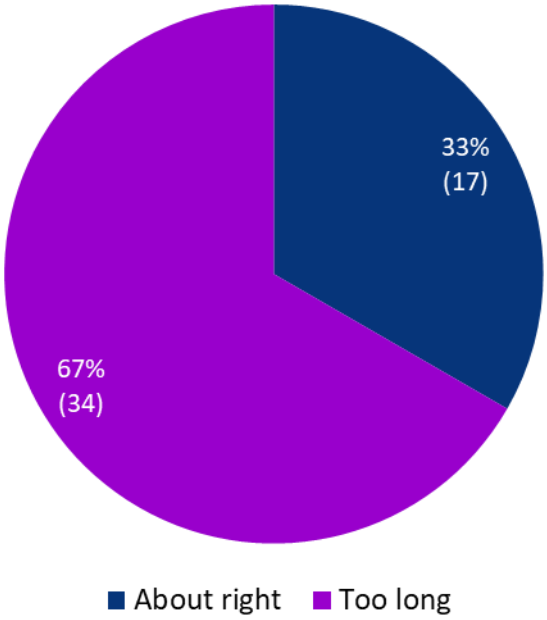
Sample	1 = No significant challenges	2	3	4	5 = Extremely significant challenges
Law firm members	54% (19)	29% (10)	9% (3)	6% (2)	3% (1)
In-house counsels	26% (5)	16% (3)	11% (2)	16% (3)	32% (6)

Note: The original survey question was "Rate the extent to which you consider that significant challenges arise from determining what constitutes decisive influence in practice, especially in joint ventures, minority stakes, or contractual arrangements."

2.3.3 Suitability of notification thresholds

Two-thirds of respondents found the **three-year accumulation period for the FFCs to be disclosed in the notification form to be too long.** The remaining third of respondents found this duration to be sufficient, while no respondent stated it was too short.

Figure 8 Suitability of the three-year FFC accumulation period



Note: The original survey question was "The period of three years, over which FFC are accumulated for the purpose of the Regulation is:". "Too short" was an available option, but it was not selected by any respondent.

Concentration thresholds in the FSR

Survey responses reveal a divergence in stakeholder sentiment regarding the two concentration-specific thresholds: **there was only limited support for major reform to the EUR 500 million turnover threshold, but respondents were more critical of the EUR 50 million FFC threshold**.

Article 20(3) of the FSR requires notification in concentration deals where:

- the acquired company, one of the merging parties, or a full-function joint venture has an **EU-wide turnover of at least EUR 500 million**, and
- the companies involved in the transaction have **received combined FFCs exceeding EUR 50 million** in the three preceding years.

The **EUR 500 million EU turnover threshold was largely viewed positively**. An overwhelming majority (95%) found it clear and easy to apply, and most **viewed turnover as an appropriate proxy** for prioritising cases (47% in agreement, 28% neutral), suggesting the threshold is relevant. A slim majority (56%) felt that the "threshold is set at about the right level"; however, 22% disagreed. Critics mostly believed the threshold was too low, with only one respondent claiming they were too high, citing problematic cases excluded from the Commission's oversight. Despite support for the current level, many respondents (44%) agreed that raising the threshold would significantly decrease the overall level of burden. There was mixed support for changing the conditions under which the threshold applies, with

suggestions including limiting its application to the acquirer's FFCs or to specific sectors or types of bidders.

Table 15 Views on the EUR 500 million EU turnover threshold

	Agree	Neither agree nor disagree	Disagree
This threshold is clear and easy to apply	95% (35)	3% (1)	3% (1)
This threshold is set at about the right level	56% (20)	22% (8)	22% (8)
This threshold is set too high	3% (1)	14% (5)	83% (29)
This threshold is set too low	20% (7)	37% (13)	43% (15)
Turnover is the most appropriate proxy for prioritising cases	47% (17)	25% (9)	28% (10)
Raising the threshold would significantly decrease the overall level of burden	44% (16)	25% (9)	31% (11)
Changing the conditions under which the threshold applies (e.g. sector-specific rules or by type of acquirer, target, bidder, tender) would significantly enhance its clarity	36% (12)	24% (8)	39% (13)
Changing the conditions under which the threshold applies (e.g. sector-specific rules or by type of acquirer, target, bidder, tender) would significantly reduce the overall burden	45% (15)	33% (11)	21% (7)

Note: The original survey question was "Do you agree with the following in relation to the EUR 500 million of EU turnover threshold?"

In contrast, **the EUR 50 million FFC threshold received far more criticism for its clarity, threshold level, and appropriateness.** 54% of respondents found the threshold was unclear or difficult to apply, and 81% thought that the threshold was set too low. A majority of respondents (62%) stated that raising the threshold would significantly reduce the overall burden created. Concentration survey respondents commented that the current threshold is an "almost meaningless" screen, as it will "nearly always" be met and has "no relevance". Changing the conditions under which the threshold applied was identified as enhancing clarity (by 47% of respondents) and significantly reducing overall burden (by 66% of respondents). There was no consensus about whether the amount of FFCs is the most appropriate proxy for prioritising cases.

Table 16 Views on the EUR 50 million FFC threshold

	Agree	Neither agree nor disagree	Disagree
This threshold is clear and easy to apply	35% (13)	11% (4)	54% (20)
This threshold is set at about the right level	11% (4)	8% (3)	81% (30)
This threshold is set too high	0%	8%	92%

	Agree	Neither agree nor disagree	Disagree
	(0)	(3)	(33)
This threshold is set too low	81% (29)	14% (5)	6% (2)
Amount of FFCs is the most appropriate proxy for prioritising cases	33% (12)	31% (11)	36% (13)
Raising the threshold would significantly decrease the overall level of burden	62% (23)	27% (10)	11% (4)
Changing the conditions under which the threshold applies (e.g. sector-specific rules or by type of acquirer, target, bidder, tender) would significantly enhance its clarity	47% (16)	29% (10)	24% (8)
Changing the conditions under which the threshold applies (e.g. sector-specific rules or by type of acquirer, target, bidder, tender) would significantly reduce overall burden	66% (23)	23% (8)	11% (4)

Note: The original survey question was "Do you agree with the following in relation to the EUR 50 million of FFCs threshold?"

Public procurement thresholds in the FSR

Articles 28(1) and 28(2) of the FSR require notification in public procurement procedures where:

- the estimated value of the procurement is at least EUR 250 million (or EUR 125 million for the lot or lots applied for), and
- the company involved received aggregate FFCs of at least EUR 4 million per third country in the three preceding years.

While **respondents found the EUR 250 million/EUR 125 million contract value threshold to be clear and its purpose appropriate,** there was widespread disagreement with its current level. A majority found it is clear and easy to apply (63%) and agreed that contract value is the most appropriate proxy for prioritising cases (65%). However, the **threshold's level was a point of major criticism.** 68% of respondents disagreed that it was set at the right level, with the near-unanimous view among this group being that it is too low. Consequently, a majority (61%) agreed that raising the threshold would significantly decrease the overall burden. It was noted that countries with centralised procurement models are especially likely to trigger this threshold, even in the absence of any additional risk of distortion. An in-house counsel respondent proposed evaluating whether problematic tenders have been mostly far above the current threshold to identify an appropriate new threshold. In contrast, changing the threshold's conditions received relatively more limited support as a solution, although respondents were still mostly supportive. Half of the respondents (50%) believed it could reduce the burden, and 47% agreed that it could enhance clarity.

Table 17 Views on the EUR 250m/EUR 125m contract value threshold

	Agree	Neither agree nor disagree	Disagree
This threshold is clear and easy to apply	63% (12)	11% (2)	26% (5)
This threshold is set at about the right level	21% (4)	11% (2)	68% (13)
This threshold is set too high	5% (1)	5% (1)	89% (17)
This threshold is set too low	58% (11)	16% (3)	26% (5)
Contract value is the most appropriate proxy for prioritising cases	65% (11)	18% (3)	18% (3)
Raising the threshold would significantly decrease the overall level of burden	61% (11)	28% (5)	11% (2)
Changing the conditions under which the threshold applies (e.g. sector-specific rules or by type of acquirer, target, bidder, tender) would significantly enhance its clarity.	47% (9)	21% (4)	32% (6)
Changing the conditions under which the threshold applies (e.g. sector-specific rules or by type of acquirer, target, bidder, tender) would significantly reduce overall burden.	50% (9)	28% (5)	22% (4)

Note: The original survey question was "Do you agree with the following in relation to the EUR 250 million /EUR 125 million contract value threshold?"

The **EUR 4 million aggregate FFCs threshold drew even more significant criticism.** Unlike the contract value threshold, respondents were **divided on its clarity**, with opinions evenly split between those who found it clear and easy to apply (47%) and those who did not (47%). However, there was a clear consensus on its level: a large majority (74%) disagreed that it was set appropriately, with the unanimous view among this group being that it is too low. Respondents argued that the **threshold is disproportionately low** for the scale of many projects, particularly as notifications are often "submitted by a consortium of different partners", making the threshold easy to cross through aggregation of FFCs. Consequently, a majority (74%) agreed that raising the threshold would significantly decrease the overall burden. In comparison, the alternative of changing the threshold's conditions received less decisive support, with 50% agreeing it could reduce the burden and 44% that it could enhance clarity.

A **majority of respondents found the rules for aggregating notifiable FFCs to be unclear and difficult to apply for several key entity types.** The specific areas where a majority reported a lack of clarity were:

- subsidiary companies without commercial autonomy (61%);
- main subcontractors and suppliers participating in the tender (67%); and
- holding companies (50%).

Table 18 Views on the EUR 4 million FFC threshold and aggregation rules

	Agree	Neither agree nor disagree	Disagree
This threshold is clear and easy to apply.	47% (9)	5% (1)	47% (9)
This threshold is set at about the right level.	11% (2)	16% (3)	74% (14)
This threshold is set too high.	0% (0)	21% (4)	79% (15)
This threshold is set too low.	68% (13)	11% (2)	21% (4)
Raising the threshold would significantly decrease the overall level of burden.	74% (14)	11% (2)	16% (3)
Changing the conditions under which the threshold applies (e.g. sector-specific rules or by type of acquirer, target, bidder, tender) would significantly enhance its clarity.	44% (8)	28% (5)	28% (5)
Changing the conditions under which the threshold applies (e.g. sector-specific rules or by type of acquirer, target, bidder, tender) would significantly reduce overall burden.	50% (9)	28% (5)	22% (4)
The rules for aggregating notifiable FFCs to subsidiary companies without commercial autonomy are clear and easy to apply.	17% (3)	22% (4)	61% (11)
The rules for aggregating notifiable FFCs to holding companies are clear and easy to apply.	28% (5)	22% (4)	50% (9)
The rules for aggregating notifiable FFCs to main subcontractors and suppliers participating in the same tender are clear and easy to apply.	17% (3)	17% (3)	67% (12)

Note: The original survey question was "Do you agree with the following in relation to the EUR 4 million aggregate foreign financial contributions threshold below which notification is not required?"

Thresholds in the FSR Implementing Regulation

Participants indicated a **preference for raising the EUR 45 million and EUR 1 million FFC threshold, which applies for the purposes of disclosing the FFCs in the Form FS-CO, rather than fundamentally reworking their application or clarity**. In-house counsel respondents were more likely to be critical of existing financial thresholds in the Implementing Regulation.

As per Annex I of Commission Implementing Regulation (EU) 2023/1441 (FSIR), the notifying parties in concentrations, which trigger an FSR filing, need to disclose only the FFCs:

- Which exceed EUR 45 million per third country over the three preceding years.
- Within that overview, include only FFCs, which individually exceed EUR 1 million.

A majority (57%) considered the EUR 45 million FFC threshold **clear and workable**, although a notable minority of in-house counsel disagreed (47%); however, there was a suggestion that it is set too low. In-house counsel responses were more likely to disagree with the current threshold level (56% compared to 33% of law firm members). In total, 22% of respondents agreed the level was "about right", and among those with a firm opinion, **the preference was unanimously for a higher**

threshold. Half of the respondents (52%) further agreed that raising the threshold would significantly decrease the overall burden, with comments highlighting it would "reduce the number of reportable FFCs". A few respondents across both surveys further commented that any threshold, under the current structure, still requires assessing "basically all the FFCs" to determine whether they cumulatively fall below the threshold, suggesting reform to the EUR 1 million threshold is more relevant. Views were more divided on changing the threshold's conditions. While 51% agreed this could also reduce the burden, there was limited consensus on whether it would enhance clarity (33% agreed vs. 22% disagreed). Suggested changes to the conditions included variable thresholds by FFC type, sector and jurisdiction [law-firm members], or exceptions for low-risk contributions [in-house counsel respondent] and contributions in countries where the company does not have significant operations [in-house counsel respondent].

Table 19 Views on the EUR 45 million FFC threshold

	Sample	Agree	Neither agree nor disagree	Disagree
This threshold is clear and easy to apply	Law firm members	66% (23)	14% (5)	20% (7)
	In-house counsel	42% (8)	11% (2)	47% (9)
This threshold is set at about the right level	Law firm members	30% (10)	36% (12)	33% (11)
	In-house counsel	6% (1)	39% (7)	56% (10)
This threshold is set too high	All	0% (0)	30% (15)	70% (35)
This threshold is set too low	All	40% (20)	36% (18)	24% (12)
Raising the threshold would significantly decrease the overall level of burden	All	52% (26)	34% (17)	14% (7)
Changing the conditions under which the threshold applies (e.g. sector-specific rules or by type of acquirer, target, bidder, tender) would significantly enhance its clarity.	All	33% (16)	42% (20)	25% (12)
Changing the conditions under which the threshold applies (e.g. sector-specific rules or by type of acquirer, target, bidder, tender) would significantly reduce overall burden.	All	51% (25)	35% (17)	14% (7)

Note: The original survey question was "Do you agree with the following in relation to the EUR 45 million foreign financial contributions threshold?"

This **sentiment for increased thresholds was even more pronounced for the EUR 1 million FFC threshold for the individual FFCs**. Similarly to the EUR 45 million threshold, law firm members were more likely to find the threshold clear and easy to apply (75%) compared to in-house counsel (42%). However, an overwhelming majority across both samples (72%) stated it **was set too low**, with only 17% finding it appropriate. These results differ from the EUR 45 million threshold, where the

pattern of threshold-level responses is differentiated between law firm members and in-house counsel. Reflecting this, 74% of respondents agreed that raising the threshold would significantly reduce the administrative burden, a view **particularly advocated by those with experience in large or private-equity cases**. Some advocates for this change argued that a higher threshold could improve the risk-based targeting of FFCs. Recommendations for an updated reporting threshold were approximately EUR 5 million, across various stakeholder categories. Changing the threshold's conditions was also seen as a way to reduce the burden (54%), but again, there was no consensus that this would improve clarity (38% agreed vs. 26% disagreed). As fewer respondents neither agreed nor disagreed, the feedback for this threshold revealed stronger and more defined opinions than for the EUR 45 million threshold, despite a comparable pattern of responses.

Table 20 Views on the EUR 1 million FFC threshold

	Sample	Agree	Neither agree nor disagree	Disagree
This threshold is clear and easy to apply	Law firm member	75% (27)	8% (3)	17% (6)
	In-house counsel	42% (8)	11% (2)	47% (9)
This threshold is set at about the right level	Law firm member	21% (7)	15% (5)	65% (22)
	In-house counsel	11% (2)	16% (3)	74% (14)
This threshold is set too high	All	2% (1)	9% (5)	89% (47)
This threshold is set too low	All	72% (38)	11% (6)	17% (9)
Raising the threshold would significantly decrease the overall level of burden	All	74% (39)	19% (10)	8% (4)
Changing the conditions under which the threshold applies (e.g. sector-specific rules or by type of acquirer, target, bidder, tender) would significantly enhance its clarity.	All	38% (19)	36% (18)	26% (13)
Changing the conditions under which the threshold applies (e.g. sector-specific rules or by type of acquirer, target, bidder, tender) would significantly reduce overall burden.	All	54% (28)	31% (16)	15% (8)

Note: The original survey question was "Do you agree with the following in relation to the EUR 1 million aggregate foreign financial contributions threshold?"

Respondents offered several specific suggestions for reforming how thresholds are applied, aiming to reduce the burden and improve targeting. A primary theme was the call for more dynamic or context-sensitive thresholds. This included proposals for variable thresholds based on the type of FFC, sector, or jurisdiction, as well as setting the threshold relative to the target's turnover in concentration cases. Another set of suggestions focused on creating exceptions to exclude low-risk contributions or those from countries where the company has no significant operations. Finally, an

implementation improvement was suggested: considering contributions at the time of payment rather than granting to better align with existing accounting systems.

2.3.4 Information requirements

Respondents reported that the scope of notification obligations is overly broad and complex, making the identification and collection of all relevant FFCs the most significant challenge. Furthermore, mechanisms intended to reduce this burden, such as declarations and waivers, were largely considered ineffective due to their practical requirements and a lack of clear guidance.

Respondents were asked to rate challenges on a five-point scale. The endpoints of the scale were defined in the survey itself, where a score of one represents "no significant challenges" and a score of five represents "extremely significant challenges". For clarity of interpretation in this report, the intermediate scores are designated as follows: two ("minimally significant challenges"), three ("moderately significant challenges"), and four ("largely significant challenges").

Suitability of public procurement notification obligations

The **scope of notification obligations, particularly its extension to subsidiaries without commercial autonomy, holding companies, and main subcontractors and suppliers, was identified as a major source of difficulty by respondents.** Overwhelming majorities rated the scope as creating significant challenges relating to confidentiality (89%), complex to delineate in practice (84%), and overly broad (68%). This complexity was attributed to a lack of clear definitions. Respondents specifically requested further guidance on the term "without commercial autonomy". The concept of a "main subcontractor" was also highlighted as problematic, as it relies on qualitative criteria, and operators are often unwilling to share the necessary sensitive information. These ambiguities were reported to have practical consequences, such as disadvantaging consortium partners with less FSR experience who struggle to meet short deadlines. Respondents also noted uncertainty regarding the treatment of sister companies and observed inconsistencies in the rule's application.

Table 21 Views on the scope of public procurement notification obligations

	Agree	Neither agree nor disagree	Disagree
This scope is overly broad.	68% (13)	21% (4)	11% (2)
It is complex to delineate in practice.	84% (16)	5% (1)	11% (2)
There are important challenges such as relating to sensitivity and confidentiality of the information to be aggregated.	89% (16)	6% (1)	6% (1)

Note: The original survey question was "The scope of the notification obligation in relation to public procurement is based on the concept of the economic operator (which is narrower than the concept of an undertaking, as applied for concentrations). However, for each tender, all FFCs to subsidiary companies without commercial autonomy, to holding companies, and to main subcontractors and suppliers, are in scope."

Respondents were critical of the system of Declarations in its current state. A majority (59%) found that **the option to submit a Declaration did not significantly reduce the burden for eligible parties**. This was partially attributed to the line-by-line reporting requirement, which an overwhelming majority (88%) considered disproportionately burdensome.

Table 22 Views on the impact and burden of Declarations

	Agree	Neither agree nor disagree	Disagree
The possibility of submitting a Declaration instead of a notification has a significant impact on reducing the burden for eligible parties.	35% (6)	6% (1)	59% (10)
The line-by-line reporting required for Declarations under Section 7.2 of the FS-PP form causes disproportionate burden.	88% (15)	0% (0)	12% (2)

Note: The original survey question was "Where none of the notifying parties have received a notifiable foreign financial contribution in line with Articles 28(1) and (2) and Article 29(1) FSR, the notifying party(ies) shall, and shall only, submit a declaration. Only Sections 1, 2, and 8 of the Form FS-PP must be filled in, as well as the specific Section 7, while the remaining sections must be left blank. Please rate the extent to which you agree with the following statement:"

Notification waivers

There was **a near-consensus among respondents that the conditions for granting a waiver for the reporting of FFCs are unclear.** This lack of clarity was evident in two key areas:

- An overwhelming majority (91%) found it unclear what constitutes "reasonable" efforts to retrieve information across global operations.
- Similarly, 95% agreed it was unclear which categories of information are "not necessary for the Commission's examination of the case".

This perception of uncertainty was compounded by the belief that waivers are rarely granted: "in our experience, waivers are exceptional". A majority of respondents (56%) stated that waiver requests were rarely accepted, while only 10% disagreed.

There was **no consensus on the actual impact of a waiver on the notification burden**. Respondents were split on the issue, with a large proportion (41%) expressing a neutral view.

Table 23 Views on notification waivers

	Agree	Neither agree nor disagree	Disagree
Requests for waivers are rarely accepted by the Commission.	56% (22)	33% (13)	10% (4)
My experience with the Commission's granting of waivers is that they significantly reduce the burden of Notifications.	31% (10)	41% (13)	28% (9)
It's unclear what efforts qualify as "reasonable" to retrieve information across global operations, especially regarding older or decentralised financial records.	91% (50)	7% (4)	2% (1)
It's unclear what categories of information will be considered "not necessary for the Commission's examination of the case".	95% (52)	2% (1)	4% (2)

Note: The original survey question was "In relation to reducing the volume and detail of information that these grounds for a waiver permit, please rate to what extent you agree with the following statements:"

Internal tracking of FFCs

A **large majority of respondents (85%) had implemented internal processes to track FFCs**. Of those who have implemented such measures, a slight majority (56%) have opted for a comprehensive tracking system over limited, informal measures. However, respondents noted that establishing a "perfect" system is difficult given the FSR's broad definitions. Generally, the key determinant for adopting a comprehensive system was not the sector, but the anticipated frequency of FSR notifications. Consequently, as respondents highlighted, entities like "private equity firms, pension funds and sovereign wealth funds tend to be more interested" in establishing such systems. The analysis of respondent backgrounds showed that most respondents from the financial sector had an internal tracking system established; however, they were no more likely to have a comprehensive system. Law firm members were more likely to have these measures (61%) than in-house counsels (40%).[8] However, of those with internal tracking systems, in-house counsels were more likely to have a comprehensive system (63%) than law firm members (15%).

Key challenges in notification preparation

The primary challenge in preparing FSR notifications was the identification and collection of relevant FFCs, with 82% of respondents finding this "extremely challenging". Additionally, the **preparation of the overview of contributions not considered most likely-distortive was rated as more challenging** (64% rated as extremely or largely challenging) than providing detailed information for those most likely to be distortive under Article 5(1) (39%). The difference between these responses was due to respondents presenting a more diverse set of views when assessing the challenge created by the detailed information provision for most likely-distortive foreign financial contributions: responses ranged from minimally to extremely challenging. Further comments across both surveys raised specific concerns about the feasibility of identifying FFCs across global groups, but welcomed "the fact that the Commission tends not to challenge" the granularity of foreign financial contribution overviews in Form FS-CO.

[8] Based on qualitative responses, it appears that when law firms state to have measures in place, they might be referring to having been involved in assisting clients implementing tracking systems or to their client having measures in place.

Furthermore, the vast majority of respondents rated the foreign subsidy assessment as moderately to extremely challenging for both:

- describing potential distortive effects (**90%**); and
- demonstrating potential positive effects (**87%**).

Concerns were raised about the limited legal certainty on how to assess distortion, with a respondent feeling the FSR Guidelines were overly broad in their definition of distortions.

Table 24 Challenges in preparing an FSR notification

	1 = No significant challenges	2	3	4	5 = Extremely significant challenges
Identifying and collecting all relevant FFCs (across the company/group and over the 3-year period).	0% (0)	0% (0)	4% (2)	14% (8)	82% (46)
Providing detailed information for FFCs that are likely to distort the market (those falling under Article 5(1) FSR – e.g. to an ailing company, facilitating an acquisition, an unlimited guarantee, etc.).	6% (2)	31% (11)	25% (9)	14% (5)	25% (9)
Preparing the overview of all other FFCs (those not falling under likely-distortive categories, including aggregating by country and ensuring thresholds like EUR 45 million/EUR 4 million per country are considered).	4% (2)	13% (7)	20% (11)	27% (15)	36% (20)
Assessing and describing the potential distortive effects of the foreign subsidies (or explaining their use/impact, including any justifications).	0% (0)	10% (3)	31% (9)	31% (9)	28% (8)
Assessing and describing the potential positive effects of the foreign subsidies for the balancing test.	0% (0)	13% (2)	33% (5)	13% (2)	40% (6)

Note: The original survey question was "How challenging did you find the following aspects of preparing an FSR notification?"

Conceptual issues with the FFC definition

A recurring theme in the feedback was that **the concept and practical application of a "foreign financial contribution" is overly broad**, creating a significant and often disproportionate reporting burden. Respondents across both surveys argued for reporting requirements to be focused on what is "strictly necessary for the Commission's substantive assessment". A key example cited was the need to report widely accessible, low-risk tax incentives (e.g., for R&D), which creates an extensive disclosure requirement. As a solution, a differentiated, risk-based approach was proposed, prioritising non-transparent or preferential agreements. The burden was highlighted as particularly acute for private equity funds, investment firms, and banks, for whom reporting becomes "almost impossible" when dealing with numerous suppliers and accounting or reporting systems not aligned with FSR requirements.

Additionally, practical, sector-specific examples of arms-length transactions were requested to improve understanding of reporting requirements. Exceptions of reporting requirements were described as "useful", but often only reduce the reporting requirement, rather than the practical collection requirements, and further complicate the application of the Regulation.

Procurement-specific experience

Finally, a specific concern was raised regarding the need for clearer guidance for contracting authorities in public procurement cases. It was reported that some contracting authorities request information that is non-compliant with the FSIR, such as data on below-threshold contributions or the use of non-standard forms. The short deadlines in procurement procedures were also noted as leaving "significant scope for error" by one in-house counsel respondent.

2.3.5 Forms FS-CO and FS-PP

Respondents were asked to rate challenges on a five-point scale. The endpoints of the scale were defined in the survey itself, where a score of one represents "no significant challenges" and a score of five represents "extremely significant challenges". For clarity of interpretation in this report, the intermediate scores are designated as follows: two ("minimally significant challenges"), three ("moderately significant challenges"), and four ("largely significant challenges").

While respondents found most administrative aspects of the notification forms straightforward, determining foreign government attributability and categorising tax advantages emerged as the most significant challenges. In contrast, there was no clear consensus on the clarity of specific definitions or the burden of providing evidence for them, with views spread across the scale.

The FSIR specifies the forms for notifications under the FSR:

- Form FS-CO: Mandated by Annex I, this form is used for the notification of concentrations (mergers, acquisitions, and joint ventures).
- Form FS-PP: Mandated by Annex II, this form is used for notifications or declarations in public procurement procedures.

Respondents' views were divided on the clarity of several aspects included within Forms FS-CO and FS-PP, with responses evenly distributed across the five-point scale. However, some marginal differences were observed. "Foreign subsidies granted to ailing undertakings" were considered marginally clearer on average, with **48%** of respondents rating their clarity as high. In contrast, the definition of an "export subsidy not in line with the OECD Arrangement on officially supported export credits" was rated as slightly more unclear, with **53%** of respondents giving this aspect a low clarity rating.

Table 25 Clarity of specific definitions in Forms FS-CO and FS-PP

	1 = Very clear	2	3	4	5 = Very unclear
Foreign subsidy granted to ailing undertakings	14% (6)	34% (15)	14% (6)	20% (9)	18% (8)
Foreign subsidy in the form of unlimited guarantees for the debts or liabilities of the undertaking	20% (9)	25% (11)	14% (6)	16% (7)	25% (11)
Foreign subsidy in the form of export subsidy not in line with the OECD Arrangement on officially supported export credits	14% (6)	9% (4)	23% (10)	30% (13)	23% (10)

Note: The original survey question was "Please rate the clarity of the following aspects of Forms FS-CO and FS-PP"

A similar pattern emerged when respondents were asked about the burden of providing evidence for these aspects, with most rating it as moderately challenging.[9] Responses were largely concentrated around the mid-point of the scale across the three aspects. However, "foreign subsidy granted to ailing undertaking" was perceived as somewhat less burdensome to evidence, although the number of responses indicating it as burdensome (four to five) is comparable. Equally, the evidence burden of "foreign subsidies in the form of export subsidy not in line with the OECD Arrangement on officially supported export credits" is believed to be somewhat more burdensome to evidence.

Table 26 Burden of providing evidence for specific foreign subsidies

	1 = Not burdensome	2	3	4	5 = Very burdensome
Foreign subsidy granted to ailing undertakings	4% (1)	39% (11)	21% (6)	18% (5)	18% (5)
Foreign subsidy in the form of unlimited guarantees for the debts or liabilities of the undertaking	11% (3)	21% (6)	29% (8)	14% (4)	25% (7)
Foreign subsidy in the form of export subsidy not in line with the OECD Arrangement on officially supported export credits	8% (2)	4% (1)	46% (11)	21% (5)	21% (5)

Note: The original survey question was "Please rate the level of burden created by the following aspects of Forms FS-CO and FS-PP"

A broad spectrum of views existed on form completion, but foreign government attributability and the categorisation of tax advantages emerged as the most difficult issues. A clear majority (63%) found **determining foreign government attributability** to be a "largely" or "extremely" significant challenge. Similarly, the **categorisation of tax advantages** was a major issue, with 63% rating it as a largely or extremely significant challenge. This difficulty was most acute within the

[9] There was a low number of procurement-related specific responses for this question, but these responses followed the same pattern as concentration-specific responses.

procurement sample, where over half (56%) rated it as an "extremely" significant challenge, compared to only 24% of the concentration sample. As one law-firm member respondent noted, this was "the main challenge regarding the identification and reporting of FFCs falling outside of the scope of Article 5".

In contrast, several other aspects of form completion were considered far less challenging. Most respondents reported limited difficulties in the following areas:

- Categorising most other FFC types: This included direct grants (**61%**), equity interventions (**60%**), debt write-offs (**57%**), loan/financing instrument/repayable advances (**55%**), and financial guarantees (**52%**).
- Providing general administrative information: This included grouping contributions by country (**63%**), identifying the granting entity (**59%**), and providing estimated aggregates (**61%**).

However, categorising direct grants and loans was notably more demanding for procurement respondents, although procurement respondents still mostly reported only limited difficulties. 33% of procurement respondents reported extremely or significant challenges in categorising both direct grants and loans, respectively, exceeding the respective rates of 13% and 23% amongst concentration-survey respondents.

Finally, for some aspects**,** there was no clear consensus on the level of difficulty. Respondents' views were near-uniformly split across the five-point scale on the challenge of stating the purpose of foreign financial contributions. One comment by a law-firm member noted that this is particularly difficult in non-mature jurisdictions or for certain categories of contributions. These difficulties were compounded by the need for specialist non-EU and EU knowledge to estimate contributions, which added to the reporting burden.

Table 27 Challenges in completing notification forms

	1 = No significant challenges	**2**	**3**	**4**	**5 = Extremely significant challenges**
Determining whether a measure is attributable to a foreign government (e.g., in the case of state-owned entities)	2% (1)	16 % (9)	20 % (11)	23 % (13)	39% (22)
Grouping FFCs by third country	36% (20)	27 % (15)	11 % (6)	13 % (7)	13% (7)
Categorising FFCs as direct grant	30% (16)	31 % (17)	13 % (7)	15 % (8)	11% (6)
Categorising FFCs as loan/financing instrument/repayable advances	30% (16)	25 % (13)	19 % (10)	9% (5)	17% (9)
Categorising FFCs as tax advantage	15% (8)	9% (5)	13 % (7)	29 % (16)	35% (19)
Categorising FFCs as guarantee	28% (14)	24 %	20 %	12 %	16% (8)

	1 = No significant challenges	2	3	4	5 = Extremely significant challenges
		(12)	(10)	(6)	
Categorise FFCs as risk capital instrument	21% (9)	19 % (8)	26 % (11)	16 % (7)	19% (8)
Categorise FFCs as equity intervention	28% (13)	32 % (15)	15 % (7)	9% (4)	17% (8)
Categorise FFCs as debt write-off	21% (10)	36 % (17)	17 % (8)	9% (4)	17% (8)
Categorise FFCs as contributions provided for the non-economic activities of an undertaking	16% (7)	16 % (7)	25 % (11)	20 % (9)	23% (10)
Stating the purpose of the FFCs	18% (10)	25 % (14)	24 % (13)	15 % (8)	18% (10)
Identifying the granting entity of the FFC	37% (20)	22 % (12)	20 % (11)	6% (3)	15% (8)
Providing estimated aggregate of the FFCs granted by the same third country (in ranges: EUR 45 – 100 million, EUR 100 – 500 million, EUR 500 – 1,000 million, more than EUR 1,000 million)	41% (22)	20 % (11)	15 % (8)	15 % (8)	9% (5)

Note: The original survey question was "Rate how challenging each of the following are:"

Table 28 Challenges in completing notification forms (differentiated by survey type)

	Sample	1 = No significant challenges	2	3	4	5 = Extremely significant challenges
Categorising FFCs as direct grant	Concentration	39% (14)	31% (11)	8% (3)	11% (4)	11% (4)
	Procurement	11% (2)	33% (6)	22% (4)	22% (4)	11% (2)
Categorising FFCs as loan/financing instrument/repayable advances	Concentration	37% (13)	26% (9)	14% (5)	9% (3)	14% (5)
	Procurement	17% (3)	22% (4)	28% (5)	11% (2)	22% (4)
Categorising FFCs as tax	Concentratio	16%	11%	14%	35%	24%

	Sample	1 = No significant challenges	2	3	4	5 = Extremely significant challenges
advantage	n	(6)	(4)	(5)	(13)	(9)
	Procurement	11% (2)	6% (1)	11% (2)	17% (3)	56% (10)

Note: The original survey question was "Rate how challenging each of the following are:"

2.3.6 Exceptions

Respondents found **the current exceptions, particularly those related to tax, to be unclear and difficult to apply in practice.** While the exception for goods and services at market terms was perceived as significantly reducing the overall burden, there was a strong consensus that changes are needed to enhance the clarity and impact of all key exceptions.

The FSR and its Implementing Regulation clarify that certain financial flows are not considered notifiable FFCs for the purposes of the FSR filings, including:

- 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. If these measures are limited, for example, to certain sectors, regions or (types of) undertakings, they have to be included.
- Application of tax reliefs for avoidance of double taxation in line with the provisions of bilateral or multilateral agreements for avoidance of double taxation, as well as unilateral tax reliefs for avoidance of double taxation applied under national tax legislation to the extent they follow the same logic and conditions as the provisions of bilateral or multilateral agreements.
- Provision/purchase of goods/services (except financial services) at market terms in the ordinary course of business, for example the provision/purchase of goods or services carried out following a competitive, transparent and non-discriminatory tender procedure.
- FFCs below the individual amount of EUR 1 million.

Respondents were mostly split by respondent type on whether the **exception for the provision of goods and services** made at market terms was clear and easy to apply. Concentration respondents typically agreed, while procurement respondents mostly disagreed. However, respondents uniformly significantly agreed that it decreases the overall level of burden (83% agreed), suggesting changes to the exception to improve its clarity (57% agreed) and reducing the overall burden (49% agreed). Comments requested additional guidance on determining if a contract without a bidding process is in line with market terms, and others called for expanding the exceptions to "standard financial transactions".

Table 29 Views on the exception for goods and services at market terms

	Sample	Agree	Neither agree nor disagree	Disagree
This exception is clear and easy to apply	Concentration	46% (16)	20% (7)	34% (12)
	Procurement	26% (5)	21% (4)	53% (10)
This exception has a significant impact on decreasing the overall level of burden.	All	83% (45)	9% (5)	7% (4)
Changes to this exception could significantly enhance its clarity.	All	57% (29)	27% (14)	16% (8)
Changes to this exception could significantly reduce the overall level of burden.	All	49% (25)	31% (16)	20% (10)

Note: The original survey question was "There are exemptions for FFCs in the context of the provision/purchase of goods and services (except for financial services) which are made at market terms in the ordinary course of business."

Respondents mostly disagreed that the **exception for general deferrals** (of tax payments, social security contributions, tax amnesties and tax holidays, as well as normal depreciation and loss-carry forward rules) was clear and easy to apply (55%) or significantly decreased the overall level of burden (43%). Regarding public procurement, respondents were more likely to disagree with both statements (69% and 56% respectively) than concentration respondents (48% and 35%). However, both types of respondents agreed that changes to the exception could enhance its clarity (64%) and reduce its burden (59%), with only a few dissenters (5% for each). Respondents asked for further clarity, including "concrete examples of exempt and non-exempt measures". Some argued that specificity concepts are hard concepts to apply, given recent EU case law, and that the excepted tax measures should be less narrow to meaningfully reduce burdens.

Table 30 Views on the exception for general tax deferrals

	Sample	Agree	Neither agree nor disagree	Disagree
This exception is clear and easy to apply.	Concentration	32% (10)	19% (6)	48% (15)
	Procurement	13% (2)	19% (3)	69% (11)
This exception has a significant impact on decreasing the overall level of burden.	Concentration	35% (11)	29% (9)	35% (11)
	Procurement	19% (3)	25% (4)	56% (9)
Changes to this exception could significantly enhance its clarity.	All	64% (28)	32% (14)	5% (2)
Changes to this exception could significantly reduce the overall level of burden.	All	59% (26)	36% (16)	5% (2)

Note: The original survey question was "There are exemptions for general deferrals of tax payments and social security contributions, tax amnesties and tax holidays as well as normal depreciation and loss-carry forward rules. However, if these measures are limited to certain sectors, regions or (types of) companies, they must be reported under the Overview Table."

Respondents were split on whether the **exception for tax reliefs** to avoid double taxation is clear and easy to apply (44% disagreed and 39% agreed). However, many disagreed that the exception significantly reduced the overall level of burden (45%), noting it required a "detailed assessment of relevant double taxation agreements". Many agreed that changes to the exception could significantly enhance its clarity (40%) and reduce the overall level of burden (38%), with the remaining responses largely neither agreed nor disagreed. Again, respondents requested further examples as guidance.

Table 31 Views on the exception for double taxation relief

	Agree	Neither agree nor disagree	Disagree
This exception is clear and easy to apply.	39% (16)	17% (7)	44% (18)
This exception has a significant impact on decreasing the overall level of burden.	20% (8)	35% (14)	45% (18)
Changes to this exception could significantly enhance its clarity.	40% (16)	45% (18)	15% (6)
Changes to this exception could significantly reduce the overall level of burden.	38% (15)	48% (19)	15% (6)

Note: The original survey question was "There are exemptions for tax reliefs for avoidance of double taxation in line with provisions of bilateral or multilateral agreements on avoidance of double taxation, as well as unilateral tax reliefs for avoidance of double taxation applied under national tax legislation to the extent they follow the same logic and conditions as the provisions of bilateral or multilateral agreements."

Some stakeholder comments requested fundamental change to the FSR regime, to entirely exempt FFC notification requirements: focusing on reporting only foreign

subsidies directly, or removing the notification requirement entirely. Other less fundamental suggestions included:

- exceptions for EEA countries, given their identical state aid regime [a law-firm member];
- exceptions for industry-wide practices [an in-house counsel respondent];
- exceptions for tenders with one bidder due to intellectual property rights [a procurement-survey, in-house counsel respondent];
- exceptions for generally available tax advantages [a law-firm member];
- exceptions for FFCs in countries the company does not primarily operate within (country of origin or turnover threshold) [an in-house counsel respondent];
- exceptions for a list of "safe" (EU-equivalent) countries [a law-firm member];
- exceptions for FFCs that the Commission historically has found do not create a significant risk of distortion ("low-risk") in the internal market [a variety of respondents]; and
- exceptions for "ordinary" banking and finance activities [a variety of respondents].

2.4 Views on simplification and other adjustments

Respondents were asked to rate challenges on a five-point scale. The endpoints of the scale were defined in the survey itself, where a score of one represents "no significant challenges" and a score of five represents "extremely significant challenges". For clarity of interpretation in this report, the intermediate scores are designated as follows: two ("minimally significant challenges"), three ("moderately significant challenges"), and four ("largely significant challenges").

Unless explicitly mentioned, reported figures refer to respondents from both the procurement and concentration samples. Questions that are specific to either the concentration or the procurement survey, and questions where responses meaningfully differed by these samples, are reported separately.

Similarly, reported figures are reported separately for law firm members and in-house counsels, where responses meaningfully differed. Figures are not reported separately if responses were not meaningfully differentiated.

2.4.1 Overall views

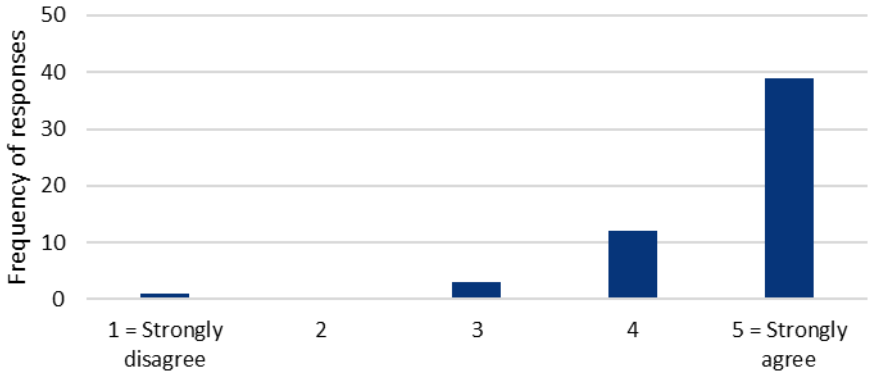
Respondents highlighted that **the wording of the FSR and Implementing Regulation was generally difficult to interpret**. Additionally, as past cases are not publicly accessible, there is no "source of interpretation" to guide stakeholders. However, specific references to aspects requiring clarification were limited and not consistent between responses. These included:

- Sections 1.2-1.5 or 2.1-2.4 of Form FS-PP;
- Section 3.1., 3.1.1. of Form FS-PP, and Section 5.1. and 5.1.1. of Form FS-CO;
- Article 28(1)(b) [a procurement survey respondent];
- Article 29(3) [a procurement survey respondent];
    - Particularly its discretionary nature in undermining consistent enforcement
- Article 32 (1) of the FSR [a procurement survey respondent];
- "Subsidiary without commercial autonomy" [a procurement survey respondent];

- "Main supplier" [a procurement survey respondent]; and
- "Sufficient indications" [a procurement survey respondent].
    - This definition is reported by the stakeholder to be interpreted differently between DG GROW and DG COMP.

There was an **overwhelming consensus among respondents that the definition of an FFC should be narrowed or clarified** to "reduce the reporting of clearly non-distortive support". The strength of this sentiment was clear, with 71% of respondents "strongly agreeing" with the statement. With the majority of remaining respondents "somewhat agreeing", only a single respondent disagreed.

Figure 9 Agreement on narrowing the definition of an FFC



Note: The original survey question was ""The definition of a 'foreign financial contribution' should be narrowed or clarified to reduce reporting of clearly non-distortive support." Please rate the above statement."

Respondents, when queried, suggested that the definition of an FFC "should be defined exhaustively" in the FSR and not left "open-ended". A group of respondents instead proposed focusing only on foreign subsidies, removing the FFC concept. Additionally, many felt notification requirements should not include any FFCs received in the "ordinary course" of business dealings or "arms-length" agreements. One in-house counsel respondent proposed excluding all contributions below a clear materiality threshold, providing more examples in the Commission's guidance, and clarifying the treatment of indirect benefits. Others felt that, given historic work on previous cases to ensure alignment with FSR requirements, further changes would "induce another increase in the already high administrative burden".

The FSR mandates a look-back period for disclosing FFCs in the FSR filings.

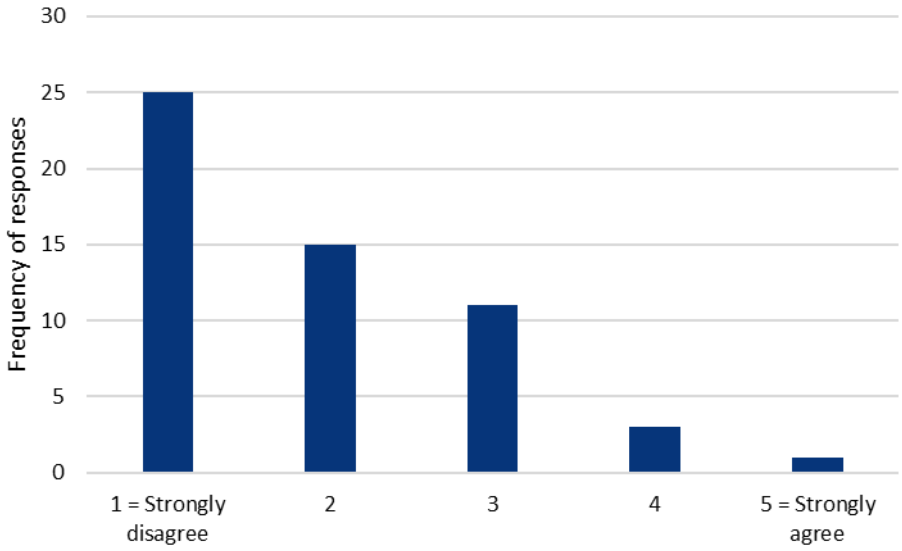
This period covers the three years preceding the conclusion of the merger agreement, the announcement of a public bid, the acquisition of a controlling interest, or the submission of a tender.

A clear majority (81%) also agreed with shortening the three-year look-back period for reporting, with 58% of total respondents preferring a one-year look-back period. One procurement survey respondent stated data collection should be aligned with "corporate financial reporting periods (e.g. annual or bi-yearly)".

Most (73%) did not feel that the objectives of the FSR justified the compliance burden that is placed on businesses. 71% were ultimately **unsatisfied with the FSR's notification procedures as they stand today**. A further comment from an in-house counsel respondent asked for a "rethink whether the current notification system is best suited to remedy the concerns it seeks to address", adding it "remains unclear to me how helpful the notification system" has

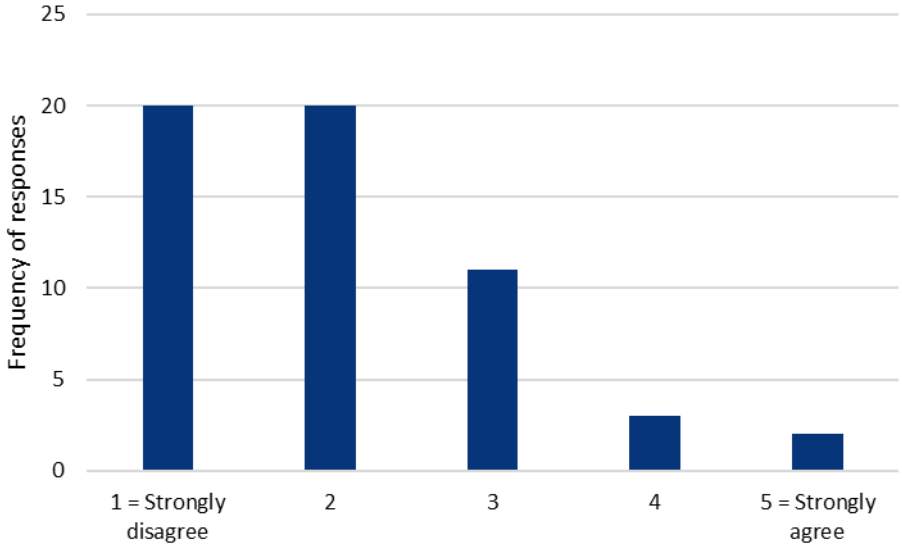
been at identifying issues. There were concerns that companies have chosen to "shy away from activities in the EU … more due to bureaucracy … than proven distortions". Another requested a procurement system where bidders update their information once, and this information provided is valid for any bid in the subsequent year. Additionally, there was concern that Commission resources were not being efficiently allocated because of the burden created by the FSR notification process.

Figure 10 Views on whether FSR objectives justify the compliance burden



Note: The original survey question was ""The objectives of the FSR (preventing distortions from foreign subsidies in the internal market) justify the compliance burden placed on businesses." Please rate your agreement with this statement."

Figure 11 Respondent agreement regarding satisfaction with FSR notification procedures



Note: The original survey question was ""I am satisfied with the FSR's notification procedures as they stand today." Please rate the above statement."

Respondents were asked for any closing comments or suggestions they had. These included:

- The Commission should allow companies to close the transaction before the 25-working-day deadline has expired if they state that they will not initiate an in-depth investigation, which current legislation precludes. [Concentration survey respondents]
- Expressly excusing small and medium-sized enterprises from public-procurement-specific FSR obligations. [A procurement survey respondent]
- Facilitate sharing of confidential FFC information with the Commission directly, in the case of bidding consortia for public tenders. [A procurement survey respondent]
- A streamlined process for simple cases. [A concentration survey respondent]
- Removal of the ability to request notifications below the established thresholds. [A procurement survey respondent]
- Introduction of a database of filings for procurement tenders, similar to that in place for concentrations. [A procurement survey respondent]
- Submission of procurement notifications directly to the Commission to reduce chances for duplicative requirements by contracting authorities and give the notifying parties certainty of the submission date, and hence the date by which the preliminary review ends. [A procurement survey respondent]

2.4.2 Views on the concentration case process

Respondents provided comments on sector-specific concentration thresholds or exceptions, in addition to a variety of concentration-specific changes to simplify the FSR process, favouring in particular the introduction of a short form FS-CO.

Favoured changes involved directly reducing workloads, through the introduction of a **short form FS-CO** (97% support) and **by posing fewer requests for information** (60% support). Additionally, **the clarification of key concepts** (such as "benefit" and "distortion") received strong support from respondents (68% support), while shortening deadlines (13% support) and earlier acceptance of commitments (21% support) were not favoured as a method to simplify the FSR process.

Table 32 Support for potential simplifications to the concentration process

Response	Yes	No
By shortening deadlines	13% (3)	87% (20)
By posing fewer RFIs	60% (18)	40% (12)
By accepting commitments earlier	21% (5)	79% (19)
By clarifying key concepts (e.g. "benefit", "distortion")	68% (21)	32% (10)
By introducing a Short Form FS-CO (similar to a Short Form-CO for merger control)	97% (33)	3% (1)

Note: The original survey question was "In your experience, how could a simplification of the FSR process be achieved?"

Respondents were split equally on a proposal for sector-specific thresholds or exceptions. Some respondents argued that sector-specific exceptions could reduce the

administrative burden considerably, especially within transactions involving private equity and investment funds. Others believed that sector-specific exceptions would overcomplicate assessment and create further uncertainty about the delineation of sectors.

Private Equity and Investment Fund exceptions

Private equity and investment fund exceptions reflected a particular point of concern for respondents. Respondents **found the requirements burdensome and difficult to meet**, showing support in proposals for simplification.

The FSIR provides for specific exceptions concerning the disclosure of the FFCs of investment funds, under certain conditions. One of the FSR simplifications offered to investments funds is the so-called "fund-by-fund" exemption, which allows the acquiring fund to limit the scope of their FFCs disclosure to only the fund(s) acquiring the target, while excluding other funds under common management by the same investment fund, if:

- The acquiring fund is subject to rules (such as the EU's Directive on Alternative Investment Fund Managers) that prevent the flow of information and benefits to other funds under common management.
- Economic and commercial transactions between the acquiring fund's portfolio and the other funds' portfolios are non-existent or limited.

Exceptions had support from most respondents; however, a need for further changes was identified. **Most respondents (56%) identified a significant decrease in the overall level of burden from existing investment fund exceptions**. However, a majority of respondents (64%) stated that these exceptions are unclear or difficult to apply, with 71% agreeing that changes to these exceptions could significantly enhance its clarity. A further 64% agreed that changes could significantly reduce the overall level of burden created by these exceptions. Stakeholder comments emphasised the need for guidance, including the definition of "limited economic and commercial transactions", "third-country legislation which is equivalent to Directive 2011/61/EU". Additionally, respondents asked for an extension of these exceptions to other investors to ensure equal treatment, such as pension funds.

Table 33 Views on the exception for investment funds

	Agree	Neither agree nor disagree	Disagree
This exception is clear and easy to apply.	16% (4)	20% (5)	64% (16)
This exception has a significant impact on decreasing the overall level of burden.	56% (14)	16% (4)	28% (7)
Changes to this exception could significantly enhance its clarity.	71% (17)	29% (7)	0% (0)
Changes to this exception could significantly reduce the overall level of burden.	64% (16)	36% (9)	0% (0)

Note: The original survey question was "There are exemptions in case of a concentration by an investment fund or by a legal entity controlled by or via an investment fund, for financial contributions granted to other investment funds managed by the same investment company but with a majority of different investors measured according to their entitlement of profit (or granted to portfolio companies controlled by these other funds) provided that (i) the investment fund is subject to Directive 2011/61/EU or equivalent third-country legislation, and (ii) there are no or limited economic and commercial transactions (e.g. sale of assets, loans, credit lines, guarantees, ownership in companies) between the investment fund and other investment funds managed by the same investment company."

All of the following questions, within the remainder of this section, were answered by respondents with experience of cases involving private equity or investment funds.

There was no consensus amongst respondents with relevant experience[10] about the fund by fund exception; however, there was support for changes to the conditions under which the exceptions apply, particularly with respect to the majority-different-investors-across-funds exception. Experienced respondents mostly disagreed that this exception was workable and appropriate, with 58% of respondents disagreeing and 37% agreeing.[11] There was no difference in the characteristics of experienced respondents who agreed or disagreed. Most experienced respondents (63%) agreed that the condition for "a majority of different investors across funds" is overly burdensome to document. Experienced respondents agreed that allowing anonymised or aggregated data on fund investors would make the exception's application more proportionate and manageable (79%) and would be a positive development in maintaining confidentiality (85%). 53% believed the condition for "no or limited transactions between funds under common management" had been interpreted too narrowly by the Commission, and a further 41% neither agreed nor disagreed with the statement.

[10] Only stakeholders with experience working on a case involving private equity or investment funds were invited to answer the following questions. These stakeholders are hereafter referred to as "experienced respondents" for the relevant questions within this section.

[11] "Agreeing" is the assumed designation given to respondents in this analysis who answer four or above on the five-point scale. "Disagreeing" is the assumed designation given to respondents in this analysis who answer two or below on the five-point scale.

Table 34 Experienced respondents' views on the investment fund exception

	1 = Strongly disagree	2	3	4	5 = Strongly agree
The exception under Article 20(4) FSR for acquiring investment funds with separate ownership structures is workable and appropriate.	32% (6)	26% (5)	5% (1)	26% (5)	11% (2)
In your experience, the first condition for the investment fund exception (majority different investors across funds) is overly burdensome to document (e.g. requiring disclosure of LP-level data).	0% (0)	16% (3)	21% (4)	11% (2)	53% (10)
"Allowing anonymised or aggregated data on fund investors (rather than LP-by-LP disclosure) would make the application of the exception more proportionate and manageable."	0% (0)	5% (1)	16% (3)	5% (1)	74% (14)
"Allowing anonymised or aggregated data on fund investors (rather than LP-by-LP disclosure) would be a positive development in terms of maintaining confidentiality."	0% (0)	5% (1)	11% (2)	11% (2)	74% (14)
In your experience, the second condition (no or limited transactions between funds under common management) has been interpreted too narrowly by the Commission.	0% (0)	6% (1)	41% (7)	29% (5)	24% (4)

Note: The original survey question was "Please rate the following statements."

There was **universal support among experienced respondents (100%) for the Commission taking a more flexible approach to exempting acquiring investment fundings and/or applying this more flexible approach differentially across sectors**. 16% supported a more flexible approach paired with appropriate safeguards. Respondents with experience of cases involving private equity or investment funds also identified further challenges:

- internal inquiries across portfolios;
- the practicality of verifying every transaction of every company controlled by the investment fund;
- the lack of an exclusion for arms-length transactions;
- sourcing evidence within the provided timelines; and
- the sensitivity regarding structure and limited partnership disclosure.

2.4.3 Views on the public procurement case process

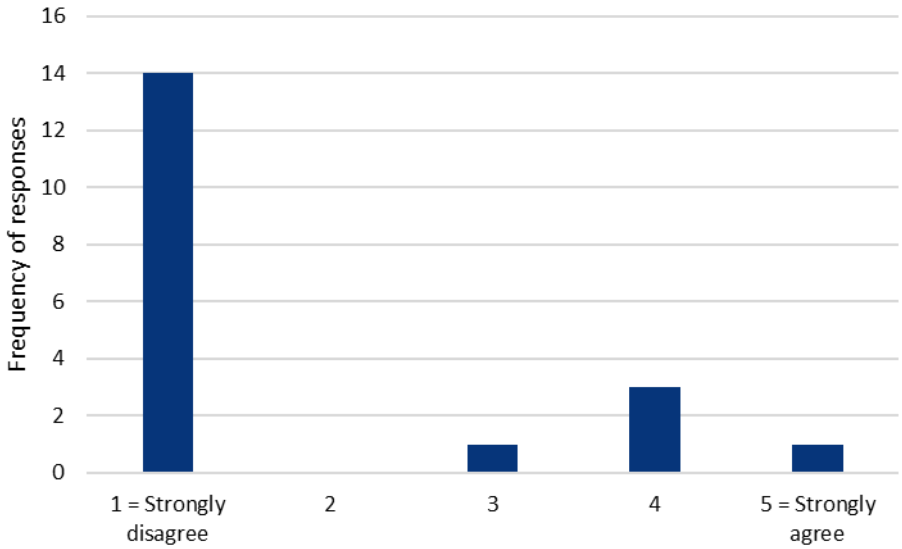
Respondents with public procurement experience were generally **opposed to proposals that would differentiate notification thresholds with different filing requirements**, citing concerns that such changes would overcomplicate the FSR framework.

This view was evident in the feedback on **differentiated tender types, which a large majority (71%) did not support.** As one respondent stated, this might

"overcomplicate assessment and compliance obligations". Another respondent, however, suggested that higher thresholds might be appropriate for dynamic purchasing systems, with lower thresholds for individual lots. Similarly, a majority of respondents (60%) did not support sector-specific notification thresholds. The primary rationale was again that it would overcomplicate the assessment and that tender value is a more relevant proxy for market impact than the sector. The minority who favoured this approach argued it would enhance proportionality, for example, by allowing lower thresholds in highly strategic sectors.

Respondents strongly disagreed (74%) that a lower notification threshold combined with lighter filing requirements could improve the effectiveness of the FSR regime.

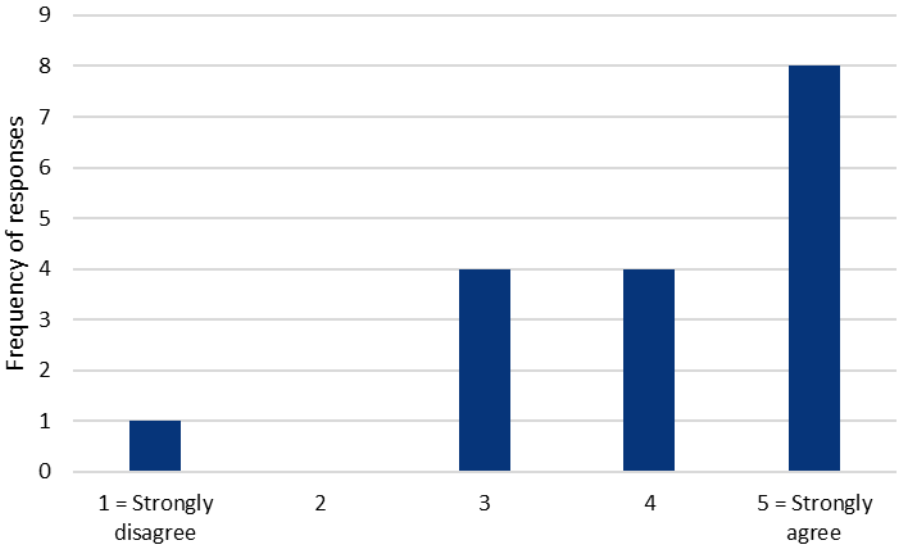
Figure 12 Views on lowering procurement thresholds with lighter filing requirements



Note: The original survey question was ""A lower notification threshold for public procurement (e.g. EUR 50 million instead of EUR 250 million), combined with lighter filing requirements, would improve the effectiveness of the FSR regime." Please rate the above statement."

Respondents were divided on whether procedural timelines were fit for purpose, with opinions evenly split (50% agreed, 50% disagreed). Criticism from those who disagreed focused on two main issues: contracting authorities underestimating the work required for notifications, and the **Commission's examination deadlines being too long, thereby delaying the procurement process**. It was also noted that these long timelines create commercial costs, as operators in markets with short-term offers must add risk premiums to extend the validity of their bids. However, there was a clear point of consensus regarding the in-depth investigation timeline. A large majority (71%) agreed that the maximum period of up to 130 days is disproportionate, given the time-sensitive nature of public tenders.

Figure 13 Views on the perceived disproportionality of the in-depth investigation timeline



Note: The original survey question was ""The maximum time allowed for an in-depth procurement investigation (up to 130 working days) is disproportionate given the time-sensitive nature of public tenders." Please rate the above statement."

Respondents offered several suggestions to reduce the burden and complexity created specifically by multi-stage procedures. The primary proposal was to limit the process to a single filing, which could be supported by establishing a minimum validity period for previous notifications (e.g., 90 days). Other ideas included narrowing the scope of reportable contributions in these procedures to only the most high-risk (Article 5) foreign subsidies, or having the Commission focus solely on ex officio proceedings or RFIs in the case of complaints or suspicious tenders. Additionally, a respondent notes that in practice, contracting authorities do not always require an invitation to tender on restricted tenders from pre-approved suppliers. Separately, to improve overall procedural efficiency, **there was overwhelming support for a one-time annual declaration system for regular bidders**. This proposal was backed by a large majority of respondents (71%), with a further 24% supporting it under "certain conditions".

2.5 Views of contracting authorities

This section presents findings from a survey targeting a small group of stakeholders with direct experience operating the Foreign Subsidy Regulation on behalf of contracting authorities. As only a limited number of contracting authorities responded, the expressed views are not representative of the broader population of contracting authorities.

The key findings indicate that the FSR imposes a **notable administrative burden** and **causes significant procurement delays**, largely **due to challenges with bidder filings**. Respondents identified a need for extensive improvements, ranging from simplifying forms and legal definitions to more structural reform of notification filing requirements.

These insights are based on a small sample of three responses. Consequently, the findings are presented qualitatively, tables indicate the number of responses

without percentage figures and findings should be interpreted with caution as indicative rather than statistically representative.

For this section, occasionally, respondents were asked to rate challenges on a five-point scale. The endpoints of the scale were defined in the survey itself, by question, where a score of one represents "no burden at all/not challenging at all/not a cause of delays" and a score of five represents "extremely burdensome/very challenging/a cause of very significant delays". For clarity of interpretation in this report, the intermediate scores are designated as follows: two ("**minimally** [burdensome/ challenging/ a cause of **minimal** delays]"), three ("**moderately** [burdensome/ challenging/ a cause of **moderate** delays]"), and four ("**largely** burdensome/ challenging/ a cause of **large** delays]").

2.5.1 Administrative and procedural burdens

Contracting authorities held more moderate views on the burden of the FSR compared to legal practitioners.

Overall ratings of the FSR's administrative burden were mixed: two respondents considered it largely burdensome, while one found it only minimally burdensome.

The following tasks were identified as the most burdensome aspects:

- Managing and verifying FSR declarations and notifications
  - Rated largely burdensome by two respondents and moderately burdensome by one.
- Responding to bidder queries on FSR filing requirements
  - Rated largely burdensome by two respondents and moderately burdensome by one.
- Ensuring compliance in multi-stage procedures
  - Rated extremely burdensome by one respondent and moderately burdensome by one.

Other obligations were considered less onerous. The timely transfer of filings to the European Commission was rated as only minimally burdensome by two respondents and moderately by one. There was no consensus on the burden of handling confidentiality, with individual responses of no burden, minimal burden, and extremely burdensome.

Table 35 Administrative burden from FSR-related tasks
(Figures indicate the number of respondents selecting each response option; three total respondents)

Aspect	1 = No burden at all	2	3	4	5 = Extremely burdensome
The overall burden	0	1	0	2	0
Managing and verifying receipt of FSR declarations and notifications	0	0	1	2	0
Ensuring timely transfer of filings to the Commission	0	2	1	0	0
Handling confidentiality	1	1	0	0	1

and secure transfer of documents					
Responding to bidder queries about FSR filing requirements	0	0	1	2	0

Note: The original question for the overall burden aspect was "How would you rate the overall administrative burden introduced by the FSR in the context of public procurement procedures managed by your authority?". For the other aspects, the original question was "Please rate the level of administrative burden associated with each of the following FSR-related tasks:".

All three respondents agreed **that FSR obligations added between two and five days of internal staff time for each procurement case requiring a filing**.

Table 36 Additional FTE days to manage FSR-related tasks per procedure
(Figures indicate the number of respondents selecting each response option; three total respondents)

	Fewer than 2 days	**2-5 days**	**6-10 days**	**More than 10 days**
On average, how many additional full-time-equivalent working days of internal staff time are typically required to manage FSR-related obligations in a single procurement procedure that triggers the filing requirements?	0	3	0	0

Note: The original survey question was "On average, how many additional full-time-equivalent working days of internal staff time are typically required to manage FSR-related obligations in a single procurement procedure that triggers the filing requirements?"

2.5.2 Public procurement timings

Respondents reported that **challenges created by FSR filing requirements are a frequent cause of delays** in public procurement schedules, **largely caused by issues with bidder compliance**.

Two of the three respondents reported that FSR filing requirements regularly cause delays in public procurement timelines in cases where the Commission does not pursue an in-depth review. The third respondent indicated no delays. **The extent of these delays was estimated at up to ten working days by one respondent, and between ten and nineteen working days by the other**.

Table 37 Extent of delays when the Commission did not pursue an in-depth review

(Figures indicate the number of respondents selecting each response option; three total respondents)

	No delays	Up to 10 working days	10-19 working days	20-29 working days	30-60 working days	More than 60 working days
Average extent of the delays in cases the Commission did not pursue an in-depth FSR review	1	1	1	0	0	0

Note: The original question was "In the case of delays, what is the average extent of the delays in cases where the Commission did not pursue an in-depth review under the FSR?". The non-response answer to this question is contextualised by the previous question "For procurement processes that fall under the scope of the FSR, have you experienced any delays in the procurement timeline due to FSR filing requirements? For this question, please consider only cases where the Commission did not pursue an in-depth review." as the respondent did not encounter any delays.

No experience was reported regarding the impact on timelines for cases for which an in-depth investigation was initiated.

When **questioned on the main causes of delay, the limited feedback suggested that issues with bidder filings were the primary source**. Specific findings include:

- Incomplete bidder filings
  - Cited as a cause of extremely significant delays by one respondent, but only minimal delays by another.
- Bidders unable or unwilling to comply
  - Identified as causing extremely significant delays by one respondent.
- Refiling in multi-stage procedures
  - Described as a cause of largely significant delays by one respondent, while another reported no delays from this cause.
- Confidentiality concerns
  - Identified as a source of minimal delays by two respondents.

To illustrate these challenges, one respondent described a large framework agreement where only half of the successful bidders submitted FSR forms, despite repeated follow-ups. This situation reportedly created a "significant administrative workload" and meant that, "due to insufficient responses, procurement needs risked not being met".

No information was provided on delays caused by DG GROW either requesting additional information or DG GROW initiating an in-depth investigation. However, one respondent indicated delays to the process due to the Commission "not respond[ing] to … inquiries" after materials are sent or questions are raised (see discussion on views on simplification below).

Table 38 Perceived main causes of delays
(Figures indicate the number of respondents selecting each response option; three total respondents)

	1 = Not a cause of delays	2	3	4	5 = A cause of very significant delays
Delays occurred when DG GROW requested additional information from the contracting authority	0	0	0	0	0
Delays occurred in cases where DG GROW pursued an in-depth investigation under the FSR	0	0	0	0	0
Delays occurred when bidders' filings were incomplete	0	1	0	0	1
Delays occurred when bidders were unable or unwilling to comply with filing obligations	0	0	0	0	1
Delays occurred in relation to confidentiality concerns	0	2	0	0	0
In multi-stage procedures, the FS-PP Declarations or Notifications may need to be filed twice for the same tender causing additional delays	1	0	0	1	0

Note: The original question was "Your perception of the main causes for the delays:".

2.5.3 Bidder preparedness and data quality

Respondent reported **that bidder filings are frequently affected by errors or omissions**, also **reporting a high volume of communications with bidders**.

Common issues were identified in bidders' FSR filings. **All three respondents cited incomplete information, missing annexes, and a lack of detail on subcontractors**. Two also encountered the incorrect choice of declaration or notification form, while one noted that confidentiality concerns delayed submissions, and another highlighted bidders' failure to use Form FS-PP.

Table 39 Issues encountered in bidders' filings
(Figures indicate the number of respondents selecting each response option; three total respondents)

	No	Yes
Incomplete information or missing annexes	0	3
Incorrect choice of declaration or notification	1	2
Lack of information on subcontractors or suppliers	0	3
Confidentiality concerns delaying submission	2	1

Note: The original question was "Which of the following issues have you encountered in filings submitted by bidders?"

These filing challenges likely contribute to a high volume of bidder interaction. Two respondents stated they are contacted **frequently** by bidders with questions about FSR requirements, and one is contacted **occasionally**. This level of regular contact suggests that bidders consistently require guidance from contracting authorities to meet their FSR obligations.

Table 40 Frequency of bidder queries to contracting authority
(Figures indicate the number of respondents selecting each response option; three total respondents)

	Never	Rarely	Occasionally	Frequently
How often do bidders contact your authority with questions or uncertainties about the FSR filing requirements?	0	0	1	2

Note: The original question was "How often do bidders contact your authority with questions or uncertainties about the FSR filing requirements?".

2.5.4 Views on simplification and other adjustments

Respondents proposed a wide range of improvements to the FSR framework, including simplifying the notification process, clarifying complex legal requirements, and resolving critical communication and systemic challenges.

Streamlining the notification process

Improvements to the public procurement FSR notification process that were prioritised by respondents included:[12]

- **a clearer and simpler version of Form FS-PP** (all three respondents);
- **automatic completeness checks by the Commission** (all three respondents);
- **enabling direct submission by bidders to the Commission** (all three respondents);

Additional priorities included more clarity from the Commission on the "state of play of filing" and more guidance for contracting authorities on handling filings.

[12] While respondents were asked to pick the top three improvements; some indicated more than three improvements. All improvements with at least two supporting respondents are listed; and the improvements with unanimous support are signposted.

Improvements that were selected by a smaller proportion of respondents included:

- shorter review timelines by the Commission;
- a secure digital platform for submitting and transferring filings; and
- sector-specific thresholds to better match procurement realities.

However, one respondent agreed with all improvements, suggesting that these "less-favoured" improvements might still be favoured overall, despite being relatively less favoured.

Table 41 Preferred improvements to the notification process
(Figures indicate the number of respondents selecting each response option; three total respondents)

Improvements	No	Yes
A clearer and simpler version of Form FS-PP	0	3
Shorter review timelines by the Commission	2	1
Clearer guidance for contracting authorities on how to handle filings	1	2
Automatic completeness checks by the Commission	0	3
A secure digital platform for submitting and transferring filings	2	1
Enable direct submission by bidders to the Commission	0	3
Sector-specific thresholds to better match procurement realities	2	1
More clarity from the Commission on the state of play of filing	1	2

Note: The original question was "What improvements would you most like to see in the FSR notification process as it applies to public procurement?".

Navigating the Balancing Test

Respondents held **mixed views** on the difficulty experienced by contracting authorities in constructing arguments under the FSR's Balancing Test.

The **most challenging arguments to formulate were related to a foreign subsidy's potential positive effects**:

- its contribution to "the development of the relevant subsidised economic activity on the internal market" and
- its "broader positive effects in relation to relevant policy objectives".

For both of these points, one respondent rated formulating the argument as extremely challenging, while another rated it as moderately challenging. One respondent explained this difficulty, noting that **contracting authorities typically lack the data needed to assess a subsidy's impact on economic activity or policy objectives**, which makes it difficult for them to construct these arguments effectively.

In contrast, arguing that a foreign subsidy "affects goods or services in relation to which there are no alternative sources of supply" was considered less difficult. One respondent found this "moderately challenging", and another found it "not challenging at all".

Table 42 Challenges for contracting authorities in applying the FSR Article 6 Balancing Test

(Figures indicate the number of respondents selecting each response option; three total respondents)

	1 = Not challenging at all	2	3	4	5 = Very challenging
The foreign subsidy affects goods or services in relation to which there are no alternative sources of supply.	1	0	1	0	0
The foreign subsidy contributes to the development of the relevant subsidised economic activity on the internal market.	0	0	1	0	1
The foreign subsidy has broader positive effects in relation to relevant policy objectives, such as a high level of environmental protection and social standards or the promotion of research and development.	0	0	1	0	1

Note: The original question was "Contracting authorities can play a role in relation to the Balancing Test of Article 6 of the FSR. Please rate the extent to which you consider that it is challenging for the contracting authority to make arguments in the following areas.".

Additional respondent comments or suggestions

Respondents identified **significant operational and communication challenges** with the FSR process and detailed suggestions to improve the framework.

One respondent described operational difficulties and challenges associated with the system for sending documents to the Commission, raising concerns in light of applicable security obligations. The respondent also noted that responses to inquiries or submitted materials were at times not forthcoming, which may create challenges in situations where timely clarification is needed to advance the procurement process. Respondents provided several detailed suggestions to improve the FSR framework:

- Waive obligations for SMEs
    - It was noted that small and medium-sized enterprises (SMEs) are disproportionately affected when acting as subcontractors or consortium members. Due to a lack of expertise with Form FS-PP, some SMEs have reportedly "refrained from participating in tenders altogether".
- Focus on "foreign subsidies", not "foreign financial contributions"
    - The concept of foreign financial contributions was described as "ill-defined and limitless", leading to confusion and potential over-reporting. It creates an impractical burden, as data cannot be easily extracted from accounting systems, and information on state influence is often

inaccessible. This ambiguity and impracticality create "significant scope for error".

- Simplify Form FS-PP
  - Respondents recommended making the form available in all EU languages and reducing the number of fields, noting that it currently requests information likely "relevant only in an in-depth investigation".
- Amend the definition of main subcontractors
  - It was suggested to remove the phrase "key elements of the contract performance" from the legal definition, as it is highly case-specific, prone to error, and has limited economic impact on the tender price.
- Reduce filing frequency
  - To address the "too high" number of notifications compared to the number of in-depth investigations, one respondent proposed allowing for a single annual filing rather than requiring documentation for each procedure.

2.6 Conclusion and recommendations

The consultation with legal practitioners and contracting authorities provides an overview of initial experiences with the Foreign Subsidy Regulation. The collected data indicates that while the strategic objectives of the regulation are generally understood, the practical application is perceived by stakeholders to create a notable administrative burden.

2.6.1 Operational experience and guidance

The analysis highlights a divergence in the experience of stakeholders. Direct engagement with the Commission was frequently rated positively, particularly regarding responsiveness during the pre-notification phase. Conversely, survey results suggest that many participants view the existing written guidance as insufficient. This perceived lack of clarity regarding key concepts appears to impact transaction timelines and resource allocation, with most in-house legal teams reporting a need to engage external experts.

2.6.2 Substantive aspects and thresholds

A primary challenge identified in the feedback is the broad definition of the FFC, which requires the resource-intensive tracking of potentially non-distortive measures. Regarding notification thresholds, views differed by metric. While the EUR 500 million EU turnover threshold for concentrations was viewed as appropriate, the EUR 50 million FFC threshold was criticised as being set too low. Similarly, respondents argued that the public procurement thresholds are insufficient, noting that both the contract value and foreign contribution limits fail to effectively filter for the most relevant cases. Separately, stakeholders expressed a strong preference for raising the detailed reporting thresholds set out in the Implementing Regulation. The EUR 1 million threshold for individual FFC was specifically identified as a significant source of administrative burden.

2.6.3 Sectoral perspectives

The survey data reveal distinct challenges for specific sectors, most notably regarding private equity and investment funds. Respondents with experience in these areas indicated that the current exceptions for investment funds are difficult to apply in practice. Stakeholders highlighted issues with data privacy and aggregation rules, with many calling for a more flexible approach to the exception criteria. Additionally, respondents from the financial sector noted the complexity of establishing internal tracking systems compatible with the broad reporting requirements of the regulation.

2.6.4 Experience of contracting authorities

The targeted survey of contracting authorities indicates that the FSR has introduced operational friction, which is attributed largely to difficulties with filings submitted by bidders. These stakeholders reported that incomplete filings and a lack of bidder awareness frequently lead to delays in procurement schedules. To mitigate these issues, contracting authorities expressed a preference for specific procedural improvements, including the introduction of automatic completeness checks, the simplification of Form FS-PP, and mechanisms to enable direct submission of filings by bidders to the Commission.

2.6.5 Views on simplification

Reflecting these reported challenges, the survey reveals a strong consensus among respondents in favour of simplifying the FSR regime. To address the perceived administrative burden, stakeholders expressed strong support for the following specific measures:

- Narrowing the scope of reportable FFCs to exclude clearly non-distortive financial flows.
- Raising notification thresholds, specifically the FFC thresholds found in both the concentration and public procurement regimes.
- Shortening the look-back period for reporting FFCs from three years to one year.
- Introducing streamlined procedures, such as a short form for concentrations and an annual declaration mechanism for regular participants in public tenders.

3 Developments in international relations regarding third countries' subsidy control systems

3.1 Introduction

This section reports on developments in international relations regarding third countries' subsidy control systems, in particular regarding Canada, China, Japan, Switzerland, Türkiye, the United Arab Emirates, the United Kingdom (UK), and the United States (Key Jurisdictions).

As the analysis below shows, the European Union (EU) together with the European Economic Area (EEA) remain unique in the way they control subsidies by operating a cross-sectoral State aid regime that includes both an *ex ante* screening procedure and *ex post* assessment mechanism, targeting distortive subsidies.

The UK and certain EU accession candidates also maintain subsidy control frameworks, albeit different ones, as part of their alignment with EU rules. Other jurisdictions have started introducing forms of subsidy screening. However, these efforts are either confined to specific sectors (as in the case of, e.g., Switzerland) or have not led to the implementation of a functioning *ex ante* review regime (as in the case of, e.g., Türkiye).

This section is structured as follows:

- A discussion of international developments in subsidy control, in particular in relation to jurisdictions that have recently entered into Free Trade Agreements (FTAs) with the EU (Section 3.2).
- A quantitative analysis of subsidy practices around the world, with a focus on the Key Jurisdictions, as well as an overview of multi-lateral efforts to control subsidies in fisheries and agriculture (Section 3.3).
- A Country-By-Country Analysis of the Key Jurisdictions, covering bilateral commitments as well as domestic law (Section 3.4).
- A comparison of the subsidy-control Regimes in the Key Jurisdictions, considering various qualitative criteria (Section 3.5).
- A conclusion on the findings across the section (Section 3.6).

3.2 Bilateral commitments

The EU's trade policy involves negotiating and concluding rules through multilateral and bilateral agreements, in particular Free Trade Agreements (FTAs).

The following section examines bilateral agreements between the EU and third countries, with a particular focus on the Key Jurisdictions, and analyses the subsidy-related obligations they contain.

3.2.1 Overview of subsidy-related provisions in FTAs

Different FTAs vary in the strength and scope of their subsidy-control commitments. Below, the report first summarises previous attempts in the literature to categorise subsidy-related commitments, before setting out the report's own categorisation focusing on the FTAs the EU has entered into.

Degree of subsidy-control related commitments

A significant number of FTAs include provisions on subsidies. In an analysis of 2019, *Laprévote*[13] found that around 43 percent of the FTAs that have been reviewed contain provisions concerning the regulation of subsidies or State aid. However, this analysis did not consider the intensity of trade, as it relied solely on a simple count of agreements. EU trade is fairly concentrated: the top three trading partners—the United States, China and the United Kingdom for goods, and the United States, the United Kingdom and Switzerland for services—account for approximately 42% of total extra-EU goods trade and approximately 56 % of total extra-EU services trade, respectively.[14] As the analysis in Section 3.4 shows, among the EU's top three trading partners, only the FTAs with the United Kingdom and Switzerland include provisions on subsidies, while no such provisions are included in agreements with the United States or China.

There are substantial differences in the extent to which third countries have committed to controlling domestic subsidies. At one end of the spectrum, there are FTAs that solely provide for transparency and consultation rights in cases involving potentially distortive subsidies. At the other end of the spectrum are agreements that include commitments to introduce subsidy control systems reflecting EU State aid rules. In most of the EU's newer FTAs with advanced economies (e.g. Japan, Canada, Singapore), the EU has secured a dedicated chapter on subsidies, but *not* a full export of EU State aid law.

Laprévote observes that FTA provisions on subsidies can generally be grouped by their scope and level of stringency:

- *FTAs with neighbouring states of the EU* generally contain the broadest and most stringent State aid obligations, closely aligned with EU law, often reflecting the parties' potential alignment or accession prospects (e.g., EU–FYROM, EU–Montenegro; EU–Serbia; EU–Bosnia; EU–Ukraine; EU–Morocco).
- *FTAs involving China* tend to include strict but narrower provisions, typically prohibiting parties from "introduc[ing] or maintain[ing] any form of export subsidy on any good destined for the territory of the other Party" (e.g., China–New Zealand; China–Singapore; Australia–China; Iceland–China, limited to agricultural goods).
- *FTAs with Japan* are narrower still, generally restricting only export subsidies on agricultural goods (e.g., Japan–Switzerland; Trans-Pacific Strategic Economic Partnership; India–Japan; Japan–Peru; Japan–Thailand; Japan–Indonesia; Japan–Malaysia). By way of exception, the Japan–Vietnam FTA covers export subsidies more broadly.
- *Other FTAs* (e.g., EFTA–Singapore; EFTA–Chile), merely reaffirm existing commitments under the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), GATT Article XVI, GATS, and the WTO Agreement on Agriculture.

Under the EU–Korea FTA,[15] the parties agree to "use their best endeavours to remedy or remove, through the application of their competition laws or otherwise, distortions of competition caused by subsidies in so far as they affect international trade, and to

[13] Laprévote, François-Charles. 2019. Competition Policy within the Context of Free Trade Agreements. OECD Global Forum on Competition background paper, DAF/COMP/GF(2019)5. Paris: Organisation for Economic Co-operation and Development, pg. 17–18. Available at: https://one.oecd.org/document/DAF/COMP/GF(2019)5/en/pdf (last accessed 27 November 2025).

[14] European Commission, DG Trade Statistical Guide (Eurostat extra-EU trade data). Available at: https://www.consilium.europa.eu/en/infographics/the-eu-s-role-in-global-trade (last accessed 6 January 2025).

[15] Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, OJ L 127, 14 May 2011, pg. 6.

prevent the occurrence of such situations" (Article 11.9). Although it requires only "best endeavours," this provision is noteworthy because it introduces the possibility of addressing subsidy-related issues through a competition law mechanism, something rarely found outside of the smaller group of EEA countries and (potential) EU accession candidates.

Categorisation of subsidy-related provisions

Each FTA and its subsidy provisions are negotiated individually and therefore do not conform to a standard format. However, *Sekine* has attempted a categorization of FTAs based on categories and contents of subsidy disciplines under FTAs concluded with the EU.[16] The categorisation broadly reflects the findings of *Laprévote*, in particular that EU neighbouring countries seeking alignment or accession accept the broadest and most stringent State aid obligation.

Table 43 Categorisation of Subsidy and State Aid Disciplines Across Trade Agreements (*after Sekine*)

Category	Terminology adopted	Contents	Examples
First category	"Public aid"	The application of the GATT/WTO provisions; exemplification of permissible public aids; introduction of an information provision system.	EU–South Africa TDCA
Second category	"State aid"	Only introducing an information provision system.	EU–Chile AA
Third category	"Subsidy"	The central discipline is an information provision; no substantive provision for subsidies.	EU–Colombia–Peru–Ecuador FTA; EU–Central America AA
Fourth category	"Subsidy"	Reference of the SCM Agreement and the addition of prohibited subsidies; best endeavour clause for competition laws; focused on transparency.	EU–Korea FTA; EU–Singapore FTA
Fifth category	"Public aid" of "Official Aid"	Juxtaposition with competition laws (some agreements demand considering criteria of EU competition laws); enactment of implementation rules; focused on transparency.	EU–Tunisia AA; EU–Palestinian Authority AA; EU–Israel AA; EU–Morocco AA; EU–Jordan AA; EU–Egypt AA
Sixth category	"State aid" or "Public aid"	Basing on the criteria of EU competition laws; establishment of operationally independent authority for State aid regulation; focused on transparency; establishment of	EU–North Macedonia SAA; EU–Albania SAA; EU–Bosnia and Herzegovina SAA; EU–Montenegro SAA; EU–Serbia

[16] Sekine, Takemasa. 2020. Possibility of Developing and Expanding the Regulation of Subsidies through Free Trade Agreements (FTAs): Analysis Focusing on a Trend in FTAs Concluded by the EU. Public Policy Review 16, no. 5: pg. 1, 4–10.

Category	Terminology adopted	Contents	Examples
		comprehensive inventory of aid schemes.	SAA; EU–Moldova AA; EU–Ukraine AA; EU–Kosovo SAA
Seventh category	"Subsidy"	Incorporation of WTO disciplines; some agreements contain a provision adding prohibited subsidies.	EU–Georgia AA; CETA; EU–Kazakhstan ECPA; EU–Vietnam FTA; EU–Japan EPA
Others	–	No specific provisions regarding subsidies	EU–Mexico GA; EU–Lebanon AA; EU–Algeria AA; EU–Iraq PCA; Agreements with ACP countries (e.g., EU–CARIFORUM EPA)

Another categorisation was proposed by *Rubini and Hoekman*,[17] focusing on the degree of alignment with World Trade Organization (WTO) and EU State aid principles, respectively:

Table 44 Categorisation of subsidy disciplines in EU FTAs (*after Rubini and Hoekman*)

Category	Example features	Examples
FTAs modelled exclusively on WTO subsidy disciplines	- Focus on goods and do not extend to services. - No reference to EU State aid principles. - No additional disciplines beyond WTO standards.	EU–Canada CETA (2017)
FTAs elaborating on WTO rules and borrowing from EU State aid law	- Extend subsidy control to services. - Include justifications for permissible subsidies. - In some cases, reproduce wording from EU law.	EU–Japan (2019), EU–Singapore (2019), EU–Mexico (2020), EU–Viet Nam (2020); EU–UK (2021)
FTAs replicating the EU State aid model	- Replicate EU State aid rules and enforcement mechanisms.	Agreements with six Western Balkan countries: North Macedonia, Albania, Montenegro, Serbia, Bosnia and Herzegovina, Kosovo (signed between 2004–2016)

The above shows that subsidy provisions in FTAs are not monolithic but exist on a broad spectrum of scope and level of stringency.

[17] Rubini, Luca and Hoekman, Bernard. 2022. Transcending Territoriality: Expanding EU State Aid Control through Consensus and Coercion. Working Paper RSC 2022/33. Robert Schuman Centre for Advanced Studies, Global Governance Programme-469, pg. 8–9.

The scope and level of stringency are fundamentally shaped by the parties' geopolitical and economic relationship with the EU, ranging from the (partial) adoption of the *acquis* by accession-oriented EU neighbours to lighter, WTO-plus commitments for other partners. Also, there has been a gradual expansion of the scope of subsidy disciplines over time.[18]

3.2.2 FTAs with the EU: Extent of Subsidy-Control Commitments

Forty FTAs concluded by the EU with non-EEA countries between 1973 and 2021 were reviewed to assess the scope of their subsidy-related provisions, in particular, whether they require procedural controls on subsidies. The following features were treated as indicators of the degree of institutionalisation of subsidy control (that is, 'harder' controls) required from third countries:

- Requires notification of subsidies

Requires additional transparency measures beyond notifications

- Includes dispute settlement mechanisms
- Designates an institutional body for transparency or enforcement

Provides for secondary legislation to expand requirements

- Requires establishment of domestic enforcement authorities
- Provides for withdrawal of unlawful subsidies

The analysis shows several consistent trends across geographic groups and agreement types:

First, the review identifies a clear regional pattern. Agreements containing the most comprehensive or institutionalised subsidy-control obligations are concentrated among: (i) EU neighbouring states; (ii) accession candidates and potential candidates; and (iii) countries engaged in structured political alignment with the EU.

This includes the Western Balkans, Türkiye, certain Eastern Partnership states (namely Armenia, Georgia, Moldova, and Ukraine), and the United Kingdom.

A smaller number of high-income partners (Canada, Japan, Singapore, South Korea) also accept more extensive obligations. In these cases, however, the driver appears to be a shared interest in predictable and competitive market conditions rather than regulatory convergence.

In short, stricter subsidy-control obligations appear to correlate more strongly with proximity and political alignment than with scale of bilateral trade and investment.

Second, the assessment of individual features reveals a graduated structure of obligations, ranging from basic transparency to fuller enforcement obligations.

- *Notification requirements* appear in almost all agreements, irrespective of region or date of conclusion, and represents the baseline level of EU external subsidy governance.
- *Enhanced transparency obligations* are found mainly in agreements with the Western Balkans, Türkiye, Ukraine, the United Kingdom and MERCOSUR (pending). These measures are typically included where the EU anticipates or encourages future regulatory convergence.

[18] Sekine, Takemasa. 2020. Possibility of Developing and Expanding the Regulation of Subsidies through Free Trade Agreements (FTAs): Analysis Focusing on a Trend in FTAs Concluded by the EU. Public Policy Review 16, no. 5: pg. 1, 4.

- *Dispute-settlement provisions* are present in nearly all agreements. Their ubiquity means they do not serve as a distinguishing feature of deeper alignment.

Third, clauses on secondary legislation that require dynamic alignment appear mainly in agreements with partners that are seeking closer alignment with the EU acquis, such as the Western Balkans, Ukraine, and the UK. These clauses require partner countries to adjust their subsidy control rules as EU rules evolve. In practice, they give the EU ongoing influence over how the partner's subsidy control regime develops over time.

Fourth, only a limited group of partners commit to establishing domestic authorities responsible for subsidy control: Western Balkans, Türkiye, Ukraine and United Kingdom.

Fifth, obligations to withdraw subsidies that are found to be incompatible with the agreement appear in the FTAs with a rather diverse group of partners: the Western Balkans, Türkiye, Côte d'Ivoire, Israel, Japan, Singapore, Switzerland/Liechtenstein, the United Kingdom, and Viet Nam. In many cases, this obligation is not introduced directly but instead arises through the application of WTO subsidy disciplines, in particular Article 3 of the SCM Agreement.

Lastly, the review examined whether the proposal of the Foreign Subsidies Regulation in May 2021 has influenced the structure or ambition of subsequent trade agreements. Only one new agreement has been concluded since the FSR proposal, namely the EU–MERCOSUR agreement. However, this single post-FSR agreement is not sufficient, and its substance is too specific, to identify a definitive trend.

Table 45 Key Features of Subsidy-Related Obligations in EU Trade Agreements (*highlighting agreements with Key Jurisdictions*)

Agreement (Year)	Requires notifications of subsidies	Requires additional transparency measures beyond notifications	Provides for dispute settlement mechanisms	Designates institutional body for transparency / enforcement	Provides for secondary legislation to expand	Requires installation of domestic enforcement	Provides for withdrawal of illegal subsidies
EU–Switzerland–Liechtenstein (1972/1973)	(✓)[19]			✓			(✓)[20]
EU–Andorra (1991)			✓				
EU–Türkiye (1996)	✓	✓	✓	✓	✓	✓	
EU–Faroe Islands (1997)	✓			✓			✓
EU–Palestine (1997)	✓		✓	✓	✓		
EU–Tunisia (1998)	✓			✓	✓		

[19] Not conclusive.

[20] Not conclusive.

Agreement (Year)	Requires notifications of subsidies	Requires additional transparency measures beyond notifications	Provides for dispute settlement mechanisms	Designates institutional body for transparency / enforcement	Provides for secondary legislation to expand	Requires installation of domestic enforcement	Provides for withdrawal of illegal subsidies
EU–Israel (2000)	✓		✓	✓	✓		
EU–Morocco (2000)	✓		✓	✓	✓		(✓)[21]
EU–Mexico (2000)			✓	✓	✓		
EU–South Africa (2000)	✓		✓	✓	✓		
EU–North Macedonia (2001)	✓	✓	✓				
EU–Jordan (2002)	✓		✓	✓	✓		
EU–Chile (2003)	✓			✓			
EU–Lebanon (2003)	✓		✓	✓			✓
EU–Egypt (2004)	✓			✓	✓		✓
EU–Algeria (2005)	✓		✓	✓			✓
EU–CARIFORUM States (2008)			✓	✓			
EU–Bosnia & Herzegovina (2008)	✓	✓	✓	✓	✓	✓	✓
EU–Pacific States (2009)			✓	✓			
EU–Albania (2009)	✓	✓	✓	✓	✓	✓	✓
EU–Montenegro (2010)	✓	✓	✓	✓	✓	✓	✓
EU–Eastern & Southern Africa States (2012)				✓			
EU–Serbia (2013)	✓	✓	✓	✓	✓		✓
EU–Central America (2013)	✓		✓	✓	✓		
EU–Colombia, Ecuador & Peru (2013)	✓		✓	✓		(✓)[22]	
EU–Cameroon			✓	✓	✓		

[21] Not conclusive.

[22] Not conclusive.

Agreement (Year)	Requires notifications of subsidies	Requires additional transparency measures beyond notifications	Provides for dispute settlement mechanisms	Designates institutional body for transparency / enforcement	Provides for secondary legislation to expand	Requires installation of domestic enforcement	Provides for withdrawal of illegal subsidies
(2014)							
EU–Georgia (2014)	✓		✓	✓			(✓)[23]
EU–Moldova, Republic of (2014)	✓		✓	✓	✓	✓	
EU–Ukraine (2014)	✓	✓	✓	✓	✓	✓	✓
EU–Korea (2015)	✓		✓	✓			✓
EU–SADC[24] (2016)			✓	✓			
EU–Côte d'Ivoire (2016)	(✓)[25]		(✓)[26]	(✓)[27]			(✓)[28]
EU–Ghana (2016)				✓			
EU–Canada (CETA) (2017)	✓		✓	✓			(✓)[29]
EU–Armenia (2018)	✓		✓	✓			(✓)[30]
EU–Japan (2019)	✓		✓	✓			(✓)[31]
EU–Singapore (2019)	✓		✓	✓			✓
EU–Viet Nam (2020)	✓		✓	✓			✓
EU–United Kingdom (2021)	✓	✓	✓	✓	✓	✓	✓
EU–MERCOSUR (Pending)		✓	✓	✓			

3.3 Subsidy practices and multi-lateral efforts of subsidy control

This section examines international subsidy practices, focusing on the Key Jurisdictions, relying on two sources of subsidy-related data:

[23] Not conclusive.

[24] South African Development Community.

[25] Not conclusive.

[26] Not conclusive.

[27] Not conclusive.

[28] Not conclusive.

[29] Through a non-binding consultation mechanism, the parties are expected to endeavour to minimise any adverse effects of a subsidy on the interests of the other party, without an explicit requirement to withdraw the subsidies.

[30] Not conclusive.

[31] Not conclusive.

- Notifications pursuant to Art. 25.2 SCM Agreement (3.3.1); and
- Data from the Global Trade Alert (GTA) (3.3.2).

While this section relies on WTO subsidy notifications and GTA data, these sources do not fully capture certain forms of state support, particularly below-market financing through state-controlled banks and implicit government guarantees for state-backed firms. This reflects a broader limitation of the WTO subsidy framework compared with the wider scope of the FSR. The analysis below should therefore be understood within the limits of the available WTO- and GTA-based data.

This section also outlines the state of multilateral efforts to strengthen global subsidy disciplines, with particular attention to fisheries and agriculture (3.3.3).

3.3.1 Notifications pursuant to Article 25 SCM Agreement

One key source for data on subsidies is the notifications made by WTO members under the SCM Agreement.[32] The SCM Agreement establishes notification obligations regarding subsidies in Article 25:

- *Under Article 25.2*, WTO members must notify any subsidy that falls within the definition in Article 1.1 and is specific within the meaning of Article 2, if it is granted or maintained within their territories.[33]
- *While Article 25.1 of the SCM Agreement* formally requires annual notifications of specific subsidies, in practice, members submit "new and full" subsidy notifications every two years under an understanding in the SCM Committee. These new and full notifications cover all specific goods-related subsidies across all sectors, including both agricultural and non-agricultural subsidies.

Observations

A review of selected WTO subsidy notifications under Article 25.2 of the SCM Agreement indicates that several non-EU jurisdictions reported notable changes in the number of central and sub-central *(e.g., provincial, state, municipal)* subsidy measures over the most recent notification cycles.

- The most pronounced increases in subsidy measures adopted at the *central level* can be observed in Canada (plus ca. 55% between 2021 and 2023), the United Kingdom (plus ca. 186% between 2021 and 2023; plus ca. 83% from 2023 to 2025), and the United States (plus ca. 30% between 2021 and 2023). In contrast, Japan reported a reduction of ca. 20% in central measures between 2021 and 2023 and no change in 2025. China and Switzerland showed only small fluctuations in central measures over the last three cycles (China ranging from 69 to 73; Switzerland ranging from 19 to 20).
- *Sub-central* data also shows substantial variation across jurisdictions. The United States reports the highest number of sub-central schemes, rising from 747 (2021) to 789 (2023) and 993 (2025), corresponding to increases of ca. 6% and ca. 26% respectively. China also notified a significant expansion in sub-central programmes, from 374 (2021) to 385 (2023) and 569 (2025), including a ca. 48% increase between 2023 and 2025. In contrast, several jurisdictions report no sub-central

[32] See, for example, European Commission, Commission Staff Working Document: Impact Assessment (Accompanying the Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market) {COM(2021) 223 final}, SWD(2021) 99 final, pg. 28.

[33] In addition, Article XVI:1 of GATT 1994 requires members to notify any subsidy (including any form of income or price support) that operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, their territory, together with information on the extent and nature of the subsidisation and its effects.

measures in any cycle: Japan, Switzerland, Türkiye, and the UAE. The United Kingdom's sub-central count increases between 2021 and 2023 (+ ca. 32%) but decreases in 2025 (– ca. 8% compared to 2023).

The UAE reports zero notified measures across all time periods covered.

Table 46 Notified central and sub-central subsidy measures across selected jurisdictions (2021–2025)

Country	Year	Central	Change	Sub-central / Provincial	Change	Source document
Canada	2025	103	–6.36%	84	–7.69%	G/SCM/N/430/CAN
Canada	2023	110	+54.93%	91	–7.14%	G/SCM/N/401/CAN
Canada	2021	71	—	98	—	G/SCM/N/372/CAN
China	2025	73	+5.80%	569	+47.79 %	G/SCM/N/430/CHN
China	2023	69	–2.82%	385	+2.94%	G/SCM/N/401/CHN
China	2021	71	—	374	—	G/SCM/N/372/CHN
Japan	2025	42	0%	12	0%	G/SCM/N/430/JPN
Japan	2023	42	–20.75%	12	—	G/SCM/N/401/JPN
Japan	2021	53	—	0	—	G/SCM/N/372/JPN
Switzerland	2025	20	+5.26%	0	—	G/SCM/N/430/CHE
Switzerland	2023	19	–5%	0	—	G/SCM/N/401/CHE
Switzerland	2021	20	—	0	—	G/SCM/N/372/CHE
Türkiye	2025	71	+4.41%—	0	—	G/SCM/N/430/TUR
Türkiye	2023	68	+19.30%	0	—	G/SCM/N/401/TUR
Türkiye	2021	57	—	0	—	G/SCM/N/372/TUR
UAE	2025	0	0%	0	—	[outstanding]
UAE	2023	0	0%	0	—	[NIL]
UAE	2021	0	—	0	—	[NIL]
United Kingdom	2025	73	+82.50%	45	–8.16%	G/SCM/N/430/GBR
United Kingdom	2023	40	+185.71%	49(+5)	+32.43 %	G/SCM/N/401/GBR
United Kingdom	2021	14	—	37	—	G/SCM/N/372/GBR

Country	Year	Central	Change	Sub-central / Provincial	Change	Source document
United States	2025	77	+5.48%	993	+25.86 %	G/SCM/N/430/USA
United States	2023	73	+30.36%	789	+5.62%	G/SCM/N/401/USA
United States	2021	56	—	747	—	G/SCM/N/343/USA

Limitations

There are important limitations when drawing policy conclusions from these observations.

- First, the data counts subsidy schemes, not individual grants. It also records only the number of schemes, not their value.
- Second, the SCM Agreement applies only to subsidies that are specifically provided to an enterprise or industry or group of enterprises or industries.[34]
- Third, the SCM Agreement only extends to specific subsidies related to goods, not services.
- Fourth, many WTO Members reportedly fail to notify their subsidies. This is often due to limited administrative capacity, different approaches to collecting subsidy information, or concerns that disclosed data could be used against them in future WTO disputes.[35] Among the Key Jurisdictions, WTO data indicates that the United Arab Emirates has not submitted notifications in recent cycles.[36] According to available WTO records, the Emirates' most recent "new and full notification" dates to 2016, covering the 2015 notification cycle, and was submitted as a NIL response. By contrast, Canada, China, Japan, Switzerland, Türkiye, the United Kingdom and the United States have submitted notifications at the prescribed intervals. The extent to which these filings were comprehensive cannot be assessed on the basis of publicly available information.
- Fifth, the quality of available data and analysis on subsidy use is frequently described as inadequate.[37]
- Finally, some forms of state intervention covered by the SCM Agreement—particularly measures involving or provided by state-owned enterprises—do not qualify as "subsidies" under the current WTO definition.

[34] See, for example, European Commission, Commission Staff Working Document: Impact Assessment (Accompanying the Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market) {COM(2021) 223 final}, SWD(2021) 99 final, pg. 27.

[35] Li, Siqi & Tu, Xinquan. 2020. Reforming WTO Subsidy Rules: Past Experiences and Prospects. Journal of World Trade 54, no. 6 (2020): pg. 853, 859.

[36] WTO, Notification Portal, Agreement on Subsidies and Countervailing Measures, Agreement on Subsidies and Countervailing Measures Art. 25.1 - GATT 1994 Article XVI:1. Available at: https://notifications.wto.org/en/notification-status/subsidies-and-countervailing-measures/25 (last accessed 6 January 2026).

[37] See, for example, Muzikarova, Sona & Busch, Sophia. 2024. Navigating Subsidy Reform at the WTO: Toward Improved Trade Governance in a Fragmented Geoeconomic Terrain. Atlantic Council GeoEconomics Center, pg. 7. Available at: https://www.atlanticcouncil.org/wp-content/uploads/2024/01/Muzikarova-and-Busch-Navigating-Subsidy-Reform-at-the-WTO.pdf (last accessed 27 November 2025).

3.3.2 Data from the Global Trade Alert

Another widely recognised source for data on subsidy practices is the data collected by the Global Trade Alert (GTA).[38] The GTA data primarily stems from information that the governments themselves make available through the announcement of measures. It is not limited to the trading of goods but also extends to services and investments.

About Global Trade Alert

The GTA is an independent initiative that tracks government measures affecting international trade. Operated by the St. Gallen Endowment for Prosperity Through Trade at the University of St. Gallen, GTA provides information on state interventions taken since 2008 that are likely to affect international commerce. The database includes state interventions affecting trade in goods and services, foreign investment and labour force migration.

Framework of the analysis

The unit of the analysis below is the "Intervention", as defined in the GTA Handbook.[39] An intervention refers to the specific policy instrument used in a policy action announced by a government authority. Each state act contains at least one intervention and may contain several.

Only those intervention types from GTA's database have been considered that relate to forms of government support: "Capital injection and equity stakes (including bailouts)", "FDI: Financial incentive", "Import incentive", "In-kind grant", "Interest payment subsidy", "Loan guarantee", "Local content incentive", "Local operations incentive", "Other export incentive", "Production subsidy", "State aid (incl. not elsewhere specified)", "State loan", "Tax or social insurance relief", "Tax-based export incentive".

For each reporting year, the total number of relevant interventions announced by state bodies in that year was counted across the Key Countries: Canada, China, Japan, Switzerland, Türkiye, the United Arab Emirates, the UK, and the United States.

The term "Implementing Jurisdiction" refers to the geographical and political scope of the agency implementing the policy. This classification determines the jurisdiction to which each intervention is attributed within the GTA dataset.

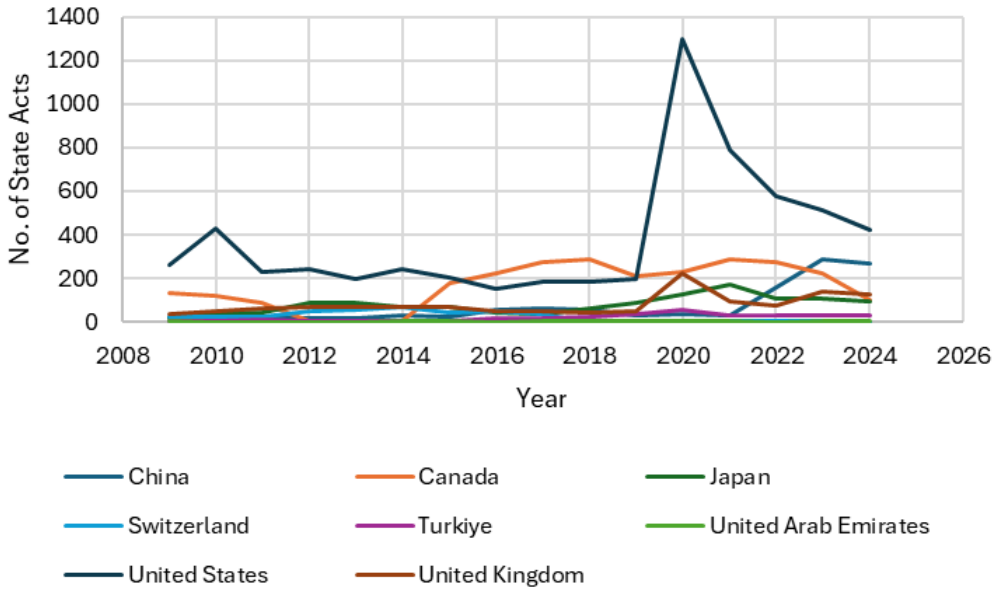
Observations

Based on GTA data for the period from 2009 to 2024, the *United States* recorded the highest number of interventions, with a pronounced spike in 2020 (1,299 interventions, mainly due to Covid-related measures), followed by elevated but declining volumes in subsequent years.

[38] See, for example, European Commission, Commission Staff Working Document: Impact Assessment (Accompanying the Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market) {COM(2021) 223 final}, SWD(2021) 99 final, pg. 9.

[39] Accessible at: https://globaltradealert.org/methodology (last accessed 27 November 2025).

Figure 14 Annual number of government support-related interventions by key countries, 2009–2024



Canada and *Japan* show moderate but relatively steady levels of interventions, with Canada consistently recording between 90 and 300 interventions per year and Japan increasing gradually from around 40–90 interventions in the early years to over 150 in 2021 before stabilising.

China shows comparatively lower activity until a marked rise from 2021 onwards, peaking in 2023 (288 interventions).

The *United Kingdom* displays modest levels through most of the period, with noticeable increases from 2020 onwards. *Türkiye* maintains low to moderate intervention levels, with small fluctuations but no significant spikes. *Switzerland* and the *United Arab Emirates* record consistently low numbers throughout the entire period.

Taken together, the series shows a significant outlier in the United States in 2020 (due to COVID-19 relief programs), persistent intervention activity in Canada, Japan, China, and the United Kingdom, and minimal activity in Switzerland and the United Arab Emirates.

The data does not show a change in behaviour around the FSR's application in mid-2023. The sharp rise in interventions by China starts earlier (from 2021), the United States continues the downward trend from its 2020 peak, and the patterns for Canada, Japan, Türkiye, Switzerland, the United Arab Emirates and the United Kingdom remain broadly in line with previous years.

Limitations

There are important limitations when drawing policy conclusions from these observations.

- First, the GTA records interventions based on publicly available information. Subsidies that are opaque, unannounced, or implemented through less transparent channels (e.g. private companies) are likely to be missing.
- Second, the database focuses on selective, trade-relevant corporate subsidies and does not systematically cover broad, economy-wide, or non-discriminatory support schemes.

- Third, the GTA counts the number of interventions but does not capture their financial value or intensity. A small grant and a major multi-billion programme therefore carry the same weight.
- Fourth, differences in announcement practices across countries can influence the number of recorded measures, irrespective of actual policy activity.

3.3.3 Multi-lateral efforts of subsidy control

A rationale for proposing the FSR was the challenge of finding a multilateral solution to subsidies within a reasonable time frame. While reforming the WTO is a stated priority for the EU, the Commission considered that change requires consensus and will be slow.[40]

Multilateral subsidy rules primarily exist under the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement)[41] and the General Agreement on Tariffs and Trade (GATT).[42]

These instruments allow WTO members to bring disputes and impose countervailing measures against other WTO members, but only for goods. Services are not covered, and the General Agreement on Trade in Services (GATS), which covers services, does not allow countervailing measures. WTO members have a mandate to negotiate rules on service subsidies, but this work reportedly has not been progressing.[43]

Experience with subsidy reform negotiations in other sectors reinforces this assessment. Efforts to discipline fisheries subsidies took more than two decades before members reached even a partial agreement, and negotiations on outstanding issues remain ongoing. Agricultural subsidy reform, a central element of the Doha Development Agenda,[44] has similarly stalled, and on-going discussions on cotton — raised repeatedly by the Cotton-4 group of West African countries — have highlighted the difficulty of reaching consensus even where concerns of competitive distortion and development impact are widely recognised.

These examples demonstrate that multilateral negotiations on subsidy control can take many years and may not lead to comprehensive outcomes.

Fisheries

After more than two decades of negotiations, the Agreement on Fisheries Subsidies (AFS) was adopted at its 12th Ministerial Conference on 17 June 2022. It entered into force on 15 September 2025 once two-thirds of WTO members submitted their instruments of acceptance.[45]

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[40] European Commission, Commission Staff Working Document: Impact Assessment (Accompanying the Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market {COM(2021) 223 final}, SWD(2021) 99 final, pg. 30.

[41] Agreement on Subsidies and Countervailing Measures, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 14 (1994).

[42] General Agreement on Tariffs and Trade 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187 (1994).

[43] European Commission, Commission Staff Working Document: Impact Assessment (Accompanying the Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market {COM(2021) 223 final}, SWD(2021) 99 final, pg. 30.

[44] At the Fourth Ministerial Conference in Doha, Qatar, in November 2001 WTO member governments agreed to launch new negotiations. They also agreed to work on other issues, in particular the implementation of the present agreements. The entire package is called the Doha Development Agenda. WTO Ministerial Declaration of 14 November 2001, available at: https://www.wto.org/english/thewto_e/whatis_e/tif_e/doha1_e.htm (last accessed 23 November 2025).

[45] WTO Ministerial Decision WT/MIN(17)/64, available at:https://www.wto.org/english/thewto_e/minist_e/mc11_e/documents_e.htm (last

The agreement introduces new disciplines on harmful fisheries subsidies and reflects a collective commitment to strengthen the multilateral framework governing subsidy practices. The AFS prohibits subsidies that support fishing of stocks already overfished, fishing in areas beyond national jurisdiction, and illegal, unreported and unregulated (IUU) fishing.

However, the length of the negotiations and the inclusion of a sunset clause – under which the agreement may lapse if the second-wave disciplines are not adopted within four years of its entry into force (i.e., by 2029), unless members agree to extend it – *illustrate the difficulty of introducing last and effective subsidy controls at the multilateral level*.[46]

Table 47 Fisheries subsidies – timeline

Period / Event	Description	Outcomes
MC11 – Buenos Aires (2017)	WTO Members commit to continue negotiations on fisheries subsidies.	Decision WT/MIN(17)/64[47] instructs Members to reach an agreement "at the earliest possible date" to eliminate harmful fisheries subsidies contributing to overfishing and Illegal, Unreported, and Unregulated (IUU) fishing. After MC11, negotiations intensify in Geneva through 2018–2020, with multiple Chair's drafts.[48]
MC12 – Geneva (2022)	Agreement on Fisheries Subsidies (AFS) adopted—first new WTO agreement since 2013.	Core Prohibitions: 1. Illegal, Unreported, and Unregulated (IUU) Fishing Subsidies prohibited (Art. 3). 2. Subsidies for fishing on overfished stocks prohibited unless a rebuilding plan exists (Art. 4). 3. Subsidies for unregulated high-seas fishing prohibited when not under RFMO/A regulation (Art. 5). Agreement contains sunset clause: if second-wave disciplines not adopted within

accessed 23 November 2025). "Members submitting acceptance of Agreement on Fisheries Subsidies", available at:https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_acceptances_e.htm (last accessed 23 November 2025). WTO "Agreement on Fisheries Subsidies enters into force", 15 September 2025, available at:https://www.wto.org/english/news_e/news25_e/fish_15sep25_e.htm (last accessed 23 November 2025).

[46] Ministry of Foreign Affairs and Trade (New Zealand), National Interest Analysis: WTO Agreement on Fisheries Subsidies, May 2023, available at:https://www.mfat.govt.nz/assets/Trade-General/Trade-policy/National-Interest-Analysis-WTO-Agreement-on-Fisheries-Subsidies.pdf (last accessed 23 November 2025): "The clause poses a risk to the permanence of the FSA […]." See also Auld K., Del Savio L. & Feris L. 2025. An Environmental Agreement in a Trade Court – Is the WTO's Agreement on Fisheries Subsidies Enforceable?, World Trade Review, Vol. 24, available at: https://doi.org/10.1017/S1474745624000375 (last accessed 23 November 2025).

[47] Available at https://www.wto.org/english/thewto_e/minist_e/mc11_e/documents_e.htm (last accessed 27 November 2025).

[48] WTO Ministerial Decision WT/MIN(17)/64, available at: https://www.wto.org/english/thewto_e/minist_e/mc11_e/documents_e.htm(last accessed 27 November 2025); WTO Negotiating Group on Rules reports (2018–2020), available at:https://www.wto.org/english/res_e/booksp_e/anrep_e/anrep20_chap4_e.pdf (last accessed 27 November 2025).

Period / Event	Description	Outcomes
		4 years of entry into force, AFS may terminate unless extended.[49]
2022–2024 (Post-MC12 Work)	"Second-wave" negotiations intensify.	- Continued consultations under WTO Negotiating Group on Rules. - Draft text TN/RL/W/279 circulated in 2024 as basis for final negotiations. - Divisions remain on special & differential treatment and scope of fuel subsidies disciplines. - Members aim for conclusion at MC13.[50]
15 September 2025 – Entry Into Force	AFS officially enters into force.	After required number of ratifications reached (116 members as of 14 November 2025),[51] AFS obligations become binding on ratifying Members.[52]
2025 and Ongoing "Second-Wave" Negotiations	Members continue work on broader overcapacity & overfishing subsidies.	Objectives: discipline subsidies for vessel construction, fuel subsidies, capacity-enhancing programmes.[53]

Agriculture

Agricultural subsidies under the WTO are governed chiefly by the Agreement on Agriculture (AoA), which entered into force in 1995. The AoA introduced disciplines on domestic support, export competition and market access: for example, domestic subsidies are categorised into "Amber", "Blue" and "Green" boxes, with differing levels of permissible support; export subsidies were permitted under schedules but subject to reduction commitments.[54]

A major evolution of these AoA disciplines occurred at the 2015 10th WTO Ministerial Conference in Nairobi, where WTO members agreed to eliminate all remaining scheduled export subsidies under the AoA and to strengthen related export-

[49] Agreement on Fisheries Subsidies, WTO Ministerial Decision of 17 June 2022, WT/MIN(22)/33, available at:https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm (last accessed 27 November 2025).

[50] Additional Provisions on Fisheries Subsidies (Draft Text), WTO Negotiating Group on Rules, 10 July 2024, TN/RL/W/279 (2024), available at:https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/TN/RL/W279.pdf&Open=True (last accessed 27 November 2025).

[51] Current list available at:https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_acceptances_e.htm (last accessed 14 November 2025).

[52] WTO Press Release, available at:https://www.wto.org/english/news_e/news25_e/fish_15sep25_e.htm (last accessed 27 November 2025).

[53] Agreement on Fisheries Subsidies (adopted at the World Trade Organization 12th Ministerial Conference, WT/MIN(22)/33 – WT/L/1144, available at: https://www.wto.org/english/docs_e/legal_e/fish_e.htm (last accessed 27 November 2025).

[54] Agreement on Agriculture (AoA) of the World Trade Organization, available at: https://www.wto.org/english/docs_e/legal_e/14-ag_01_e.htm (last accessed 27 November 2025). See also description of domestic support "boxes" (Amber, Blue, Green) under the agreement: https://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd13_boxes_e.htm (last accessed 27 November 2025).

competition disciplines, including on export credits, international food aid, and agricultural exporting state trading enterprises.[55]

Despite the existence of this framework, further multilateral negotiations — including those under the Doha Development Agenda — have made limited substantive progress, notably on trade-distorting domestic support and public stockholding for food security, *reflecting the persistent challenges of reforming subsidy controls at the multilateral level*.

Table 48 Agricultural subsidies — major milestones

Period / Event	Description	Outcomes
MC4 – Doha (2001)	Agriculture-related negotiations formally launched	Doha Declaration (para. 13–14) sets mandate for "substantial improvements" in market access, "reductions of, with a view to phasing out" export subsidies, and "substantial reductions" in trade-distorting domestic support.[56]
MC5 – Cancún (2003)	No subsidy-related agreement or consensus.	No subsidy-related outcomes.
MC6 – Hong Kong (2005)	End-date for agricultural export subsidies.	Agreement to ensure that the parallel elimination of all forms of export subsidies and measures with similar effect will be completed by the end of 2013.[57]
MC7 – Geneva (2009) to MC9 – Bali (2013)	No subsidy-related agreement or consensus.	No subsidy-related outcomes.
MC10 – Nairobi (2015)	Elimination of all agricultural export subsidies	Agreement to eliminate **all *agricultural* export subsidies.** Developed Members agreed to end export subsidies immediately; developing Members by 2018 (with

[55] Nairobi Ministerial Decision on Export Competition (WT/MIN(15)/45), available at:https://www.wto.org/english/thewto_e/minist_e/mc10_e/l977_e.htm (last accessed 27 November 2025).

[56] Doha Ministerial Declaration of 14 November 2001, WT/MIN(01)/DEC/1, available at: https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm (last accessed 27 November 2025).

[57] Hong Kong Ministerial Declaration of 18 December 2005, WT/MIN(05)/DEC, available at: https://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm (last accessed 27 November 2025).

Period / Event	Description	Outcomes
		specific transitions for some products).[58] However, **no agreement** on domestic support reduction for agriculture. **Prohibition of export subsidies for *cotton***, in line with the broader Nairobi Export Competition Decision. However, **no agreement** on domestic support reduction for cotton.
MC11 – Buenos Aires (2017) to MC13 – Abu Dhabi (2024)	No subsidy-related agreement or consensus.	No subsidy-related outcomes.

3.4 Country-by-country analysis

In this section, the report examines developments in subsidy regimes in the Key Jurisdictions from two perspectives:

- **Bilateral commitments with the EU**: The developments in bilateral commitments relating to subsidies between the EU and the Key Jurisdictions have been reviewed. The review includes developments prior to the European Commission's proposal of the Foreign Subsidies Regulation in May 2021 (pre-FSR developments) and those that followed (post-FSR developments).
- **Developments in domestic laws**: Domestic laws and regulations in the Key Jurisdictions have been reviewed for elements of subsidy control. For domestic subsidy control purposes, the Key Jurisdictions can be broadly grouped into two categories:
    - **Group 1**: China, Switzerland, Türkiye, and the United Kingdom — these jurisdictions have established, or have taken steps towards establishing, a review regime aimed at controlling the provision of subsidies domestically. The analysis focuses on the latest iterations of measures and legislative efforts introducing controls on subsidies, namely China's 公平竞争审查条例 (*Fair Competition Review Regulations*), Switzerland's *Beihilfeüberwachungsgesetz* (Subsidy Oversight Act), Türkiye's *6015 Devlet Desteklerinin İzlenmesi ve Denetlenmesi Hakkında Kanun* (Law No. 6015 on Monitoring and Supervision of State Support), and the United Kingdom's Subsidy Control Act 2022 and its accompanying statutory guidance.
    - **Group 2:** Canada, Japan, the United Arab Emirates and the United States — these jurisdictions have not yet undertaken comparable steps

[58] Nairobi Ministerial Decision on Export Competition of 21 December 2015, WT/MIN(15)/45, available at:https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN15/45.pdf (last accessed 27 November 2025).

to introduce a domestic subsidy control regime. Here, the analysis highlights provisions in domestic law, intergovernmental arrangements, or relevant judicial practice that relate to the granting or control of subsidies, even where such frameworks remain too rudimentary to constitute a coherent domestic subsidy control system.

The following sub-section provides an overview of bilateral commitments across key jurisdictions, with subsequent sub-sections providing detailed and separate analyses of each jurisdiction.

3.4.1 Canada

Bilateral commitments with the EU

Canada's subsidy-related commitments towards the EU will, once the ratification process is completed, stem primarily from the Comprehensive Economic and Trade Agreement (CETA) between Canada, on the one hand, and the European Union and its Member States, on the other.[59]

The agreement has been provisionally applied since 21 September 2017.

CETA includes a dedicated chapter on subsidies (Chapter 7) that broadly reflects and reinforces the rights and obligations established under the SCM Agreement. It promotes transparency through information exchange between the parties. It also establishes dispute settlement mechanisms and designates an institutional body responsible for transparency and enforcement.

Table 49 EU–Canada — summary of subsidy-related FTA provisions

Official title	Status (Year)	Subsidy-control related provisions	Source (full text, consolidated)
Framework Agreement for commercial and economic cooperation between the European Communities and Canada	In force (1976)	None identified	https://eur-lex.europa.eu/eli/agree_international/1976/2300/oj/eng
Agreement Between Canada and the European Community on Customs Cooperation and Mutual Assistance in Customs Matters	In force (1998)	None identified	http://data.europa.eu/eli/agree_internation/1998/18/oj
Agreement on Mutual Recognition between the European Community and Canada	In force (1998)	None identified	https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/european_community-

[59] Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part, OJ [2017] L 11/23, 14.1.2017.

Official title	Status (Year)	Subsidy-control related provisions	Source (full text, consolidated)
			communaute_europeenne/mra/index.aspx?lang=eng
Agreement between the European Community and the Government of Canada on sanitary measures to protect public and animal health in respect of trade in live animals and animal products	In force (1999)	None identified	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01999A0318%2801%29-20130726 http://data.europa.eu/eli/agree_internation/1999/201/2013-07-26
Agreement between the European Community and Canada on trade in wines and spirit drinks	In force (2004)	None identified	https://eur-lex.europa.eu/eli/agree_internation/2004/91/oj/eng
Agreement between the European Communities and the Government of Canada regarding the application of their competition laws	In force (1999)	None identified	https://eur-lex.europa.eu/eli/agree_internation/1999/445/oj/eng
Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part	Provisional application since 21 September 2017; full entry into force pending ratification	**Summary**: Contains a dedicated chapter on subsidies (Chapter 7) Reflects and reinforces the WTO Agreement on Subsidies Promotes transparency through information exchange and notification Includes dispute settlement mechanisms Designates an institutional body for transparency and enforcement]	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22017A0114%2801%29 https://eur-lex.europa.eu/eli/agree_internation/2017/37/oj

Under CETA, the parties must notify each other every two years regarding the form, legal basis, and the amount of the subsidy (or the amount budgeted for the

subsidy).[60] Notifications provided to the WTO under Article 25.1 of the SCM Agreement are deemed to meet the requirement for goods. For services, the parties are required to promptly provide each other relevant information and respond to specific requests concerning instances of government support.[61]

Through a non-binding consultation mechanism, the parties are expected to endeavour to minimise any adverse effects of a subsidy on the interests of the other party, without an explicit requirement to withdraw the subsidies.[62] However, CETA explicitly carves out these subsidy consultation obligations from binding dispute settlement.[63]

There are specific provisions relating to agricultural goods and fisheries products.

CETA does not oblige Canada to adopt domestic legislation governing subsidies. In particular, Canada is not obliged to impose a requirement for subsidies to be pre-authorised before implementation, as in the EU's State aid regime.[64]

Seventeen EU Member States have ratified the agreement, while ten—among them France, Italy, and Poland—have yet to complete their national ratification procedures.[65] Canada has completed its own ratification process and continues to apply CETA provisionally pending full EU ratification.

At the 2025 EU–Canada Leaders' Meeting, both sides reaffirmed their commitment to the effective implementation of CETA and outlined plans to expand cooperation in digital trade, industrial policy, and security.[66]

Other international commitments

WTO

As a WTO Member, Canada is required to submit a new and full subsidy notification every two years. The SCM Agreement (Article 25) requires notification of any subsidy, as defined in the Agreement, that is specific. Furthermore, GATT (Article XVI:1) requires notification of any subsidy that causes trade effects. Canada's notifications must cover all goods-related subsidies.

Please refer to Section 3.3.1 for an analysis of relevant notifications.

Developments in domestic legislation

No indication has been found that Canada, at either the federal or sub-federal level, operates or has taken steps to implement a subsidy control regime comparable to the EU State aid framework.

Federal level

[60] CETA, Article 7.2.

[61] CETA, Article 7.3.

[62] CETA, Article 7.3.

[63] CETA, Article 7.9.

[64] Clifford Chance, The EU and Canada sign the Comprehensive Economic and Trade Agreement, available at: https://www.cliffordchance.com/content/dam/cliffordchance/PDFDocuments/The%20EU%20and%20Canada%20sign%20the%20Comprehensive%20Economic%20and%20Trade%20Agreement.pdf (last accessed 27 November 2025).

[65] European Commission, Overview: EU-Canada Comprehensive Economic and Trade Agreement (CETA), available at:https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/canada/eu-canada-agreement_en (last accessed 25 November 2025).

[66] European Commission, Press Release: Joint Statement following the European Union – Canada 2025 Summit: Enduring Partnership, Ambitious Agenda, 23 June 2025, available at:https://ec.europa.eu/commission/presscorner/detail/da/statement_25_1600 (last accessed 25 November 2025).

Canada does not have a formalised and unified oversight framework specifically designed to control domestic subsidies. There is no Canadian equivalent of the European Commission's State aid rules (Art. 107 TFEU) or the UK's Subsidy Control Act 2022. No documentary evidence has been identified that suggests any official proposals, either from the federal government or a broad consensus of provinces, to establish a formalised and unified oversight framework for subsidies.

However, government entities are under an obligation to publish grants and contributions (Gs&Cs) under the Access to Information Act. Section 87 of the Act requires government entities to publicly disclose grants and contributions with a value of more than CAD25,000, as well as grants and contributions that are of CAD25,000 or less but were amended so that their value is of CAD25,000 or more.

On October 21, 2005, the Government of Canada announced its commitment to proactively disclose all grants and contributions (Gs&Cs) valued at over $25,000 as part of its broader management improvement agenda.[67]

In June 2016, under the Canada's Third Biennial Plan to the Open Government Partnership,[68] the Treasury Board of Canada Secretariat (TBS) pledged to enhance both the transparency and practical value of grants and contributions data. This effort was coordinated by a TBS-led committee comprising 37 departments, agencies, and Crown corporations, known as the Committee on the Reporting of Grants and Contributions Awards (which has since been dissolved).

Provincial / territories level

The Canadian Free Trade Agreement (CFTA)[69] is a trade accord between the federal, provincial, and territorial governments of Canada. It was signed by ministers representing each government and came into effect on 1 July 2017.

The purpose of the CFTA is to make it easier for goods, services, investments, and workers to move freely across Canada's provinces and territories by reducing internal trade barriers. It aims to create a more open and efficient domestic market, similar to how international trade agreements promote cross-border commerce.

The CFTA *prohibits* Parties from providing "incentives" that discriminate against an enterprise based on its head office location or ownership, would result in relocation, or primarily intended to undercut competitors from another Party.[70]

Additionally, each Party "shall endeavour" to refrain from providing an incentive that:

sustains, for an extended period of time, an economically non-viable operation whose production adversely affects the competitive position of a facility located in the territory of another Party;
increases capacity in sectors where the increase is not warranted by market conditions; or
is excessive, either in absolute terms or relative to the total value of the specific project for which the incentive is provided, taking into account such factors as the

[67] Government of Canada. Guidelines on the Reporting of Grants and Contributions Awards. Ottawa: Government of Canada, modified October 3, 2024. https://www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=32563 (last accessed 27 November 2025).

[68] Government of Canada. Third Biennial Plan to the Open Government Partnership (2016–18). Ottawa: Government of Canada, 2016. http://open.canada.ca/en/content/third-biennial-plan-open-government-partnership (last accessed 27 November 2025).

[69] Government of Canada. Canadian Free Trade Agreement (CFTA). Ottawa: Government of Canada, July 1, 2017. https://www.canada.ca/en/intergovernmental-affairs/services/internal-trade/canadian-free-trade-agreement.html. The full text is available at https://www.cfta-alec.ca/canadian-free-trade-agreement (last accessed 27 November 2025).

[70] CFTA, Article 320.

economic viability of the project and the magnitude of the economic disadvantage that the incentive is designed to overcome.[71]
Furthermore, each Party shall refrain from engaging in bidding wars against another Party to attract prospective investors seeking the most beneficial incentive.[72]

Each Party has to submit a biennial report on incentives that provides information on the incentive programs and amounts committed to enterprises under its territory,[73] except regional, local, district, or other forms of municipal government.

The CFTA also provides for a consultation process between the requesting party and the responding party.[74]

On the basis of these consultations, the responding party shall endeavour to eliminate or minimise any adverse effects of the incentive on the requesting Party's interests.[75]

Matters arising from the alleged provision of Prohibited Incentives[76] (but not merely discouraged incentives) are subject to the dispute resolution mechanisms in Chapter 10 of the CFTA, but become time-barred if more than two years have elapsed from the date when the Party first acquired, or should have first acquired, knowledge of an incentive and knowledge that the Party had incurred injury.[77]

"Incentives" are defined as follows:

"*(a) a contribution with a financial value, including cash grants, loans, debt guarantees, or equity injections, made on preferential terms, which confers a benefit on the recipient of that contribution;*

(b) a reduction in taxes or government levies otherwise payable aimed at a specific enterprise, whether organised as one enterprise or as a group of enterprises, but does not include such a reduction when it results from the general application of a tax law of a Party; or

(c) any form of income or price support that results directly or indirectly in a draw on the public purse".[78]

Enforcement of the CFTA appears limited. Government-operated lists of current and past disputes under the CFTA show only one person-to-government dispute during the period, which alleged "financial assistance and subsidies" to Marine Transportation Services (Northwest Territories). As of 31 March 2024, the case remained at the consultation stage before being discontinued.[79]

This may indicate that incentive-related issues arise infrequently and rarely progress to panel proceedings.

[71] CFTA, Article 321(4).

[72] CFTA, Article 321(5).

[73] CFTA, Article 323.

[74] CFTA, Article 322.

[75] CFTA, Article 322(3).

[76] CFTA, Article 320.

[77] CFTA, Article 1003.

[78] CFTA, Part E, Definitions.

[79] Government of Canada. Status of Disputes by Chapter: Canadian Free Trade Agreement (CFTA). Last updated April 14, 2025. PDF. https://www.cfta-alec.ca/wp-content/uploads/2025/05/Status-of-Disputes-by-Chapter-CFTA-April-14-2025.pdf (Last accessed 27 November 2025).

3.4.2 China

Bilateral commitments with the EU

Subsidy-related commitments of China towards the EU were discussed as part of the negotiations on the EU–China Comprehensive Agreement on Investment (CAI), which were concluded in principle in 2020, but the agreement has not been ratified.

Developments in domestic laws

Background

Although the Fair Competition Review System constitutes the principal recent regulatory development relevant to subsidies in China, its primary objective is not subsidy control comparable to the EU State aid framework or the FSR. Rather, the system is designed as an internal-market instrument aimed at reducing local protectionism and promoting the creation of a unified national market.

No indication has been found that China, at either the central or sub-central level, operates or has taken steps to implement a subsidy control regime comparable to the EU State aid framework.

China's subsidy control framework centres on the Fair Competition Review System, introduced in 2016[80] and subsequently formalised through State Council regulations that entered into force in 2024.[81] The State Administration for Market Regulation (SAMR), China's competition regulator and the agency that will be primarily responsible for the enforcement of the Fair Competition Review Regulations, released the Implementation Measures for the Fair Competition Review Regulations (公平竞争审查条例实施办法) on 18 March 2025.[82]

The Regulations build on a framework developed over several years to prevent government policies from restricting or distorting market competition:

In 2016, the State Council introduced the fair competition review system through the Opinions on Establishing a Fair Competition Review System in the Development of the Market System (关于在市场体系建设中建立公平竞争审查制度的意见), providing a mechanism to curb the abuse of administrative power.[83]

In 2021, five ministries issued the revised Detailed Rules for the Implementation of the Fair Competition Review System (公平竞争审查制度实施细则), refining procedures and review criteria.[84]

[80] State Council Opinions on Establishing a Fair Competition Review System in the Development of the Market System, Guo Fa [2016] No. 34, adopted 1 June 2016, available at: https://www.gov.cn/zhengce/content/2016-06/14/content_5082066.htm (last accessed 18 November 2025).

[81] State Council Order No. 783, adopted 11 May 2024, promulgated 6 June 2024, in force from 1 August 2024, available at: https://www.gov.cn/gongbao/2024/issue_11426/202406/content_6959686.html (last accessed 18 November 2025).

[82] Available at: https://www.gov.cn/gongbao/2025/issue_12006/202504/content_7021457.html (last accessed 27 November 2025).

[83] State Council of the People's Republic of China. 1 June 2016. Opinions on Establishing a Fair Competition Review System in the Development of the Market System (*国务院关于在市场体系建设中建立公平竞争审查制度的意见*), Guo Fa [2016] No. 34, issued 14 June 2016. Available at: https://www.gov.cn/zhengce/content/2016-06/14/content_5082066.htm (last accessed 27 November 2025).

[84] State Administration for Market Regulation, National Development and Reform Commission, Ministry of Finance, Ministry of Commerce, and Ministry of Justice. 29 June 2021. Notice on Issuing the Detailed Rules for the Implementation of the Fair Competition Review System (市场监管总局等五部门关于印发 公平竞争审查制度

In 2022, the amended Anti-Monopoly Law (反垄断法) formally required the State to establish and improve the fair competition review system.[85]

The Fair Competition Review Regulations (公平竞争审查条例) are meant to strengthen the legal authority of the system. They intend to play a role in accelerating the creation of a unified national market (全国统一大市场), ensuring that all business entities can access production factors on equal terms and compete fairly.[86]

Formal Law: Regulation on Fair Competition Review

The table below sets out the structure and main contents of the Fair Competition Review Regulations (公平竞争审查条例 — State Council Order No. 783).[87]

Table 50 Fair competition review regulations (公平竞争审查条例 — State Council Order No. 783) (summary of key provisions, courtesy translation)

Section	Summary
Chapter I: General Provisions（*第一章 总则*）	
Art. 1	Purpose and legal basis: standardise fair-competition review, promote fair competition, improve the business environment, and build a unified national market, pursuant to the Anti-Monopoly Law and other laws.
Art. 2	Scope: when drafting any "policy measure" affecting operators' economic activities (laws, regulations, rules, normative documents, concrete policy measures), drafting units (administrative organs and organisations with public-affairs functions authorised by law/regulation) must conduct a fair-competition review.
Art. 3	Leadership principle: uphold CPC leadership and implement Party and State policies and decisions; safeguard equal access to factors and fair participation in competition for all operators.
Art. 4	Central coordination: the State Council establishes a coordination mechanism to plan, coordinate, guide, resolve major issues, and evaluate nationwide review work.
Art. 5	Local mechanisms: people's governments at/above county level shall establish and resource review mechanisms and include related funding in their budgets.

实施细则 的通知), Guo Shi Jian Fan Long Gui [2021] No. 2. Available at: https://www.gov.cn/zhengce/content/2016-06/14/content_5082066.htm (last accessed 27 November 2025).

[85] Standing Committee of the National People's Congress. 24 June 2022. Decision on Amending the Anti-Monopoly Law of the People's Republic of China (全国人民代表大会常务委员会关于修改 中华人民共和国反垄断法 的决定). Available at: https://www.gov.cn/xinwen/2022-06/25/content_5697697.htm (last accessed 27 November 2025).

[86] Zhao, Xiaohong, Zhangqi Tao, Changsheng Cai, and Yunjie Zhang. 2024. Analysis of Key Points of the Fair Competition Review Regulations. KWM (China), available at: https://www.kwm.com/cn/zh/insights/latest-thinking/key-takeaways-of-china-s-new-rules-for-fair-competition-reviews.html (last accessed 18 November 2025).

[87] Available at: https://www.gov.cn/gongbao/2024/issue_11426/202406/content_6959686.html (last accessed 27 November 2025).

Section	Summary
Art. 6	Competent authority: SAMR guides implementation and urges departments/regions to carry out reviews; local market-regulation departments organise implementation within their jurisdictions.
Art. 7	Assessment integration: governments include review work in rule-of-law government and business-environment evaluations.
Chapter II: Review Standards（*第二章 审查标准*）	
Art. 8	No restrictions on market entry/exit. Policy measures must not: (i) set approval beyond the negative list, (ii) set or grant franchises unlawfully, (iii) require use of specified operators' goods/services, (iv) set unreasonable/discriminatory entry/exit conditions, or (v) other entry/exit restrictions or disguised restrictions.
Art. 9	No barriers to free flow of goods/factors: must not (i) restrict entry/exit of out-of-region/imported goods/factors or hinder local operators' relocation/export, (ii) exclude/limit/force out-of-region investment or branches, (iii) exclude/limit out-of-region bidders in procurement/tendering, (iv) set discriminatory fees/prices/subsidies, (v) impose discriminatory requirements on qualifications/enforcement, or (vi) other restrictions on free flow.
Art. 10	No cost-affecting preferences without legal basis or State Council approval: must not grant to specific operators (i) tax preferences, (ii) selective/differential fiscal rewards or subsidies, (iii) preferential access to factors, admin fees, government funds, social insurance, or (iv) other cost-affecting content.
Art. 11	No interference with business conduct: must not (i) force or facilitate monopoly conduct, (ii) set government-guided/priced items or preferential prices beyond statutory competence, (iii) unlawfully interfere with market-regulated prices of goods/factors, or (iv) other conduct-affecting production / operation.
Art. 12	Allowable exceptions: measures that may exclude/restrict competition can be issued only if they (i) safeguard national security/development interests, (ii) promote sci-tech progress and indigenous innovation, (iii) achieve public interests such as energy conservation, environmental protection, disaster relief, or (iv) other situations by law/regulation; and only where no less-restrictive alternative exists and a reasonable implementation period or termination condition is set.
Chapter III: Review Mechanism（*第三章 审查机制*）	
Art. 13	Departmental measures: drafting unit conducts review at the drafting stage; for joint measures, lead drafter conducts

Section	Summary
	the review.
Art. 14	Government-level measures: for measures to be issued by a government at/above county level or submitted to its people's congress (or standing committee), the market-regulation department conducts the review jointly with the drafter; the drafter does a preliminary review and submits the draft plus prelim opinion to market-regulation for review.
Art. 15	Cross-region/department pilots encouraged to explore joint review mechanisms.
Art. 16	Hearings/consultation: solicit views from operators, industry associations/chambers and other stakeholders; where public interest is involved, solicit public opinions.
Art. 17	Review conclusion: apply Chapter II standards, assess competitive impact, and issue a review conclusion; if Art. 12 applies, explain in detail in the conclusion.
Art. 18	No issuance without compliant review: measures not reviewed, or found to violate Arts. 8–11 and not meeting Art. 12, must not be issued.
Art. 19	Confidentiality: state secrets, trade secrets, and personal privacy learned during review must be kept confidential according to law.
Chapter IV: Supervision and Safeguards（*第四章 监督保障*）	
Art. 20	SAMR strengthens supervision/assurance; establishes spot-check, reporting, and inspection mechanisms.
Art. 21	Spot checks: market-regulation departments organise spot checks of policy measures; where violations are verified, urge the drafter to rectify; report results to the government at the same level; results may be disclosed publicly.
Art. 22	Reporting channels: any organisation or individual may report violating measures to market-regulation; upon receipt, departments shall handle promptly or transfer to competent bodies.
Art. 23	State Council inspections: conducted periodically; SAMR responsible for implementation.
Art. 24	Interviews for non-rectification: where a drafter fails to conduct review per the Regulation and, after being urged, still fails to rectify, the higher-level market-regulation department may interview its responsible persons.
Art. 25	Accountability: where failure to conduct review per the Regulation causes serious adverse impact, responsible leaders and other directly liable persons of the drafter are disciplined according to law.
Chapter V: Supplementary Provisions（第五章 附则）	
Art. 26	SAMR shall formulate detailed implementation measures for

Section	Summary
	the review system under this Regulation.
Art. 27	Effective date: 1 August 2024.

Implementation

The system rests on administrative measures rather than a single, comprehensive statute. It is now linked to the Anti-Monopoly Law. In formal terms, government bodies at all levels are required to carry out a fair competition review before adopting policies that may affect market access, business costs or competitive conditions, including subsidies, tax incentives, public procurement rules and other support measures. The framework is drafted in broad terms and appears to be capable of applying across sectors and forms of state support.[88]

Enforcement is structured on a **decentralised self-review model**. The granting authority is expected to conduct its own review using a standardised checklist and criteria aimed at identifying measures that may unduly restrict or distort competition.[89]

The State Administration for Market Regulation (SAMR) has a coordinating and supervisory role,[90] refining review standards, defining behavioural rules, and ensuring implementation by strengthening oversight mechanisms, including establishing and improving systems for random inspections of policy measures, handling public reports, and conducting supervision and follow-up rectification. SAMR must report inspection results to the relevant level of government and may disclose them publicly, while also making reporting channels—such as telephone numbers, mailboxes, or email addresses—open to society.[91]

The formal powers are mainly preventive and administrative: authorities are not supposed to introduce measures without a lawful basis, and higher-level bodies may instruct revisions.

Official statistics show that more than 1.61 million policy-measures have been reviewed and 93,000 of them amended or repealed under the system.[92] However, the

[88] Emch, Adrian. 2016. Fair competition review system – competition advocacy and State aid rules through the back door? Kluwer Competition Law Blog, available at: https://legalblogs.wolterskluwer.com/competition-blog/fair-competition-review-system-competition-advocacy-and-state-aid-rules-through-the-back-door/ (last accessed 18 November 2025).

[89] Huang, Yong and Wu, Baiding. 2017. China's Fair Competition Review. CPI Antitrust Chronicle, available at: https://www.competitionpolicyinternational.com/wp-content/uploads/2017/03/CPI-Huang-Wu.pdf (last accessed 18 November 2025); Emch, Adrian. 2016. Fair competition review system – competition advocacy and State aid rules through the back door? Kluwer Competition Law Blog, available at: https://legalblogs.wolterskluwer.com/competition-blog/fair-competition-review-system-competition-advocacy-and-state-aid-rules-through-the-back-door/ (last accessed 18 November 2025).

[90] Ross, Lester. 2024. New Chinese Regulation on Fair Competition Review (WilmerHale Client Alert, 26 June 2024), available at: https://www.wilmerhale.com/en/insights/client-alerts/20240626-new-chinese-regulation-on-fair-competition-review (last accessed 18 November 2025); Huld, Arendse. 2024. China Issues New Fair Competition Review Regulations in Effort to Improve the Business Environment (China Briefing, 24 June 2024), available at: https://www.china-briefing.com/news/china-fair-competition-review-regulations/ (last accessed 18 November 2025).

[91] State Council Order No. 783, adopted 11 May 2024, promulgated 6 June 2024, in force from 1 August 2024, Articles 20-22, available at: https://www.gov.cn/gongbao/2024/issue_11426/202406/content_6959686.html (last accessed 18 November 2025).

[92] Nation to crack down on market barriers, State Council Information Office press release, 24 June 2024, available at: https://english.scio.gov.cn/m/pressroom/2024-06/24/content_117270189.htm (last accessed 18 November 2025).

methodology and consistency of these adjustments (review-and-amend actions) are not always transparent in the public record.[93]

Legal commentators note that SAMR's practical ability to enforce the Regulation uniformly across China in the face of competing local priorities is *"questionable"*.

Legal commentators further observe that SAMR does not have extensive resources, and that regional authorities have on many occasions managed to push back against central directives which may run counter to local interests. Also, the exception provisions leave considerable room for local authorities to adopt measures that favour their own interests, provided they can justify them as serving national security or delivering specific technological, economic, or social benefits.[94]

3.4.3 Japan

Bilateral commitments with the EU

Japan's subsidy-related commitments towards the EU are set out in the Agreement between the European Union and Japan for an Economic Partnership, in force since 2019.[95]

The agreement introduces transparency and consultation mechanisms, as well as targeted prohibitions. The agreement prohibits unlimited government guarantees and restructuring aid to ailing enterprises without a credible viability plan and a meaningful owner contribution, and requires that subsidies be used only for their intended purpose.

Table 51 EU–Japan: summary of subsidy-related FTA provisions

Official title	Status (Year)	Subsidy control-related provisions	Source (full text, consolidated)
Agreement on mutual recognition between the European Community and Japan	In force (2001)	None identified	https://eur-lex.europa.eu/eli/agree_internation/2001/747/oj/eng
Agreement between the European Community and the Government of Japan on cooperation and	In force (2008)	None identified	http://data.europa.eu/eli/agree_internation/2008/202/oj

[93] Wang, Keju. 2024. Regulations seek to create fairer competition, China Daily, 11 Sept 2024, available at: https://www.chinadaily.com.cn/a/202409/11/WS66e0ddf0a3103711928a7433.html (last accessed 18 November 2025).

[94] Ross, Lester. 2024. New Chinese Regulation on Fair Competition Review (WilmerHale Client Alert, 26 June 2024), available at: https://www.wilmerhale.com/en/insights/client-alerts/20240626-new-chinese-regulation-on-fair-competition-review (last accessed 18 November 2025); Huld, Arendse. 2025. China Issues New Fair Competition Review Regulations in Effort to Improve the Business Environment (China Briefing, 24 June 2024), available at: https://www.china-briefing.com/news/china-fair-competition-review-regulations/ (last accessed 18 November 2025).

[95] Agreement between the European Union and Japan for an Economic Partnership. 2018. OJ L 330, 27 December 2018, p. 3–899.

Official title	Status (Year)	Subsidy control-related provisions	Source (full text, consolidated)
mutual administrative assistance in customs matters			
Agreement between the European Union and Japan for an Economic Partnership	In force (2019)	Summary: *Transparency Requirements* Art. 12.5: Every two years, each Party must notify: The legal basis, form, amount or budget, and—where possible—the recipients of specific subsidies. (*Publication on an official website or WTO SCM notification fulfils this obligation for goods.*) For services, notification applies only to certain sectors. *Consultation Mechanism* Art. 12.6: Consultations may be requested for subsidies affecting trade or investment; information (legal basis, purpose, form, duration, eligibility, amount, recipient) to be provided within 90 days; explanations required if withheld; concerns to receive sympathetic consideration. (*The consultation process is not subject to dispute settlement.*) *Prohibited Subsidies* Article 12.7: Unlimited government guarantees of an enterprise's debts or liabilities. Restructuring aid to ailing enterprises without: - A credible plan for returning to viability, and - A meaningful owner contribution.	https://eur-lex.europa.eu/eli/agree_internation/2018/1907/2024-05-14

Official title	Status (Year)	Subsidy control-related provisions	Source (full text, consolidated)
		Other Provisions Art. 12.8: Each Party must ensure subsidies are used only for their intended purpose.	
Protocol amending the Agreement between the European Union and Japan for an Economic Partnership	In force (2024)	None identified	https://eur-lex.europa.eu/eli/agree_prot/2024/1304/oj/eng

Other international commitments

WTO

As a WTO Member, Japan is required to submit a new and full subsidy notification every two years. The SCM Agreement (Article 25) requires notification of any subsidy, as defined in the Agreement, which is specific. Furthermore, GATT (Article XVI:1) requires notification of any subsidy that causes trade effects. Japan's notifications must cover all goods-related subsidies.

Japan has made substantive submissions under Article 25 SCM Agreement, reporting on programmes granted or maintained at the central and sub-central levels, since joining the WTO.[96]

Please refer to Section 3.3.1 for an analysis of relevant notifications.

Developments in domestic legislation

No indication has been found that Japan, at either the federal or sub-federal level, operates or has taken steps to implement a subsidy control regime comparable to the EU State aid framework.

Central level

Japan does not have a formalised and unified oversight framework specifically designed to control domestic subsidies. There is no Japanese equivalent of the European Commission's State aid rules (Art. 107 TFEU) or the UK's Subsidy Control Act 2022. No documentary evidence has been identified that suggests any official proposals, either from the federal government or a broad consensus of provinces, to establish a formalised and unified oversight framework for subsidies.

Act on the Optimization of Budget Execution Related to Subsidies

The Act on the Optimization of Budget Execution Related to Subsidies, etc. (Act No. 179 of 1955) (補助金等に係る予算の執行の適正化に関する法律（昭和三十年法律第百七十九号[97]) is currently in force and has been amended multiple times, including by Act No. 68 of 2020. It sets out the framework for applying for, granting, using, monitoring, and,

[96] See WTO Member Profile for Japan, https://notifications.wto.org/en/status-by-member/japan (last accessed 27 November 2025).

[97] Available at: https://laws.e-gov.go.jp/law/330AC0000000179/ (last accessed 27 November 2025).

where necessary, recovering central-government funds provided to non-government entities.

The law establishes procedural and compliance requirements for ministries and subsidy recipients. It defines "subsidies" (補助金) broadly to include direct grants, interest subsidies and other non-compensated financial benefits (Article 2). It regulates how ministries may grant subsidies (Articles 3–10), how subsidies are to be implemented (Articles 11–16), as well as repayment of subsidies (Articles 17–21). The Act appears to function primarily as a public finance and administrative control measure, ensuring transparency and accountability in the domestic execution of Japan's national budget.

However, the Act does not establish a State aid control system comparable to the EU's regime under Articles 107–109 TFEU. There is no general prohibition on state support that distorts competition, nor any independent ex ante review mechanism (such as the European Commission's notification and approval process). The Act also lacks a competition-based test of market distortion. Instead, the Japanese law's focus is administrative and fiscal: preventing fraud, ensuring lawful expenditure, and maintaining proper budget execution within the domestic public sector.

Guidelines for Public Support for Revitalization in view of Competition Policy

Japan's competition regulator, the Japan Fair Trade Commission (JFTC), appears to have taken an advisory role in the past when it comes to assessing the market impact of domestic subsidies.

A notable example is the *Guidelines for Public Support for Revitalization in view of Competition Policy*,[98] which the JFTC reportedly released in 2015 after a multi-agency study group's discussions. These guidelines address cases where public bodies bail out or restructure failing enterprises (a form of subsidy/support to prevent business exit). They recommend principles such as the "principle of subsidiarity" (public support should be given only if the private sector cannot rescue the business) and the "principle of minimum necessity" (support should be limited to the minimum scale and duration needed). They also emphasise a "principle of transparency", advising that the details of each case of aid should be disclosed as much as possible so competitors and the public can understand the impacts.

There is no indication that these guidelines are legally enforceable. Also, no indication has been found that the JFTC is systematically consulted before the government adopts subsidy programmes.[99]

Prefectures level

No indication has been found in the documents reviewed that any of the Japanese prefectures operate a formalised and unified oversight framework specifically designed to control domestic subsidies.

No specific requirements or practices have been identified in any of the Prefectures regarding the disclosure of subsidies or grants, whether in aggregate or disaggregated form.

[98] Japan. 2021. The Promotion of Competitive Neutrality by Competition Authorities: Contribution from Japan. OECD Global Forum on Competition, Session III, DAF/COMP/GF/WD(2021)20. Paris: Organisation for Economic Co-operation and Development. Available at: https://www.jftc.go.jp/kokusai/kaigai/oecd_images/0312_competitive_neutrality.pdf (Last accessed 27 November 2025).

[99] Japan. 2021. The Promotion of Competitive Neutrality by Competition Authorities: Contribution from Japan. OECD Global Forum on Competition, Session III, DAF/COMP/GF/WD(2021)20. Paris: Organisation for Economic Co-operation and Development. Available at: https://www.jftc.go.jp/kokusai/kaigai/oecd_images/0312_competitive_neutrality.pdf (Last accessed 27 November 2025).

3.4.4 Switzerland

Bilateral commitments with the EU

Switzerland's existing subsidy-related commitments towards the EU are primarily set out in the Agreement between the European Economic Community and the Swiss Confederation, in force since 1972,[100] and the Agreement between the European Community and the Swiss Confederation on Air Transport, in force since 1999.[101]

The 1972 Agreement prohibits any public aid that distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, insofar as such aid affects trade between the Parties. It also allows either Party to take appropriate or precautionary measures in cases of incompatibility or exceptional circumstances requiring immediate action.

The 1999 Air Transport Agreement contains a similar prohibition on aid that distorts competition and provides for ongoing review by the European Commission and the Swiss authorities of existing aid systems in the EU Member States and in Switzerland.

Table 52 EU–Switzerland: summary of subsidy-related FTA provisions

Official title	Status (Year)	Subsidy control-related provisions	Source (full text, consolidated)
Agreement between the European Economic Community and the Swiss Confederation	In force (1972)	[**Extracts**] Article 23(1) The following are incompatible with the proper functioning of the Agreement in so far as they may affect trade between the Community and Switzerland: … (iii) any ***public add* (*sic!*)** which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods. 2. Should a Contracting Party consider that a given practice is	https://eur-lex.europa.eu/eli/agree_internation/1972/2840(1)/2025-02-01

[100] Agreement between the European Economic Community and the Swiss Confederation. 1972. OJ L 300, 31 December 1972, pg. 189–280.

[101] Agreement between the European Community and the Swiss Confederation on Air Transport. 1999. OJ L 114, 30 April 2002, pg. 73–90.

Official title	Status (Year)	Subsidy control-related provisions	Source (full text, consolidated)
		incompatible with this Article, it may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 27. […] Article 27(3)(e): Where exceptional circumstances requiring immediate action make prior examination impossible, the Contracting Party concerned may, in the situations specified in Articles 24, 24a, 25 and 26 and also in the case of *export aids* having a direct and immediate incidence on trade, apply forthwith the precautionary measures strictly necessary to remedy the situation.	
Agreement between the European Community and the Swiss Confederation on Air Transport	In force (1999)	[**Extracts**] Article 13: (1) Save as otherwise provided in this Agreement, any aid granted by Switzerland or by an EC Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by	https://eur-lex.europa.eu/eli/agree_internation/2002/309(2)/2025-08-01

Official title	Status (Year)	Subsidy control-related provisions	Source (full text, consolidated)
		favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Contracting Parties, be incompatible with this Agreement. (2) The following shall be compatible with this Agreement: […] (3) The following may be considered to be compatible with this Agreement: […] Article 14 The Commission and the Swiss authorities shall keep under constant review matters to which reference is made in Article 12 and all systems of aid existing respectively in the EC Member States and in Switzerland. […]	
Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment	In force (2002)	None identified	https://eur-lex.europa.eu/eli/agree_internation/2002/309(5)/2017-12-22
Agreement between the European Community and the Swiss Confederation on trade in agricultural	In force (2002)	Annex 3(2(d) In the first year following the entry into force of the Agreement,	https://eur-lex.europa.eu/eli/agree_internation/2002/309(4)/oj

Official title	Status (Year)	Subsidy control-related provisions	Source (full text, consolidated)
products		Switzerland shall gradually eliminate export subsidies on consignments of cheese to the Community as follows […] Subsidies may be granted solely on cheeses manufactured from milk produced entirely in Swiss territory.	
Agreement between the European Community and the Swiss Confederation on certain aspects of government procurement	In force (2002)	None identified	https://eur-lex.europa.eu/eli/agree_internation/2002/309(6)/2012-10-22
Agreement between the European Community and the Swiss Confederation on the simplification of inspections and formalities in respect of the carriage of goods and on customs security measures	In force (2009)	None identified	https://eur-lex.europa.eu/eli/agree_internation/2009/556/2021-03-15
Agreement between the European Union and the Swiss Confederation concerning cooperation on the application of their competition laws	In force (2014)	None identified	https://eur-lex.europa.eu/eli/agree_internation/2014/866/oj

Since 2022, Switzerland and the EU have renewed negotiations to modernise their bilateral economic agreements. The current "package" approach (known as Bilateral III) replaces the idea of a single overarching treaty.

Developments in domestic legislation

Background

Historically, Switzerland has operated without a centralised subsidy control regime comparable to the EU's State aid system or the UK's Subsidy Control Act 2022.[102]

Currently, Swiss law relies on general principles, especially the constitutional guarantee of economic freedom, to set limits on state support.[103] The Swiss state is obliged to treat private economic operators equally and to perform its functions in a way that remains neutral with respect to competition. Accordingly, public authorities must not take measures that have the purpose or effect of significantly distorting or eliminating competition to the detriment of private economic operators.[104]

Currently, Switzerland has subsidy supervision only in the aviation sector. Under the Agreement between the European Community and the Swiss Confederation on Air Transport,[105] Switzerland agreed to review subsidies in the aviation sector. The Swiss Competition Commission (WEKO) has the power to assess State aid measures in the Swiss air transport sector, by virtue of article 103 of the Federal Act of 21 December 1948 on Air Transport (Luftfahrtgesetz). The authorities granting subsidies must obtain an opinion from the WEKO.[106]

Swiss and EU negotiators reached a political understanding by late 2024 according to which:

- Switzerland will adopt rules **equivalent** to EU State aid rules in the covered sectors, but enforcement will follow a "two-pillar" system respecting Swiss sovereignty. In other words, instead of the European Commission policing Swiss subsidies, Switzerland will police its own subsidies to meet EU standards.[107]
- State aid control reportedly has been limited to the agreements on land transport, electricity, and air transport (the 1972 Free Trade Agreement and the Agreement on Public Procurement are not affected by the State aid rules and were not part of the negotiated "package").[108]

The draft text explicitly provides exceptions for public service obligations ("Service Public") and introduces thresholds/minimum thresholds. The State aid rules under the electricity agreement include further sector-specific safeguards.

The Federal Council (*Bundesrat*) has very recently submitted a draft State Aid Supervision Act (*Beihilfenüberwachungsgesetz, BHÜG*), which has been published on the government's website[109] but has not yet been subject to official guidance or commentary.

[102] Hirsbrunner, Simon. 2016. Switzerland, Getting the Deal Through – State Aid 2016. Law Business Research Ltd, pg. 2, 3.

[103] Ibid.

[104] Ibid.

[105] OJ L 114 30.4.2002, pg. 73.

[106] United Swiss Confederation / State Secretariat for Economic Affairs (SECO). 2025. Staatliche Beihilfen https://www.seco.admin.ch/seco/de/home/wirtschaftslage---wirtschaftspolitik/wirtschaftspolitik/Wettbewerbspolitik/staat-und-wettbewerb/staatliche_beihilfen.html (last accessed 27 November 2025).

[107] Ibid.

[108] Ibid.

[109] Available at: https://www.europa.eda.admin.ch/dam/de/sd-web/SvwYvAu6eUvx/1.%20BB%20Stabilisierung%20(DE).pdf (last accessed 27 November 2025).

Formal law: State Aid Supervision Act

The table below sets out the structure and main contents of the draft State Aid Supervision Act.

Table 53 Switzerland—State Aid Supervision Act (*Beihilfenüberwachungsgesetz*) (summary of key provisions, courtesy translation)

Section	Summary
Chapter 1: General Provisions	
Subject matter & scope (Art. 1)	Establishes the oversight authority's tasks and procedures for monitoring State aid. Applies to any State aid that distorts or threatens to distort competition and affects trade between Switzerland and the EU within the scope of: the Air Transport Agreement (1999), the Land Transport Agreement (1999), and, if concluded, the Electricity Agreement. De-minimis aid per the listed protocol annexes is excluded. (Art. 1 para. 1–3)
Key definitions (Art. 2):	Defines granting authority (Beihilfegeber), beneficiary (Beihilfeempfänger), aid scheme (Beihilferegelung), individual aid (Einzelbeihilfe), individual aid under a scheme (Umsetzungsbeihilfe), individual aid not under a scheme (Ad-hoc-Beihilfe), the treaty state-aid rules ("beihilferechtliche Bestimmungen"), and compatible with those rules ("zulässig").
Chapter 2: Oversight Authority (*Überwachungsbehörde*)	
Institutional set-up (Art. 3)	A three-member decision-making body (*Beihilfekammer*) within the Competition Commission (*WEKO*) acts as the oversight authority and takes final decisions. One member is from the WEKO presidium and chairs; the Federal Council appoints the other two and their substitutes. Selected provisions of the Cartel Act (Arts. 18–25, 41, 49 KG) apply unless this Act provides otherwise.
Tasks (Art. 4):	Advises aid grantors; reviews aid and issues opinions; challenges unlawful aid via complaints or procedures under Chapter 4 (see below); runs special procedures; continuously reviews existing schemes; and publishes information on aid and related procedures.
Chapter 3: Ordinary Procedure before the Oversight Authority (*Überwachungsbehörde*)	
Section 1: Advisory Procedure and Notification (*Beratung und*	

Section	Summary
***Anmeldung*)**	
Advisory service (Art. 5):	Non-binding advice on this Act and the treaty rules during aid design; fee-based, time-spent; fee rates set by the Federal Council.
Notification duty (Art. 6):	Aid grantors must notify planned aid and significant changes; significance includes material increase, change of beneficiary, or changes to legal nature/objective.
Exemptions from notification (Art. 7):	No notification for: (a) implementation aid under a scheme already assessed by the authority (opinion or appeal decision); (b) implementation aid under an existing scheme; (c) aid that meets the "block-exempted" conditions in the cited annex sections of the protocols (and electricity agreement, if applicable).
Standstill (Durchführungsverbot) (Art. 8):	Notifiable federal aid may not be granted before the authority issues its opinion. If the time limit in Art. 20 expires without an in-depth review being opened or an opinion issued, the standstill is lifted.
Content/form of notification (Art. 9):	Grantor must supply all information necessary for assessment; details set by WBF/EAER. (Art. 9 para. 1–2)
Timing of notification (Art. 10):	Notify once key features are set and no significant changes are expected; for aid in the form of legislation, notify by the first consultation round at the latest (where such a round occurs).
Acknowledgement of notification (Art. 11):	Receipt confirmed within five working days; missing items trigger a request with a deadline.
Withdrawal of notification (Art. 12):	Grantor may withdraw until the authority communicates its opinion (Arts. 15 or 17(1)); failure to supply requested information in time counts as withdrawal.
Section 2: Assessments (*Prüfungen*)	
Assessment focus (Art. 13):	Authority examines whether notified aid is "*zulässig*" (compatible).
Simple review (Art. 14):	Begins upon acknowledgement; may be suspended if the grantor wishes to adjust the aid.
Outcome of simple review (Art. 15):	If the aid is compatible or not aid, the authority issues an opinion and informs the grantor of its publication.
In-depth review (Art. 16):	Opened if doubts arise in simple review; opening notice is published and summarises key facts, legal issues, and the authority's preliminary assessment.
Outcome of in-depth review (Art. 17):	Authority issues an opinion stating whether the notified measure is compatible, incompatible, or not aid; may propose adjustments if incompatible. Publication is notified to the grantor.
Legal effect of opinions (Art. 18):	Opinions are non-binding. If the grantor departs from the opinion when granting aid, it must state reasons. (Art. 18 para. 1–2)
Revocation of an opinion (Art. 19)	Authority may revoke an opinion; for Art. 15 opinions it first opens an in-depth review; grantors/beneficiaries may comment before revocation if not already heard.

Section	Summary
Deadlines (Art. 20)	Two months for simple review (from acknowledgement); twelve months for in-depth review (from opening); may be extended with the grantor's agreement.
Rights of competitors (Art. 21)	Competitors may comment in writing after in-depth review is opened; further exchanges possible.
[…]	[…]
Section 3: Duty to Notify and Procedure to Issue a Decision (*Mitteilungspflicht und Verfahren auf Erlass einer Verfügung*)	
Duty to notify (Art. 24)	Grantor must notify: (a) publication of schemes and ad-hoc aid in legislative form; (b) ad-hoc aid not in legislative form; (c) implementation aid under unexamined or (in)compatible schemes per listed cases; (d) implementation aid under existing schemes assessed as unlawful per listed cases. Notifications occur via service of decisions for decision-form aid; public-law contracts must be notified before performance (an SuG Art. 19(2) opening suffices).
Exemptions from notification (Art. 25)	No notification for measures meeting listed annex conditions; aid by the Federal Assembly and Federal Council is exempt.
Procedure to issue a decision (Art. 26)	If unlawful: for public-law contracts, request withdrawal/termination/adaptation and recovery within 30 days; for SuG Art. 19(2) applications, request an appealable decision within 30 days; for real acts, request cessation/reversal and recovery within 30 days; if not complied, the grantor must issue a decision; not applicable to aid by Federal Assembly/Federal Council.
[…]	[…]
Chapter 4: Special procedures in cases of breach of the notification or reporting obligation (*Besondere Verfahren bei Verletzung der Anmelde- oder Mitteilungspflicht*) **Section 3: Elimination and Recovery of Unlawful Aid (*Verfahren zur Beseitigung unzulässiger Beihilfen und deren Rückforderung*)**	
Process in case of unlawful individual aid (Art. 31)	If unlawful: request withdrawal of decisions; withdrawal/termination/adaptation of contracts; cessation/reversal of real acts; and request recovery; if not complied, the grantor must decide by decision.

Section	Summary
[…]	
Chapter 5: Complaint Proceedings (*Beschwerdeverfahren*)	
Standing to complain (Art. 36)	Authority may complain against: individual-aid decisions; decisions concerning individual aid via contracts or real acts; schemes and ad-hoc legislative aid. No complaints against aid by the Federal Assembly/Federal Council or constitutional aid.
[…]	
Chapter 6: Recovery (*Rückforderung)*	
Art. 41 Repayment modalities	Recovery includes interest from availability of the aid until actual repayment.
[…]	
Chapter 8: Transparency (*Transparenz*)	
Art. 49 Reporting obligations of aid grantors	Aid grantors must submit final decisions, judgments and reports on all aid measures within 30 days, while redacting business secrets.
Art. 50 Summary reporting	Aid grantors provide a short description and text of aid granted under Art. 25(1), with additional details required for individual aid above EUR 500,000, and must redact business secrets
Art. 51 Publication	The supervisory authority publishes information on aid and related procedures—including statements, decisions, complaints and reports—while redacting business secrets, with details defined by the WBF (Art. 51 para. 1–5). *[WBF refers to the Federal Department of Economic Affairs, Education and Research (in German: Eidgenössisches Departement für Wirtschaft, Bildung und Forschung)].*
[…]	
Chapter 9: General Procedural Provisions (Allgemeine Verfahrensbestimmungen)	
Art. 52 Establishing facts	Authority investigates "von Amtes wegen" (*ex officio*); evidence may include documents, information from grantors/beneficiaries/third parties, and expert opinions. (Art. 52 let. a–d).
[…]	

Implementation

Switzerland does not yet have a comprehensive subsidy-control regime, and oversight remains limited to specific sectors, most notably aviation, where the Competition Commission (Switzerland) (WEKO) issues non-binding opinions on proposed

subsidies.[110] Beyond this narrow context, federal and cantonal authorities reportedly continue to operate a wide range of support programmes without systematic horizontal review.[111]

In recent years, however, negotiations with the EU have prompted the Federal Council of Switzerland to explore the establishment of a more structured framework. A draft Subsidy Oversight Act (*Beihilfeüberwachungsgesetz, BHÜG*) is under consultation, and it is intended to provide an overarching legal basis for monitoring, reviewing, and—where necessary—challenging state-support measures.[112] The emerging regime would introduce an *ex-ante* assessment process for public subsidies. Under current practice in aviation, authorities consult COMCO prior to granting aid, but are not bound by its views.[113]

Under the planned system, the responsibility for reviewing notifications would shift to an independent administrative authority with powers to examine proposed subsidies before they are implemented, and to initiate proceedings before Swiss courts where it considers an aid measure to be incompatible.[114] The proposal also envisages greater transparency, including a public register of notified and approved subsidies, though the final design of these mechanisms is still being defined.[115]

However, because the proposals are still at an early stage, there is no commentary yet on the regime's likely effectiveness in practice.

3.4.5 Türkiye

Bilateral commitments with the EU

Under Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union,[116] Türkiye committed to approximate EU rules on State aid (i.e., to control and transparently report subsidies that could distort competition).

That commitment includes having an independent authority, detailed implementing rules, and a public inventory of aid schemes.

[110] Federal Council (FDFA). 2024. Factsheet: State aid (Staatliche Beihilfen). Available at: https://www.eda.admin.ch/content/dam/europa/en/documents/fs/paketansatz/2024-staatliche-beihilfen_EN.pdf (last accessed 18 November 2025).

[111] Rutz, Samuel. 2022. Switzerland, the Land of Subsidies, in: Avenir Suisse, 17 March 2022: "While certain aspects at least of the granting of subsidies at federal level are regulated, in the cantons and municipalities it's effectively no-holds-barred … there is no cross-sectoral regime." Available at: https://www.avenir-suisse.ch/en/publication/switzerland-the-land-of-subsidies/ (last accessed 18 November 2025).

[112] Schweizerische Eidgenossenschaft, Notice of 10 November 2025. Ende der Vernehmlassung zum Paket Schweiz-EU – Bundesrat analysiert. Available at: https://www.europa.eda.admin.ch/de/vernehmlassung-paket-schweiz-eu (last accessed 18 November 2025).

[113] Federal Council (FDFA). 2024. Factsheet: State aid (Staatliche Beihilfen), pg. 2: "The only monitoring function recognised by Switzerland to date is in the air transport sector, and is carried out by COMCO." Available at: https://www.eda.admin.ch/content/dam/europa/en/documents/fs/paketansatz/2024-staatliche-beihilfen_EN.pdf (last accessed 18 November 2025).

[114] Ibid.

[115] *Cf.* Draft State Aid Supervision Act (*Beihilfeüberwachungsgesetz, BHÜG*), Section 51.

[116] Decision No 1/95 of the EC–Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union, OJ L 35, 13.2.1996, pg. 1–47.

Table 54 EU–Türkiye: summary of subsidy-related FTA provisions

Official title	Status (Year)	Subsidy control-related provisions	Source (full text, consolidated)
Agreement establishing an Association between the European Economic Community and Turkey	In force (1963/1964)	None identified	https://eur-lex.europa.eu/eli/agree_internation/1964/732/2004-05-01
Additional Protocol and Financial Protocol signed on 23 November 1970, annexed to the Agreement establishing the Association between the European Economic Community and Turkey and on measures to be taken for their entry into force	In force (1973/1970)	None identified	https://eur-lex.europa.eu/eli/prot/1972/2760(1)/oj
Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union	In force (1995)	[Extracts] Article 34 1. Any aid granted by Member States of the Community or by Turkey through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between the Community and Turkey, be incompatible with the proper functioning of the Customs Union. *[exceptions listed]* Article 35 Any practices contrary to Articles 32, 33 and 34 shall be assessed on the basis of	https://eur-lex.europa.eu/eli/dec/1995/1(5)/oj

Official title	Status (Year)	Subsidy control-related provisions	Source (full text, consolidated)
		criteria arising from the application of the rules of Articles 85, 86 and 92 of the Treaty establishing the European Community and its secondary legislation. Article 36 The Parties shall exchange information, taking into account the limitations imposed by the requirements of professional and business secrecy. Article 37 1. The Association Council shall, within two years following the entry into force of the Customs Union, adopt by Decision the necessary rules for the implementation of Articles 32, 33 and 34 and related parts of Article 35. These rules shall be based upon those already existing in the Community and shall inter alia specify the role of each competition authority. 2. Until these rules are adopted, […] (b) the provisions of the GATT Subsidies Code shall be applied as the rules for the implementation of Article 34. Article 38 […] 2. In the case of practices incompatible with Article 34, such appropriate measures may, where the General Agreement on Tariffs and Trade applies thereto, only be adopted in conformity with the procedures and under the conditions laid down by the General Agreement on Tariffs and	

Official title	Status (Year)	Subsidy control-related provisions	Source (full text, consolidated)
		Trade and any other relevant instrument negotiated under its auspices which are applicable between the Parties. Summary Article 39: Turkey must align its competition and State aid rules with EU law as a condition of the Customs Union. This includes adopting equivalent competition legislation, creating an effective competition authority, and adjusting State aid schemes (first in textiles, then in all sectors) to EU standards within set deadlines. Both sides must exchange information on laws, aid schemes, and individual aid awards, and each may raise objections or refer disputed aid cases to arbitration or the Court of Justice.	
Decision No 1/96 of the EC-Turkey Customs Cooperation Committee of 20 May 1996 laying down detailed rules for the application of Decision No 1/95 of the EC-Turkey Association Council	Repealed (2001)	None	http://data.europa.eu/eli/dec/1996/488/oj
Decision No 1/96 of the EC-Turkey Association Council of 2 September 1996 repealing Decision 5/72 relating to methods of administrative cooperation for implementation of Articles 2 and 3 of the Additional	In force (1996)	None	https://eur-lex.europa.eu/eli/dec/1996/541/oj/eng

Official title	Status (Year)	Subsidy control-related provisions	Source (full text, consolidated)
Protocol to the Ankara Agreement			
Decision No 2/97 of the EC-Turkey Association Council of 4 June 1997 establishing the list of Community instruments relating to the removal of technical barriers to trade and the conditions and arrangements governing their implementation by Turkey	In force (1997)	None	https://eur-lex.europa.eu/eli/dec/1997/438/oj/eng
Decision No 2/97 of the EC-Turkey Customs Cooperation Committee of 30 May 1997 amending Decision No 1/96 laying down detailed rules for the application of Decision No 1/95 of the EC-Turkey Association Council	Expired (2000)	None	https://eur-lex.europa.eu/eli/dec/1997/614/oj/eng
Decision No 1/2001 of the EC-Turkey Customs Cooperation Committee of 28 March 2001 amending Decision No 1/96 laying down detailed rules for the application of Decision No 1/95 of the EC-Turkey Association Council	Repealed (2006)	None	https://eur-lex.europa.eu/eli/dec/2001/283/oj/eng
Decision No 1/2003 of the EC-Turkey Customs Cooperation Committee of 4 December 2002 amending Decision No 1/2001	Repealed (2006)	None	https://eur-lex.europa.eu/eli/dec/2003/75(1)/oj/eng

Official title	Status (Year)	Subsidy control-related provisions	Source (full text, consolidated)
amending Decision No 1/96 laying down detailed rules for the application of Decision No 1/95 of the EC-Turkey Association Council			
Decision No 1/2006 of the EC-Turkey Association Council on the implementation of Article 9 of Decision No 1/95 of the EC-Turkey Association Council on implementing the final phase of the Customs Union	In force (2006)	None	https://eur-lex.europa.eu/eli/dec/2006/654/oj/eng

Developments in domestic legislation

Background

Under the Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union, Türkiye committed to approximate EU rules on State aid (i.e., to control and transparently report subsidies that could distort competition).[117]

Türkiye adopted Law No. 6015 on the Monitoring and Supervision of State Aids (Devlet Desteklerinin İzlenmesi ve Denetlenmesi Hakkında Kanun) in October 2010, that the European Commission deemed mirroring EU concepts.[118]

Law No. 6015 defines the State aid (Devlet desteği) as "any aid providing a financial benefit to its beneficiary granted by the State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between European Union and Turkey."

However, the secondary implementing legislation needed to apply it in practice has never been put into force. Without those rules, the European Commission found that there is no functioning notification, assessment, or recovery system comparable to the EU's.[119]

The earlier supervisory structure was dismantled during institutional changes in Turkey. Responsibilities were reassigned Economic Policies Council and the President,

[117] Decision No 1/95 of the EC–Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union, OJ L 35, 13.2.1996, pg. 1–47.

[118] European Commission, Commission Staff Working Document: Turkey 2021 Report (Accompanying the Communication on EU Enlargement Policy) {COM(2021) 644 final}, SWD(2021) 288 final, p. 82.

[119] See, for example, European Commission, Commission Staff Working Document: Türkiye 2024 Report, Accompanying the Communication on EU Enlargement Policy, {COM(2024) 690 final}, pg. 10, 11.

who is also the appointing authority of this Council's members, a structure that the EC did not deem operationally independent.[120]

In June 2022, a Directorate-General for State Aids (DGSA) was re-established under the Presidency of Strategy and Budget, which itself grants subsidies, raising EU concerns about independence and effectiveness of oversight.

A public, comprehensive inventory of all aid schemes has reportedly also not been made available in Türkiye.[121]

Formal law: Law No. 6015

The table below sets out the structure and main contents of Law No. 6015 on the Monitoring and Supervision of State Aids (*Devlet Desteklerinin İzlenmesi ve Denetlenmesi Hakkında Kanun*).[122]

Table 55 Türkiye— Law No. 6015 (summary of key provisions)

Section	Summary
Article 1 — Purpose and scope (Amaç ve kapsam)	Establishes principles and procedures to regulate State aids in line with Türkiye–EU agreements, ensure notifications to relevant authorities, and set rules for monitoring and supervision. Excludes State aids in agriculture, fisheries, and services sectors.
Article 2 — Definitions (Tanımlar)	Defines key terms including Başkan (Head of Strategy and Budget), devlet desteği (State aid affecting TR–EU trade and conferring a financial advantage to certain undertakings/products), ilgili taraf, kanuna uygun olmayan devlet desteği, Kurul, münferit destek, Müsteşarlık, teşebbüs, destek programı, desteği alan/veren, desteğin kötüye kullanılması, Başkanlık. Notes 2024 amendments (7521/23).
Article 3 — Compatible State aid (Uygun devlet desteği)	Lists aid that is compatible (e.g., non-discriminatory social aid to individuals; disaster/exceptional-event relief not exceeding damage). Specifies aid that may be considered compatible subject to "Kurul" rules (regional development; TR–EU structural alignment; sectoral/regional development; cultural/natural heritage; important projects in common interest; serious economic disturbances; other aids set by TR–EU Association Council). Provides for block exemptions/de minimis-type rules via secondary legislation; general, non-selective economic/fiscal measures are not State aid; no aid may be granted unless permitted by the Law.
Article 4 — Board (Kurul)	(Historical framework of the Devlet Desteklerini İzleme ve Denetleme Kurulu: composition, appointment, operation, ethics/conflict rules, remuneration, secrecy, independence, secretariat, budget). Note: Earlier repeal by Decree-Law No. 703; the Constitutional

[120] European Commission, Commission Staff Working Document: Turkey 2019 Report (Accompanying the Communication on EU Enlargement Policy) {COM(2019) 260 final}, SWD(2019) 220 final, pg. 71.

[121] European Commission, Commission Staff Working Document: Turkey 2019 Report (Accompanying the Communication on EU Enlargement Policy) {COM(2019) 260 final}, SWD(2019) 220 final, pg. 55.

[122] Available at: https://www.lexpera.com.tr/mevzuat/kanunlar/devlet-desteklerinin-izlenmesi-ve-denetlenmesi-hakkinda-kanun-6015 (last accessed 28 November 2025).

Section	Summary
	Court's 7/12/2023 E:2021/125, K:2023/213 decision annulled the provision removing Article 4.
Article 5 — Duties and powers of the Board (Kurulun görev ve yetkileri)	Set principles and prepare legislation consistent with TR–EU agreements; examine, monitor, and supervise aid compatibility; obtain implementation results from grantors and notify the European Commission and relevant authorities. Grantors/parties must provide all information (including confidential), which is used solely for purposes under the Law; confidentiality obligations bind the Board vis-à-vis third parties.
Article 6 — Board decisions (Kurul kararları)	If decisions are not followed or required measures are not taken, the Board adopts necessary administrative/judicial measures. Jurisdiction: actions against Board decisions are heard at first instance by the Council of State (Danıştay) and treated as urgent. Publication procedures for decisions set by regulation.
Article 7 — Applications and review of State aid (Başvuru ve inceleme)	Grantors must submit draft legislation on State aid to the Board for prior opinion. After submission, the Board conducts pre-assessment and may request additional information; applications are not examined until complete. Following review, the Board decides that the measure is (a) not State aid, (b) compatible, or (c) merits an in-depth review. If (c): the Board communicates its preliminary factual/legal assessment and competition effects; may seek views from other parties (with source confidentiality upon request); the grantor may respond. After full file is complete, the Board may decide the measure is compatible, incompatible, becomes compatible/not-aid with adjustments by the grantor, or applicable subject to conditions. Grantors must act accordingly.
Article 8 — Withdrawal of application (Başvurunun geri çekilmesi)	The grantor may withdraw its application before the Board issues a decision under Article 7; pre-assessment/review then terminates.
Article 9 — Revocation of decision (Kararın geri alınması)	If a prior decision under Article 7 was based on incorrect information, the Board—ex officio or upon complaint/notice—revokes it after hearing the grantor, starts a new review, and concludes with a fresh decision under Article 7; the grantor must comply.
Article 10 — Unlawful aid and recovery (Kanuna uygun olmayan devlet desteği ve desteğin geri alınması)	The Board may open a review under Article 7 for unlawful/suspect aid and order suspension pending final decision; the grantor must stop processing. If incompatible, the Board requires the grantor to recover the aid. Interest: weighted average of TL discounted government domestic borrowing securities rates from benefit date to recovery decision; recovery must start within one month. Instalments may be allowed (with exceptions for general budget entities); detailed interest/late-payment rules reference Law 6183; enforcement paths depend on the grantor's status. Implementation rules set by regulation (with MoF opinion).
Article 11 — Limitation	Recovery of unlawful aid is subject to a 10-year

Section	Summary
(Desteğin geri alınmasında zamanaşımı)	limitation from the date of actual grant. Pre-assessment, review initiation, or suspension stops the clock; maximum stop for the review is six months.
Article 12 — Misuse of aid (Devlet desteğinin kötüye kullanılması)	If there are indications of misuse by the beneficiary, the Board requests the grantor to verify, take all measures required by the relevant legislation, and inform the Board.
Article 13 — Annual report (Yıllık rapor)	Grantors report implementation data for all aids within three months after year-end per Board procedures. The annual report is approved by the Board and sent to relevant authorities by end-June; also submitted to the TBMM Plan and Budget Committee, which the Başkan briefs at least annually.
Article 14 — Regulation (Yönetmelik)	Procedures/principles and timelines for implementation are set by regulations prepared by the Board and issued with the Başkan's approval (as amended 2024/7521 m.24).
Article 15–16 — Related provisions	Amendments relating to Law No. 4059 (incorporated into that law).
Article 17 — Staffing (Kadrolar)	Creates positions listed in (1) SAYILI LİSTE for the Treasury Undersecretariat (now successor institutions).
Additional Article 1 — *Regulations; data system & obligations*	*Regulations on notification/monitoring/supervision are issued upon Presidential decision. Public bodies must upload all records/data on schemes conferring financial benefits to undertakings into the information system within the Presidency (Başkanlık); administrative fines (by reference to Statistics Law No. 5429, Art. 54/2(b)) apply for non-compliance without prejudice to the data-submission duty. The Presidency and competent public bodies may request information/documents/records/data from persons and institutions for monitoring/evaluation; confidentiality, data protection, and criminal provisions apply to misuse or unlawful disclosure. (Amended 2014; 2024/7521 m.24–25).*
Additional Article 2 — *Reference re-mapping (2025)*	*As of 18/06/2025 (7551/16), statutory references to the Devlet Desteklerini İzleme ve Denetleme Kurulu are deemed to refer to the board or authority designated by the President.*
Temporary Article 1–2 — *Transitional*	*(G.M.1 repealed in 2014.) Initial staggering/renewal schedule for the first Board appointments (G.M.2).*
Temporary Article 3 — *Existing State aids*	*Upon entry into force of implementing regulations, existing schemes must be notified within three months. The Board completes pre-assessment in 60 business days; it may order suspension within five business days' notice if incompatibility indications exist; during suspension, the grantor may not expand scope/duration or accept new applications. The Board issues a final decision in 30 business days and may require amendments. Recovery under Article 10 applies to incompatible aid granted on applications after the regulations' effective date; certain earlier*

Section	Summary
	applications are excluded from recovery if unchanged.
Temporary Article 4 *— First annual report*	*The first annual report is prepared for the year following the entry into force of the regulations; it covers the period from the regulations' effective year and the following year.*
Temporary Article 5 *— Certain investments deemed completed*	*Certain pre-31/12/2001 investment incentive certificates are deemed completed as is (with specified exclusions); subsequent issues may still lead to actions under relevant legislation.*
Temporary Article 6 *— Protocol (2024)*	*Within six months of the provision's entry into force, all records/data, technical documentation, and source code of the State Aids Information System are transferred to the Presidency by protocol.*
Article 18 — Entry into force (Yürürlük)	Enters into force on publication.
Article 19 — Execution (Yürütme)	Implemented by the Council of Ministers (now Presidency under the post-2018 system; later amendments re-allocate functions accordingly).

Implementation

Türkiye adopted Law No 6015 Devlet Desteklerinin İzlenmesi ve Denetlenmesi Hakkında Kanun (*Law No. 6015 on Monitoring and Supervision of State Support*) in 2010 with the stated aim of creating a structured framework for reviewing state support measures.[123] The regime has remained largely unimplemented,[124] and the practical oversight of subsidies continues to occur through sector-specific legislation and general economic policymaking rather than through Law 6015. [125]

The regime formally applies to subsidies granted through state resources that may confer a selective advantage and affect competition and trade. Despite being intended as a comprehensive framework, significant sectors—such as agriculture, fisheries and services—lie outside its scope.[126]

The law created a State Aid Monitoring and Supervision Board as the responsible authority. It was meant to be an inter-ministerial board (under the Prime Ministry, now Presidency) with a Secretariat (General Directorate of State Aids). This review body is not independent, being a government entity with no separate legal personality. [127]

[123] 53rd meeting of the EU-Turkey Association Council, Cover Note of 28 May 2015, UE-TR 4806/15, pg. 50, available at: https://data.consilium.europa.eu/doc/document/ST-4806-2015-INIT/en/pdf (last accessed 18 November 2025).

[124] "*No progress was made on legislative framework. Overall, Türkiye's Law on the monitoring and supervision of State aid is broadly aligned with Articles 107 and 108 TFEU. However, Türkiye's legislative framework is de facto ineffective due to the indefinite suspension of the implementation of the State aid law*." Commission Staff Working Document, Türkiye 2025 Report, SWD(2025) 756 final, 4 November 2025, page 73.

[125] Ibid.

[126] Gursoy, Nilsun. 2016. State Aid in Turkish Competition Law, in Mondaq. Available at: https://www.mondaq.com/turkey/antitrust-eu-competition/466652/state-aid-in-turkish-competition-law (last accessed 18 November 2025).

[127] Ibid.

3.4.6 United Arab Emirates (UAE)

Bilateral commitments with the EU

There is no EU–UAE trade or investment agreement in force beyond the Gulf Cooperation Council (GCC)-wide cooperation agreement listed below. In April 2025, the EU and UAE announced the launch of negotiations for a bilateral FTA; that is not an agreement yet, so it was not included it in the dataset.

Table 56 EU–UAE: summary of subsidy-related FTA provisions

Official title	Status (Year)	Subsidy control-related provisions	Source (full text, consolidated)
Cooperation Agreement between the European Economic Community, of the one part, and the countries parties to the Charter of the Cooperation Council for the Arab States of the Gulf, of the other part (GCC)	In force (1989)	None	https://eur-lex.europa.eu/eli/agree_internation/1989/147/oj/eng
Agreement between the European Community and the United Arab Emirates on certain aspects of air services	In force (2008)	None	https://eur-lex.europa.eu/eli/agree_internation/2008/87/oj/eng

In April 2025, the EU and the UAE agreed to begin negotiations on a free trade agreement (FTA) as part of the EU's broader strategy to strengthen trade and investment relations with the Gulf region, following the 2022 Joint Communication on a Strategic Partnership with the Gulf and the 2024 EU-GCC Summit Joint Statement.[128]

The FTA negotiations were officially launched on 28 May 2025, with the first negotiation round held on 24 June 2025. The EU's initial textual proposals to the UAE include provisions on subsidy control, covering transparency requirements, consultation procedures, prohibited subsidies (and certain conditions), use restrictions as well as a dispute settlement mechanism (except for consultations).[129]

Other international commitments

WTO

As a WTO Member, the UAE is required to submit a new and full subsidy notification every two years. The SCM Agreement (Article 25) requires notification of any subsidy, as defined in the Agreement, which is specific. Furthermore, GATT (Article XVI:1)

[128] European Commission. Undated. EU–United Arab Emirates Free Trade Agreement. Available at: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/gulf-region/eu-united-arab-emirates-agreement_en (last accessed 27 November 2025).

[129] Ibid.

requires notification of any subsidy that causes trade effects. UAE's notifications must cover all goods-related subsidies.

The UAE have not identified any submissions other than NIL responses since the UAE has joined the WTO.[130]

Developments in domestic legislation

No indication has been found that the UAE, at either the federal or sub-federal level, operates or has taken steps to implement a subsidy control regime comparable to the EU State aid framework.

Federal level

No documentary evidence has been identified that suggests any official proposals, either from the federal government or a broad consensus of provinces, to establish a formalised and unified oversight framework for subsidies.

However, the UAE does have public finance laws and oversight bodies that touch on subsidies in terms of budgetary process, transparency, and anti-corruption controls.

For example, under Federal Decree-Law No. 26 of 2019, when the annual federal budget is prepared, expenditures are classified by type, including a line item for "Subsidies" and "Grants" alongside other categories like wages, goods and services, and social benefits.[131]

The UAE Ministry of Finance Open Data section provides "Expenditure Budget" records, which sets out expenditures by category (including "grants" and "subsidies").[132]

However, these show aggregate spending lines, not beneficiary-level detail.

Emirates level

No indication has been found in the documents reviewed that any of the Emirates operate a formalised and unified oversight framework specifically designed to control domestic subsidies.

No specific requirements or practices have been identified in any of the Emirates regarding the disclosure of subsidies or grants, whether in aggregate or disaggregated form.

3.4.7 United Kingdom (UK)

Bilateral commitments with the EU

The UK's subsidy-related commitments towards the EU are set out in the Withdrawal Agreement (in force since 2020) and the Trade and Cooperation Agreement (TCA) (in force since 2021).

The Withdrawal Agreement provides transitional arrangements for State aid enforcement and contains State aid provisions in the Protocol on Ireland/Northern Ireland.

The TCA establishes a comprehensive subsidy control regime, defining scope and carve-outs, setting core principles and prohibited/conditional categories, requiring beneficiaries to use funds only for the stated purpose, mandating transparency, and

[130] See WTO Member Profile for the UAE, available at https://notifications.wto.org/en/status-by-member/united-arab-emirates, (last accessed 27 November 2025).

[131] United Arab Emirates. Federal Decree Law No. (26) of 2019 Regarding Public Finance. Available at: https://uaelegislation.gov.ae/en/legislations/1081 (last accessed 27 November 2025).

[132] Accessible via https://mof.gov.ae/en/open-data-landing/open-data/ (last accessed 27 November 2025).

providing oversight and enforcement via an independent authority, court review, and recovery. It also sets out inter-party coordination through information requests and consultations.

Table 57 EU–UK: summary of subsidy-related FTA provisions

Official title	Status (Year)	Subsidy control-related provisions	Source (full text, consolidated)
Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community	In force (2020)	***Summary:*** Transitional arrangements as regards State aid enforcement (Article 93) State Aid related provisions in the Protocol on Ireland/Northern Ireland (Article 10)	https://eur-lex.europa.eu/eli/treaty/withd_2020/2024-05-17
Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part	In force (2021)	***Summary***: Scope and carve-outs: what subsidies / sectors / service of public interest are covered or excluded, thresholds, emergencies, and special rules for air carriers. (Article 364-365) Services of public economic interest: coverage of compensation for public service tasks and related thresholds. (Article 365) Control framework: core principles and prohibited/conditional categories (e.g., unlimited guarantees, export/domestic-content links, rescue/restructuring, energy/environment, large cooperation projects, air routes). (Articles 366–367) Use of funds: requirement that beneficiaries use subsidies only for the stated purpose. (Article 368) Transparency: publication duties, timing, and access for interested parties. (Article 369)	https://eur-lex.europa.eu/eli/agree_international/2021/689(1)/2025-01-04

Official title	Status (Year)	Subsidy control-related provisions	Source (full text, consolidated)
		Oversight and enforcement: roles of an independent authority, court review, and recovery mechanisms. (Articles 371–373) Inter-party coordination: information requests and consultations, unilateral remedial measures, and dispute settlement. (Articles 370, 374–375)	

Developments in domestic legislation

Background

Following the United Kingdom's withdrawal from the European Union, the Government announced its plan to establish a domestic framework for regulating subsidies, replacing the EU State aid rules with a UK-specific regime. An interim system operated from 1 January 2021 until 4 January 2023, largely reflecting the subsidy provisions of the EU–UK Trade and Cooperation Agreement (TCA).

To implement a comprehensive UK Subsidy Control framework, the UK Parliament enacted the Subsidy Control Act 2022 in April 2022. Part 1 of the Act, which introduced a new definition of subsidy, came into force on 28 April 2022. The remainder of the Act took effect on 4 January 2023.

Accordingly, the UK has a new statutory regime governing subsidies, one that fulfils its international obligations under the TCA and other agreements, while also addressing the regulation of its internal market. Branton finds that the Subsidy Control Act 2022 extends beyond the requirements of the TCA in several areas.[133]

Formal law: Subsidy Control Act 2022

The table below sets out the structure and main contents of Subsidy Control Act 2022.

Table 58 UK— Subsidy Control Act 2022 (summary of key provisions)

Section	Summary
PART 1 - Overview and key interpretation	
s.2 "Subsidy"	"Subsidy" = financial assistance from public resources that (a) is given by a public authority (directly/indirectly), (b) confers an economic advantage, (c) is specific, and (d) has or can have effects on UK competition/investment or on trade/investment with territories outside the UK. Lists forms of assistance (grants, loans, guarantees, tax

[133] Branton, Jonathan. 2023. An Introduction to the UK's New Subsidy Control Regime. DWF Group, available at: https://dwfgroup.com/en/news-and-insights/insights/2023/1/an-introduction-to-the-new-subsidy-control-regime (last accessed 27 November 2025).

Section	Summary
	foregone, provision/purchase of goods or services). Includes private giving where in substance it is the public authority's decision. Enterprise deemed aided if it has an enforceable right. Cross-refers to ss.3–8.
s.3 Financial assistance which confers an economic advantage	Advantage exists only if the terms are more favourable than those reasonably available on the market to that enterprise.
s.4 Financial assistance which is specific	Not specific if distinctions are justified by principles inherent to the design of the measure (examples for tax: anti-fraud, manageability, neutrality, progressivity, ability to pay). Tax measures specific only if they reduce liability under the normal regime and treat comparables more favourably; identifies how to find the "normal taxation regime". Special purpose levies not specific where grounded in non-economic public policy objectives and non-discriminatory (including foregone amounts).
[…]	
PART 2 - Subsidy control requirements	
CHAPTER 1 - Principles	
s.12 Application of the subsidy control principles	Public authorities must consider the principles and only give/make subsidies/schemes if (in their view) consistent with them (scheme subsidies considered at scheme-making stage).
[…]	
CHAPTER 2 - Prohibitions and other requirements	
s.15 Unlimited guarantees	Prohibits guarantees without a cap on amount or duration.
s.16 Export performance	Prohibits subsidies contingent (in law or fact) on export performance, with exceptions for short-term export credit insurance for non-marketable risks and permissible programmes under the SCM Agreement. Allows SoS to re-designate marketable risk countries by regulations (negative procedure).
s.17 Use of domestic goods or services	Prohibits subsidies contingent on using domestic over imported goods/services (with audiovisual sector carve-out and TCA safeguards).
s.18 Relocation of activities	Prohibits subsidies conditioned on relocating existing activities within the UK unless specific social/economic disadvantage and transformational conditions are met.
ss.19–23 Ailing or insolvent enterprises	s.19 Rescuing: rescue aid only as temporary liquidity (loan/guarantee) during preparation of a restructuring plan and meeting public-interest/exceptional-circumstances tests (not for deposit takers/insurers). s.20 Restructuring: requires credible plan to restore viability, own contributions (or SME), public-interest test, and "no repeat within 5 years" (with unforeseeable-circumstances exception); excludes deposit takers/insurers. s.21 Restructuring deposit takers or insurance companies: credible plan,

Section	Summary
	significant own contributions, proper remuneration. s.22 Liquidating deposit takers or insurance companies: only for orderly exit; limited to what is necessary and minimises negative effects; significant own contributions to liquidation costs. s.23 Liquidity provision for deposit takers or insurance companies: temporary, not loss-absorbing/capital support, properly remunerated.
[…]	
CHAPTER 3 - Transparency	
s.32 Subsidy database	SoS must provide a public, free database; allow authorities to edit for s.33 duties; may direct the CMA to perform the duty.
s.33 Duty to include information in the subsidy database	Authorities must enter subsidies and schemes within set deadlines (tax: 1 year; tax-scheme: 3 months; others: 3 months). De minimis database exemption for scheme-based subsidies ≤ £100,000 (modifiable up to £500,000 by affirmative regulations). Entries must be maintained 6 years (or longer if the subsidy/scheme lasts longer). Modifications must be entered within specified periods.
s.34 Information to be included in the subsidy database	SoS (negative procedure) may specify required data fields (legal power, objective, beneficiary, decision date/duration/conditions/amount, and where further public info can be found; for schemes: eligibility categories, terms, calculation basis, subsidy ratios).
PART 3 - Exemptions	
CHAPTER 1 - Introductory	
s.35 Introductory	Identifies cases where subsidy control requirements do not apply to giving a subsidy; if so, a scheme providing for such subsidies is likewise exempt to that extent (subject to specific provisions in Part 3).
CHAPTER 2 - Minimal or SPEI financial assistance	
s.36 Minimal financial assistance	Exempts aid up to £315,000 per enterprise over the current FY (elapsed) + 2 prior FYs. Transparency duties still apply except where a minimal-financial-assistance subsidy is ≤ £100,000. Amount measured as gross cash or gross cash equivalent. Does not authorise export-contingent or domestic-content subsidies (ss.16–17).
[…]	
CHAPTER 3 - Emergencies etc.	[…]
s.43 Natural disasters & other exceptional occurrences	Full exemption from subsidy control requirements to compensate damage from natural disasters or non-purely-economic exceptional occurrences—only where SoS publishes a notice (laid before Parliament). Transparency duties still apply.
CHAPTER 4 - Other miscellaneous exemptions	[…]
s.45 National security	Subsidy control requirements don't apply to subsidies

Section	Summary
	for safeguarding national security.
s.46 Bank of England monetary policy	Exempt subsidies by/on behalf of the BoE in pursuit of monetary policy.
PART 4 - CMA: referrals and functions	[…]
CHAPTER 1 - Functions on referrals	[…]
s.52 Mandatory referral to CMA	Public authorities must request a CMA report before giving/making a subsidy/scheme of particular interest, or when directed (s.55). Request must include specified info and an assessment of compliance with Parts 2 Chs.1–2.
[…]	
CHAPTER 2 - General functions	
s.65 Monitoring and reporting	CMA must review operation and impact of the Act for each relevant period (first 3-year period from commencement, then 3 years, then 5-year cycles), publish and lay reports; SoS may request a report for a specified period after first two cycles.
s.66 CMA annual report	CMA Annual Report must list cases reported on (mandatory, voluntary, post-award).
[…]	
CHAPTER 3 - Subsidy Advice Unit (SAU)	
s.68 Subsidy Advice Unit	CMA must establish SAU (a Board committee) to exercise subsidy-control functions (delegation permitted).
s.69 References to subsidy control groups	SAU may ask CMA Chair to constitute a CMA group to carry out referred functions/cases.
PART 5 - Enforcement	
s.70 Review of subsidy decisions (CAT)	Interested parties (incl. SoS) may apply to the CAT to review subsidy decisions; where under a scheme, challenge must be to the scheme. CAT applies JR principles; lodging does not auto-suspend effects.
[…]	
s.72 CAT powers (E&W, NI)	CAT may grant mandatory/prohibiting/quashing orders, declarations, injunctions; can remit; may make recovery orders (s.74); may refuse for delay, hardship, prejudice, or good-administration reasons.
s.73 CAT powers (Scotland)	CAT has Court of Session supervisory powers and may make recovery orders; orders have equivalent effect/enforceability.
s.74 Recovery orders	If CAT grants relief and finds non-compliance with Part 2 Chs.1–2, it may order recovery (including interest), set scope/timing/coverage. Enforceable as HC/Court of Session orders.
s.75 Appeals against CAT	Appeal on a point of law to the Court of Appeal/Court of Session with permission; available to parties or others with sufficient interest.
[…]	

Section	Summary
PART 6 - Miscellaneous and general	[…]
CHAPTER 1 - Miscellaneous	[…]
[…]	
CHAPTER 2 - General	[…]
s.91 Commencement	Part 1, regulation-making powers in Parts 2–4 and Part 6 CHAPTER 1, and Part 6 CHAPTER 2 commence on Royal Assent; remainder by appointed day regs (with transitional/saving).

Implementation

The Subsidy Control Act 2022 (SCA) was established by an Act of Parliament in 2022, and came into force on 4 January 2023.[134] The regime covers any "subsidy" given by UK public authorities (central or local) that provides an economic advantage from public resources and may distort competition or investment in the UK (or affect international trade).[135] All subsidies, regardless of sector, fall within the scope of the Act. The only exceptions are a small group of subsidies that are always allowed or always prohibited, and "minimum financial assistance."[136]

The primary compliance model is self-regulation: each granting authority must ensure its subsidy complies with the law. There is only advisory oversight via the Competition and Markets Authority's Subsidy Advice Unit (SAU). There is no power for SAU to veto or modify a subsidy. If a subsidy violates the SCA (e.g. principles not met or a prohibited subsidy given), the enforcement comes if an interested party challenges it in the UK Competition Appeal Tribunal (CAT).

The CAT can suspend the subsidy, quash it, or order recovery of funds from the recipient.[137] Thus, the real "teeth" of the regime are *ex post*: the risk of litigation and reversal by the CAT.

The UK swiftly implemented the subsidy control regime following Brexit, including publication of statutory guidance,[138] establishment of the SAU within the CMA,[139] and the creation of the online UK Subsidy Database.[140]

By 15 January 2026, the UK Subsidy Database contained more than 41,000 awards made under schemes and more than 1,900 standalone awards.[141]

Only a limited number of cases has been lodged with the CAT to date.[142]

[134] Subsidy Control Act 2022, 2022 c. 23, available at: https://www.legislation.gov.uk/ukpga/2022/23 (last accessed 18 November 2025).

[135] Section 2 of the Subsidy Control Act 2022.

[136] Squire Patton Boggs. 2022. The Subsidy Control Act 2022, pg. 2. Available at: https://www.squirepattonboggs.com/-/media/files/insights/publications/2022/05/uk-subsidy-control-regime-receives-royal-assent/thesubsidycontrolact2022part1.pdf (last accessed 18 November 2025).

[137] Cf. Sections 72, 74 of the Subsidy Control Act 2022.

[138] UK Government, UK Subsidy Control Regime: Statutory Guidance, available at: https://www.gov.uk/government/publications/uk-subsidy-control-statutory-guidance (last accessed 18 November 2025).

[139] Ibid.

[140] UK Government, UK Subsidy Database (GOV.UK Transparency Database), available at: https://searchforuksubsidies.beis.gov.uk/ (last accessed 18 November 2025).

[141] Ibid.

[142] Citing only two cases until February 2025, Norton Rose Fulbright. 2025. Two years of the Subsidy Control Act, available at: https://www.nortonrosefulbright.com/en/knowledge/publications/2ad11946/two-years-of-the-subsidy-control-act (last accessed 18 November 2025).

3.4.8 United States of America (USA)

Bilateral commitments with the EU

No subsidy-related bilateral commitments of the United States towards the EU have been identified.

Table 59 EU–US: summary of subsidy-related FTA provisions

Official title	Status (Year)	Subsidy control-related provisions	Source (full text, consolidated)
Agreement on mutual recognition between the European Community and the United States of America	In force (1998/1999)	None	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01999D0078-20021008
Agreement between the European Community and the United States of America on customs cooperation and mutual assistance in customs matters	In force (1997)	None	https://eur-lex.europa.eu/eli/agree_internation/1997/541/oj/eng
Agreement between the European Community and the United States of America on intensifying and broadening the Agreement on customs cooperation and mutual assistance in customs matters to include cooperation on container security and related matters	In force (2004)	None	https://eur-lex.europa.eu/eli/agree_internation/2004/634/oj/eng
Agreement between the European Community and the United States of America on trade in wine	In force (2006)	None	https://eur-lex.europa.eu/eli/agree_internation/2006/232/2012-06-01

Other international Commitments

WTO

As a WTO Member, the U.S. is required to submit a new and full subsidy notification every two years. The SCM Agreement (Article 25) requires notification of any subsidy, as defined in the Agreement, which is specific. Furthermore, GATT (Article XVI:1) requires notification of any subsidy that causes trade effects. UAE's notifications must cover all goods-related subsidies.

The U.S. has made substantive submissions under Article 25 SCM Agreement, reporting on programmes granted or maintained at the federal and sub-federal levels, since joining the WTO.[143]

Developments in domestic legislation

No indication has been found that the United States, at either the federal or sub-federal level, operates or has taken steps to implement a subsidy control regime comparable to the EU State aid framework.

Federal level

The U.S. does not have a formalised and unified oversight framework specifically designed to control domestic subsidies. There is no U.S. equivalent of the European Commission's State aid rules (Art. 107 TFEU) or the UK's Subsidy Control Act 2022.

No documentary evidence has been identified that suggests any official proposals, either from the federal government or a broad consensus of U.S. States, to establish a formalised and unified oversight framework for subsidies.

At the same time, the absence of a unified subsidy control regime should not be interpreted as an absence of significant public subsidy activity in the United States. Recent federal programmes, notably the Inflation Reduction Act (IRA) and the CHIPS and Science Act, have substantially expanded the use of subsidies and tax incentives in strategic sectors such as clean energy and semiconductors. OECD work indicates a marked increase in subsidy support in North America in recent years, particularly through tax-based instruments.

However, U.S. federal courts, including the U.S. Supreme Court, have found certain state assistance to violate the Commerce Clause of the U.S. Constitution.

Commerce Clause (United States Constitution, Art. I, sec. 8, cl. 3), pursuant to which the U.S. Congress shall have power

"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

The U.S. Supreme Court has held that there is a "dormant" or "negative" aspect of the Commerce Clause that implicitly limits the states' right to tax or otherwise regulate interstate commerce: It has been long accepted that the Commerce Clause not only grants Congress the authority to regulate commerce among the States, but also directly limits the power of the States to discriminate against interstate commerce.

See, for example, the U.S. Supreme Court's argumentation in *New Energy Co. of Indiana v. Limbach*:[144]

It has been long accepted that the Commerce Clause not only grants Congress the authority to regulate commerce among the States, but also directly limits the power of the States to discriminate against interstate commerce.

This 'negative' aspect of the Commerce Clause prohibits economic protectionism – that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competition […].

Thus, State statutes that clearly discriminate against interstate commerce are routinely struck down, […] unless the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism.

[143] See WTO Member Profile for the USA, https://notifications.wto.org/en/status-by-member/united-states-of-america (last accessed 27 November 2025).

[144] 486 U.S. 269, 273-74 (1988).

In a submission of the U.S. Federal Trade Commission (FTC) to the OECD in 2010,[145] the FTC reports about U.S. federal Courts applying the "dormant" or "negative" aspects of the Commerce Clause to invalidate U.S. State measures that either discriminate against interstate commerce by favouring in-state interests, or burden interstate commerce by making it more difficult for companies to conduct business within the State, even when such measures are non-discriminatory:

- In *Cuno v. DaimlerChrysler, Inc.*,[146] the Sixth Circuit invalidated Ohio's income tax credit for in-state investments, holding that it discriminated against interstate economic activity by pressuring businesses to expand locally rather than in other states.
- In *Granholm v. Heald*,[147] the U.S. Supreme Court struck down Michigan and New York laws that favoured in-state wineries by allowing them to sell directly to consumers while restricting out-of-state producers. The Court found that the rules were not the least restrictive means of achieving the states' regulatory objectives and were instead part of an "ongoing, low-level trade war" among states.
- Earlier precedents such as *West Lynn Creamery v. Healy*,[148] *Bacchus Imports, Ltd. v. Dias*,[149] and *Oregon Waste Systems, Inc. v. Department of Environmental Quality*[150] similarly found that state taxes or subsidies benefiting in-state producers at the expense of out-of-state competitors violated the Commerce Clause.

States level

No indication has been found in the documents reviewed that any of the U.S. States operate a formalised and unified oversight framework specifically designed to control domestic subsidies.

Furthermore, no specific requirements or practices have been identified in any of the U.S. States regarding the disclosure of subsidies or grants, whether in aggregate or disaggregated form. However, the Governmental Accounting Standards Board (GASB) has issued specific auditing standards addressing one category of government support measures: tax abatements.

Since August 2015, Governmental Accounting Standards Board (GASB) Statement No. 77, Tax Abatement Disclosures, requires state and local governments to disclose the following:

- A concise description of each tax abatement agreement, including the tax being abated, the statutory authority, eligibility criteria, abatement mechanism, recapture provisions, and any commitments by the recipient; and
- The gross dollar amount of taxes abated during the reporting period.[151]

Established in 1984, the Governmental Accounting Standards Board (GASB) is an independent, private-sector organization, which establishes accounting and financial

[145] U.S. Federal Trade Commission. 2010. Competition, State Aids and Subsidies: Contribution from the U.S. Federal Trade Commission. OECD Global Forum on Competition, Session I, DAF/COMP/GF/WD(2010)67. Paris: Organisation for Economic Co-operation and Development. Available at: https://www.ftc.gov/sites/default/files/attachments/us-submissions-oecd-and-other-international-competition-fora/stateaidftc.pdf (last accessed 27 November 2025).

[146] 386 F.3d 738 (6th Cir. 2004).

[147] 125 S. Ct. 1885 (2005).

[148] 512 U.S. 186 (1994).

[149] 460 U.S. 263 (1984).

[150] 511 U.S. 93 (1994).

[151] Governmental Accounting Standards Board. 2015. Statement No. 77 of the Governmental Accounting Standards Board: Tax Abatement Disclosures. Norwalk, CT: Governmental Accounting Standards Board of the Financial Accounting Foundation. Available at: https://gasb.org/page/ShowPdf?path=gasbs77_final-+Cropped.pdf (last accessed 27 November 2025).

reporting standards for U.S. state and local governments that follow Generally Accepted Accounting Principles (GAAP).

GASB operates under the oversight of the Financial Accounting Foundation (FAF) but is not a governmental or legislative body. Its pronouncements are not federal or states law but rather are recognised as the generally accepted accounting principles (GAAP) for U.S. state and local governments.[152]

Compliance with GASB standards is understood to be encouraged for U.S. State and local governments that are required, by statute or regulation, to prepare financial statements in accordance with GAAP, and auditors generally recognise these standards as professional auditing standards. Also, the American Institute of Certified Public Accountants (AICPA) recognises GASB standards as authoritative when auditing governmental entities under U.S. GAAP frameworks.

However, GASB standards, including Statement 77, are not formal law.

3.5 Summary and comparison

This section summarises and compares the subsidy-related commitments that Key Jurisdictions have made towards the EU, and outlines how their domestic subsidy control systems differ in structure, enforcement and practical operation.

3.5.1 Summary and comparison of bilateral commitments in Key Jurisdictions

The tables below provide a comparison of certain aspects of the subsidy-related commitments towards EU.

The UK–EU Trade and Cooperation Agreement contains one of the EU's most detailed and enforceable sets of subsidy-related commitments with a third country, including its own subsidy definition, regular notification duties, a public database obligation, structured consultation steps and partial justiciability. This stands in contrast to the much older 1972 EU–Switzerland FTA, whose provisions on "public aid" are sparse, lack explicit notification or transparency obligations, and rely mainly on soft consultations without direct enforceability. The two instruments sit at opposite ends of the spectrum in terms of precision and legalisation, with the commitments of Canada, Japan and Turkey positioned between them in both level of detail and stringency.

Table 60 Comparison of subsidy-related commitments towards EU made by Group 1 countries

Aspect	China	Switzerland	Turkey	UK
Legal instrument	Political agreement, not in force	FTA, in force (*re-negotiations on-going*)	Customs Union, in force	Trade and Cooperation Agreement (TCA), in force
Existence of subsidies disciplines	Proposed by both parties	Yes	Yes	Yes
Subsidy	No details	Own definition	EU State-Aid	Own definition

[152] See About the GASB, available at: https://www.gasb.org/about-us/about-the-gasb (last accessed 27 November 2025).

Aspect	China	Switzerland	Turkey	UK
definition	available, except that it is limited to services sector	("Public aid")	Definition ("Any aid")	of "Subsidies"
Periodic notification duty	No details available	No explicit obligation	Yes	Yes (6-month interval)
Public-facing database	No details available	No explicit obligation	No explicit obligation	Yes
Obligations in consultation	No details available	Joint Committee examines, seeks to "eliminate the practice", failing which the complaining Party can apply safeguard measures	Parties must try to resolve; if Turkey and EU disagree on lawfulness of aid, either can refer to arbitration/CJEU after a set period	Yes Envisaged process: Explanation requests -> Additional information requests -> Consultation request -> Joint Committee shall make every attempt to arrive at a mutually satisfactory resolution of the matter
Are subsidy provisions justiciable?	No details available	No	Ultimate recourse to arbitration/the CJEU	Partially

Table 61 Comparison of subsidy-related commitments towards EU of Group 2 Countries

Aspect	Canada	Japan	UAE	United States
Legal instrument	CETA, most provisions provisionally applicable	Economic Partnership Agreement (EPA), in force	Commenced negotiations, not in force	None identified
Existence of subsidies disciplines	Yes	Yes (dedicated Chapter 12 on subsidies, incl. prohibited subsidies and use of	Proposed by the EU	N/A

Aspect	Canada	Japan	UAE	United States
		subsidies)		
Subsidy definition	SCM Agreement definition (Art. 1.1 and 2 reference), but extending to services	SCM Agreement definition (Art. 1.1 and 2 reference), but extending to services	Proposed by the EU: SCM Agreement definition (Art. 1.1 and 2 reference), but extending to services	N/A
Periodic notification duty	Yes (2 years interval)	Yes (2 years interval)	Proposed by the EU (annually)	N/A
Public-facing database	Generally not	No explicit stand-alone obligation, but making information publicly available on an official website is an explicit alternative to formal notification	Proposed by the EU	N/A
Consultation obligation	Yes Consultation request -> Additional information requests -> "Endeavour to eliminate or minimise any adverse effects of the subsidy"	Yes – Consultation request → Additional information requests → "Sympathetic consideration" to the concerns and any solution must be feasible and acceptable	Proposed by EU Additional information requests -> Consultation request -> "Make every attempt to arrive at a mutually satisfactory resolution of the matter"	N/A
Are subsidy provisions justiciable?	Yes, but not for consultations	Yes, but not fully for consultations (Article 12.6(5) "sympathetic consideration" excluded) is expressly excluded	Proposed, but not for consultations	N/A

3.5.2 Summary and comparison of domestic developments in key jurisdictions

In the following, the report seeks to outline a structured framework for comparing domestic subsidy control regimes as regards their stringency (or maturity) and to apply it to the Key Jurisdictions.

Framework for comparison

There appears to be no established framework for assessing and comparing subsidy control regimes as regards their stringency (or maturity) has been identified in the literature. The framework proposed here is based on the factors identified through the comparative analysis of the different regimes, while also considering the various "models" of subsidy disciplines found in the FTAs.

This framework is not intended to rank regimes normatively, but rather to provide a structured way of observing how different systems approach subsidy control.

Each dimension captures an element that appears to shape the practical effects of subsidy rules: whether they exist in binding law, how broadly they apply, whether an independent authority monitors compliance, the extent of enforcement powers, the timing and nature of review, the tests applied to determine compatibility, and how the system operates in practice.

By placing a regime along each spectrum, it becomes possible to compare its level of structure and constraint to systems with more developed subsidy control disciplines, including the EU State aid framework, which remains one of the most stringent and institutionalised models in operation.

Table 62 Framework for comparing maturity of subsidy control regimes

Dimension	Spectrum
Formality	No Legal Basis → Voluntary Principles → Binding Domestic Law
Scope of Application	No Specific Scope (ad-hoc) → Limited sector coverage (e.g., transport only) → Cross-Sectoral but with Major Exceptions → Comprehensive Cross-Sectoral Application
Enforcement Authority	No Enforcement Authority → Internal Review by the Granting Authority (i.e., department providing the support) → Dedicated Regulatory Authority Independent from Granting Authority (e.g., Competition Authority)
Enforcement Power	None → Requiring Reporting & Transparency Only → Power to Issue Opinions/Recommendations → Power to Veto/Prohibit Subsidies → Power to Order Recovery of Illegal Aid
Procedure	
Timing of Review	No Review → Ex Post (After the fact) → Ex Ante (Prior to grant)
Review / Appeal Process	No Process → Internal Administrative Review → Judicial Review → Direct Right of Appeal for Competitors to a Court/Tribunal
Substantive Test	
Substantive Test for Allowing a	No Test → Budgetary Considerations Only →

Dimension	Spectrum
Subsidy	Wider Economic Considerations → Competition Analysis
Quality of the Test	Transparency-Only (disclosure is the only requirement) → Procedural-Only (following an evaluation process is the requirement) → Substantive (the subsidy is assessed against pre-defined criteria (e.g., market distortion))
Implementation	
Implementation and Adaptation in Practice	No Implementation → Limited implementation (ad hoc enforcement or anecdotal application) → Active implementation and enforcement → Active implementation with case-Based adaptation (rules evolve based on precedents and practice)

3.5.3 Comparative qualitative assessment

Below sets out the qualitative assessment for the key Jurisdictions listed above.

Table 63 Qualitative analysis of selected jurisdictions

Dimension	China	Switzerland	Turkey	UK
Formality	Binding Domestic Law	Now: Binding domestic law only for specific sectors (aviation) Future: Binding domestic law	Binding Domestic Law (not implemented)	Binding Domestic Law
Scope of Application	Cross-Sectoral but with Major Exceptions (*not conclusive*)	Now: Limited Sector Coverage (aviation only) Future: Limited Sector Coverage (several sectors)	Cross-Sectoral but with Major Exceptions	Comprehensive Cross-Sectoral Application
Enforcement Authority	Internal Review by the Granting Authority (i.e., department providing the support) (with coordinating role for SAMR)	Now: No enforcement authority Future: Independent enforcement authority	Enforcement authority, but not independent (*de jure*) → No enforcement authority (*de facto*)	Dedicated Regulatory Authority Independent from Granting Authority
Enforcement Power	Power to Issue Opinions or	Now: No enforcement	Power to Veto/Prohibit	Power to Veto/Prohibit

Dimension	China	Switzerland	Turkey	UK
	Recommendations (*but potentially practical ability to force revision via hierarchy*)	power (voluntary) Future: Power to Veto/Prohibit Subsidies → Power to Order Recovery of Illegal Aid	Subsidies → Power to Order Recovery of Illegal Aid (not implemented)	Subsidies → Power to Order Recovery of Illegal Aid
Effective Procedure				
Timing of Review	Ex Ante (Prior to Grant) (by Granting Authority)	Now: No review Future: Ex Ante (Prior to grant)	Ex Ante (Prior to grant) (not implemented)	Ex Ante (Prior to grant)
Review / Appeal Process	Internal Administrative Review	Now: No Process Future: Judicial Review	Judicial Review (not implemented)	Judicial Review → Direct Right of Appeal for Competitors to a Court/Tribunal
Substantive Test				
Substantive Test for Allowing a Subsidy	Competition Analysis (or similar)	Now: No Test Future: Wider Economic Considerations (or Competition Analysis, depending on final law)	Competition Analysis (not implemented)	Competition Analysis
Quality of the Test	Substantive (the subsidy is assessed against pre-defined criteria (e.g., market distortion))	Now: No Test Future: Substantive (the subsidy is assessed against pre-defined criteria (e.g., market distortion))	Substantive (the subsidy is assessed against pre-defined criteria (e.g., market distortion)) (not implemented)	Substantive (the subsidy is assessed against pre-defined criteria (e.g., market distortion))
Implementation	Status unclear	Now: Limited Implementation (symbolic, early-stage adaptation) Future: Active Implementation with Case-Based	No Implementation or Monitoring (currently)	Active implementation with case-Based adaptation (rules evolve based on precedents and practice)

Dimension	China	Switzerland	Turkey	UK
		Adaptation		

3.6 Conclusion

This chapter focused on the analysis of "developments in international relations regarding third countries' subsidy control systems" as referred to in Article 52 of the EU FSR. Pursuant to Article 52, the Commission is required to report on such developments as part of its report on the implementation of the EU FSR to the European Parliament and the Council.

The document review, which focused on the Key Jurisdictions, namely Canada, China, Japan, Switzerland, Türkiye, United Arab Emirates, United Kingdom (UK) and United States of America, but also considered broader themes observable in other jurisdictions, has shown that there have only been gradual developments in international relations regarding third countries' subsidy control systems since the adoption of the EU FSR in 2022.

- With respect to bilateral relations between the EU and third countries, developments in the EU's relationship with the UAE have been noteworthy. In April 2025, the EU and the UAE agreed to begin negotiations on a free trade agreement (FTA) as part of the EU's broader strategy to strengthen trade and investment relations with the Gulf region.[153] The EU's initial textual proposals to the UAE include provisions on subsidy control, covering transparency requirements, consultation procedures, prohibited subsidies (and certain conditions), use restrictions as well as a dispute settlement mechanism (except for consultations).[154]
- On the national level, there have been certain developments that point towards a more stringent control of subsidies in the UK, Switzerland and potentially also in China:
    - To implement a comprehensive UK Subsidy Control framework, the UK Parliament enacted the Subsidy Control Act 2022 in April 2022. Part 1 of the Act, which introduced a new definition of subsidy, came into force on 28 April 2022. The remainder of the Act took effect on 4 January 2023.
    - In Switzerland, the Federal Council (Bundesrat) has very recently submitted a draft State Aid Supervision Act (*Beihilfenüberwachungsgesetz*), which has been published on the government's website but has not yet been accompanied by official guidance or commentary. It remains to be seen whether the draft will be adopted and what its precise impact on subsidy control in Switzerland will be.
    - In China, the State Administration for Market Regulation (SAMR), China's competition regulator and the agency that will be primarily responsible for the enforcement of the Fair Competition Review Regulations (*公平竞争审查条例*), released the Implementation Measures for the Fair Competition Review Regulations (*公平竞争审查条例实施办法*) on 18 March 2025. However, there is limited visibility into how these measures are applied and how effective they are.

[153] European Commission. Undated. EU–United Arab Emirates Free Trade Agreement. https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/gulf-region/eu-united-arab-emirates-agreement_en (Last accessed 27 November 2025).

[154] Ibid.

Notwithstanding these developments, the EU (together with the EEA) remains unique in controlling subsidies. It operates a comprehensive State aid regime that includes both an *ex ante* screening procedure and an *ex post* assessment mechanism, targeting subsidies that distort the internal market.

Developments in third-country subsidy control regimes have been gradual since the adoption of the FSR. This finding bears on regulatory architecture. This applies both to the EU's bilateral relationships with the key jurisdictions and to developments at the multilateral level, particularly within the WTO.

4 Review of the Commission's case practice – concentration cases

4.1 Introduction

Article 52 paragraph 2 of the FSR provides that the Commission shall review its practice of implementing and enforcing this Regulation. The following section focusses on concentration cases and analyses how the Commission has implemented the FSR in practice between October 2023, when reporting obligations began, up until June 2025. Much of the analysis was completed in 2025 before the introduction of the FSR Guidelines, clarifications made to Question 26 of the FSR Q&A (concerning investment funds) as well as the adoption of the Commission's commitment decision in Case FS.10056. The analysis hence reviews the application of Articles 3, 4, 5, 6, 9, 20, and 25 by analysing:

- A representative sample of 90 cases; and
- The Commission's approach in the one in-depth investigation that was closed by the study's cut-off date (June 2025) in the form of a case study.

The analysis is based on relevant information provided by the Commission regarding these 90 cases and the in-depth investigation. This includes details regarding:

- Potential FFCs reported by the parties and considered by the Commission.
- The Commission's application of the FSR to assess whether reported FFCs constitute foreign subsidies linked to the concentration at stake.
- If any foreign subsidies in the concentration are identified, the Commission's assessment of whether these have the potential to distort the internal market.

To analyse the Commission's approach across the 90 cases, a framework was developed to collect and systematically analyse information on the cases. This includes information relating to each of the articles listed above, and details regarding facts of the cases. Most importantly, the framework was used to analyse the overall approach employed by the Commission and identify any patterns in the Commission's assessment. Findings from the analysis of the 90 cases on the Commission's approach are also compared throughout this section with the approach employed by the Commission in the in-depth investigation.

While the analysis outlines the approach taken by the Commission up until June 2025, the Commission's practice in past cases is not binding for future cases and may change based on learnings and revisions to the FSR Guidelines. The FSR Guidelines will continue to be the main reference point for the interpretation of the FSR.

The interpretations and descriptions of legal terms included in this section, such as the concepts of "benefit", "selectivity" and "attributability" are intended solely to facilitate reading. They should not be understood as reflecting the precise definitions of these concepts or the Commission's official interpretation.

It should also be noted that this report is a review of the FSR and the Commission's assessment. As such, references made to 'the Commission' should not be interpreted as a direct or formal assessment by the Commission.

4.2 Representativeness of the sample

Procedurally, the FSR is a two-step process. Initially, after notification, the Commission will conduct a "preliminary review" of the transaction. If it finds that there are *"sufficient indications of the existence of a foreign subsidy distorting the internal market"* the Commission will launch an in-depth investigation. Between October 2023 and June 2025, a total of 149 concentration cases were notified to the Commission. There was only one concentration where the Commission found cause to conduct an in-depth investigation into a concentration. All other reviews[155] were closed in preliminary review and without an in-depth investigation by the Commission.

The single case in the period of the study (i.e., concluded before June 2025) which led to an in-depth investigation is discussed in detail throughout the following subsections as a case study. In this case, the Commission raised concerns about several FFCs received by the acquirer, e&, which were attributable to the UAE.

A representative sample of 90 cases was created from the population of 149 notified concentration cases for the analysis. The sample was drawn randomly to facilitate representativeness, which was checked by ensuring that the distribution of concentration types, target sectors, and cross-border operations was similar to that observed in the population of cases.

The distribution of cases by NACE code in the sample is always within 2 percentage points of that in the population. In both the sample and the population, the most frequent sector was 'Manufacturing' (32%), followed by 'Financial and insurance activities' (17%), and 'Wholesale and retail trade' (11%).

Table 64 Sector of the target (using NACE code)

Count of NACE Code	Sample (#)	Sample (%)	Population (%)
Agriculture, forestry and fishing	1	1%	1%
Mining and quarrying	2	2%	1%
Manufacturing	29	32%	29%
Electricity, gas, steam and air conditioning supply	6	7%	10%
Water supply; sewerage, waste management and remediation activities	1	1%	1%
Construction	4	4%	5%
Wholesale and retail trade; repair of motor vehicles and motorcycles	10	11%	12%
Transportation and storage	8	9%	7%
Accommodation and food service activities	2	2%	1%
Information and communication	7	8%	6%
Financial and insurance activities	15	17%	16%
Real estate activities		0%	2%

[155] Ongoing cases and in-depth investigations were excluded from the study.

Professional, scientific and technical activities	2	2%	3%
Administrative and support service activities	2	2%	2%
Human health and social work activities	1	1%	2%
Arts, entertainment and recreation		0%	1%
Total	**90**	**100%**	**100%**

The sample is also representative by concentration type. Across the sample and the wider population of cases, by far the most frequent type of transaction was an acquisition of sole control of the whole company; 41% of cases fell into this type of concentration. Just 1 case was a merger.

Table 65 Concentration type

Count of Concentration Type	Sample (#)	Sample (%)	Population (%)
Acquisition of joint control of part of a company	0	0%	1%
Acquisition of joint control of the whole company	13	14%	11%
Acquisition of joint control through a joint venture	2	2%	2%
Acquisition of sole control of part of a company	7	8%	7%
Acquisition of sole control of previously reduced or enlarged companies	1	1%	1%
Acquisition of sole control of the whole company	37	41%	41%
Acquisition of sole control through a subsidiary of a group	2	2%	3%
Merger	1	1%	1%
N\A	26	29%	32%
Total	**90**	**100 %**	**100%**

Note: NAs meant that the type of transaction was not recorded in the dataset.

The most common type of notifications concerns intra-EU transactions (43%, including intra-EU transactions and intra-EU single Member State transactions); while the cross-border EU to non-EU transactions amount to 40%.

Table 66 Cross-border Operations

Cross-border Operation	Sample (#)	Sample (%)	Population (%)
Cross border EU – non-EU	36	40%	38%
Cross border inside EU	20	22%	20%
Cross border non-EU – non-EU	9	10%	11%
No cross border EU - EU	19	21%	22%
No cross border non-EU – non-EU	6	7%	8%
Total	**90**	**100%**	**100%**

Considering the share of cases in the sample where the Commission also conducted a merger review into the concentration, this occurred in 88% (79) of cases. 64% of cases (58) involved a national Foreign Direct Investment (FDI) screening and 6% (5) involved a national merger review.

Based on the markets either party was active in, deductions have been made on whether or not there appear to be any horizontal overlaps between the parties. This appeared to be the case in 52 cases in the sample (58%). Since this information is not systematic, it should be interpreted with caution. It was also possible to draw conclusions on the vertical relationships between the parties based on a similar approach. These were apparent in 12 cases (13%) within the sample.

Finally, a notable feature about cases and the involved parties is how often the acquirer is a fund or investment vehicle (for example, private equity, or asset management). These are referred to as 'funds' in the remainder of the study. 39 cases (43%) involved an acquirer fund. Upon review, it was evident – within the sample and the study period – that when the acquirer is a fund, certain types of FFCs are consistently reported by the parties and assessed by the Commission. With this in mind, the analysis in the following subsections is split by cases which involved acquirer funds and those which did not.

Case Study: e& case

As of June 2025, the Commission had opened and concluded one in-depth investigation under the FSR into a concentration. Findings based on the analysis of the preliminary review and in-depth investigation of the e& case are presented in these boxes throughout this section on concentration cases. The following outlines some background information on the case, which is based on the published decision of the investigation.[156]

The operation in the case underlying the in-depth investigation was a cross-border transaction between PPF, an EU-based target, and e&, a non-EU acquirer. The target, PPF was incorporated in the Netherlands and ultimately controlled by PPF Group N.V., a Czech entity also established in the Netherlands. In this transaction, PPF sold parts of its retail telecommunications services in Hungary, Bulgaria, Serbia, and Slovakia under the Yettel and O2 brands. PPF Telecom Group B.V. was not listed on any stock exchange. The acquirer, Emirates Telecommunications Group Company P.J.S.C. (e&), was incorporated in Abu Dhabi, United Arab Emirates, and was listed on the Abu Dhabi Stock Exchange. It was controlled and majority-owned by the Emirates Investment Authority (EIA), a sovereign wealth fund fully owned and controlled by the Federal Government of the UAE. The EIA and e& form part of the same undertaking, meaning the acquirer is effectively a state-controlled entity. e& is active as a telecommunications operator and operated in the same product market as the target but in different geographic regions, with no vertical relationships between their respective activities.

The following sub-sections analyse each of the relevant articles in the FSR for the sample of 90 concentration cases and, where applicable, for the in-depth investigation.

[156] European Commission (2024) *Summary notice concerning the initiation of an in-depth investigation in case FSP.100147 pursuant to Articles 10(3)(d) of Regulation (EU) 2022/2560.* C/2024/1913. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52024XC01913 (Accessed: 5 February 2026)

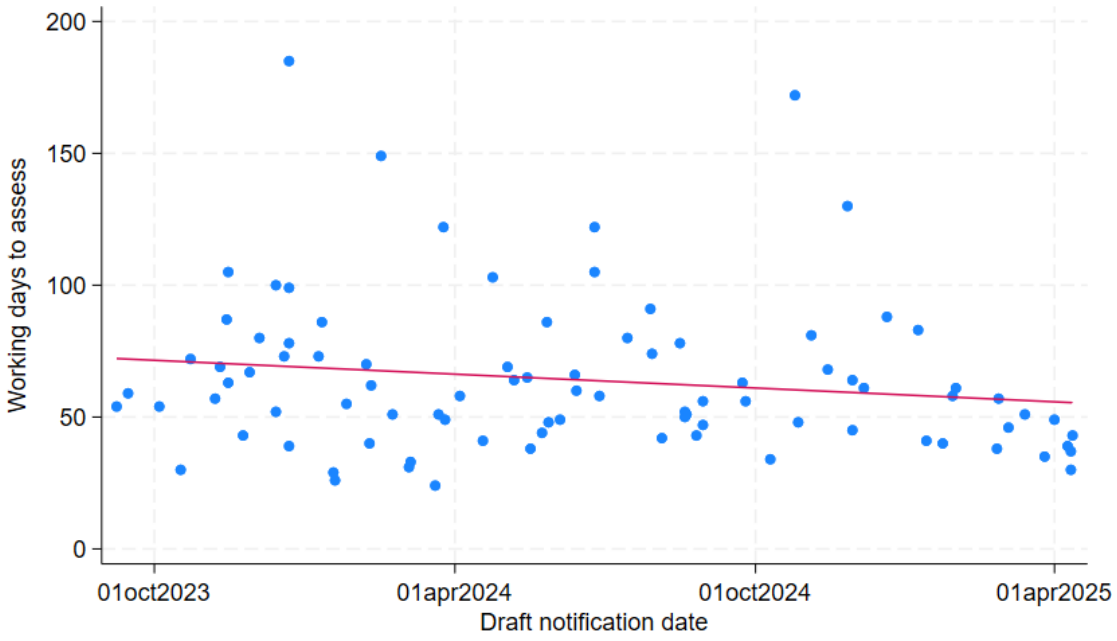
4.3 Article 25 – procedural rules

Under Article 25(2) FSR, the Commission has 25 working days from the receipt of a complete notification of a concentration to conduct a preliminary review and to decide whether to initiate an in-depth investigation. In accordance with the standstill obligation set out in Article 24(1)(a) FSR, the parties must not implement the concentration during this preliminary review period. Where the Commission does not adopt a decision to open an in-depth investigation within the 25-working-day period, the concentration is deemed not to raise concerns under the FSR and may be completed after the 25th day, i.e. the Legal Deadline.

All preliminary reviews took 25 working days from formal notification, consistent with the time limits set out in the FSR.

While Article 25 sets out the formal time limit once a complete notification has been received, the Commission often engages with the Notifying Parties prior to the formal notification. This may include a review of a first draft of the FS-CO Form provided by the parties to the Commission. This draft may contain references to FFCs or potential foreign subsidies, which may form part of the Commission's preliminary review. Therefore, the total period following the receipt of a draft notification until the end of the standstill period provides a more meaningful picture of the total period over which the Commission liaised with the Notifying Parties.

Figure 15 Number of working days from draft notification to conclusion of preliminary review



Note: To calculate working days, weekends and European Commission holidays are removed.

Examining the time taken from Draft Notification to the end of the standstill period demonstrates that the number of working days to process a case is highly variable, reflective of the fact that it depends on the time taken for the parties to react which varies case by case.

It is also apparent that this time has decreased slightly on average since the introduction of the FSR. The average number of working days to process a case (from the draft notification date) fell from 67 working days between September 2023 and

March 2024, to 60 days between October 2024 and April 2025.[157] Since there are a small number of outliers driving up the average (see Figure 15), the median number of working days, which fell from 61 working days to 49 working days in the same period, is likely to be more informative.

Since the mandatory standstill period always lasts 25 working days in cases where the Commission does not initiate an in-depth investigation, only the number of days between the Draft Notification and the receipt of the complete notification is variable and can be affected by the Notifying Parties and/or the Commission. The median number of working days in this pre-notification phase fell from 36 working days to 24 working days, a notable reduction of around 33%. This could indicate the Commission, the Notifying Parties, or both have become more familiar and efficient with the notification process and analysis.

Table 67 Average number of working days from Draft Notification to Legal Deadline (by period)

Draft notification period	Number of cases notified	Average working days from Draft Notification to end of standstill period	Median working days from Draft Notification to end of standstill period	Median working days from Draft Notification to receipt of complete notification
September 2023 - March 2024	36	67	61	36
April 2024 - September 2024	29	64	58	33
October 2024 - April 2025	25	60	49	24
Total reduction		**10%**	**20%**	**33%**

Case Study (e&): Procedure (Articles 24 and 25)

The case was pre-notified on 3 October 2023, following which the formal notification of the transaction was submitted on 26 April 2024. The pre-notification phase therefore lasted 135 working days. The Commission opened an in-depth investigation on 10 June 2024. The Commission suspended time limits due to a missing information from e& in the preliminary review, which did not occur in any of the 90 cases in the sample.

As per Article 24(4), the standard time limits for the in-depth investigation were extended by 20 working days upon request by the notifying party to 4 December 2024. The Commission adopted its decision with commitments and closed the case well before the legal deadline of 4 December 2024, i.e., on 24 September 2024. The duration from initiation of the case until the closure of the in-depth investigation was thus 237 working days.

[157] The start date quoted here is based on the Draft Notification Date rather than the Notification Date. For this reason, the last case in the sample appears to have been notified in April 2025; this was the month of draft notification with formal notification received in June 2024.

4.3.1 Conclusion

The Commission complies with the procedural rules and the time limits set out in the Article 25 FSR.

There has been a notable decrease in the time of the pre-notification phase, which does not fall under the mandatory standstill period of 25 working days following the receipt of a complete notification. The median working days fell from 36 days to 24 days, a decrease of about 33%, which could be due to the Commission's and the Notifying Parties' increased familiarity and efficiency of the processes and information required.

The case study regarding e& demonstrates that where cases are complex, the pre-notification phase may take more time, with pre-notification taking 135 working days in this case.

4.4 Article 20(3) – Notification thresholds

Article 20(3) sets out the thresholds under which parties must notify a transaction under the FSR to the Commission. Both must be met for the FSR to apply to a concentration:

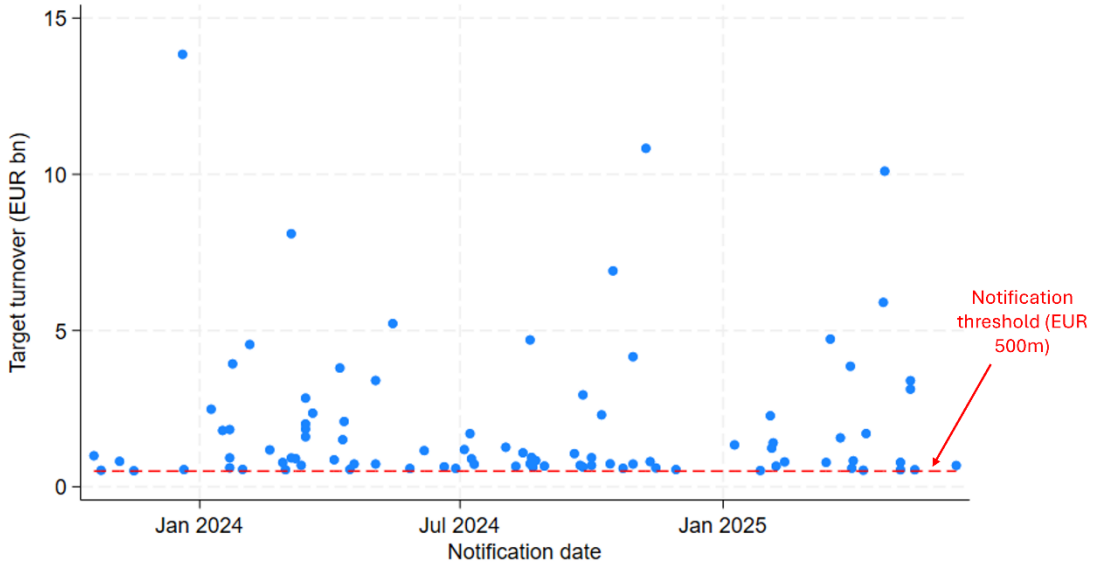
- **Article 20(3)(a)** – EU-wide turnover in excess of EUR 500 million. This applies to the target in the case of an acquisition, one or more of the merging undertakings in a merger, or joint venture itself in case of a joint venture.
- **Article 20(3)(b)** – Receipt of FFCs in excess of EUR 50 million in the last 3 years. This threshold refers to the combined aggregate FFCs received by the acquirer and the target in the case of acquisitions, all merging undertakings in a merger, or all entities creating a joint venture in a joint venture.

Consistent with the regulation, in all reviewed acquisitions (89 cases), resulting in sole control or joint control, the target met the threshold. In the one merger case in the sample, the Commission used the turnover of both parties.

In all 90 cases when analysing whether the threshold for Article 20(3)(b) was met, the Commission examined whether FFCs were in excess of EUR 50 million in the last three years, with the specific amount of individual FFCs typically discussed in a different context to thresholds for notification. In 30 of the acquisitions in the sample, the Commission only considered the value of the FFCs reported by the acquirer, and not those of the target, when assessing whether the notification thresholds were met. In other cases, FFCs received by both parties were discussed. While there is no strict requirement to consider the value of the FFCs received by the target, it could contribute to the combined aggregate value of FFCs if not already met by the acquirer alone.

The below figure demonstrates that there is no apparent trend in the annual turnover reported by the parties linked to the FSR. It should also be noted though that a comprehensive analysis of any effect of the FSR on the types of acquisitions made would also require the distribution of concentrations that are not notified because they are below the threshold or before the introduction of the FSR.

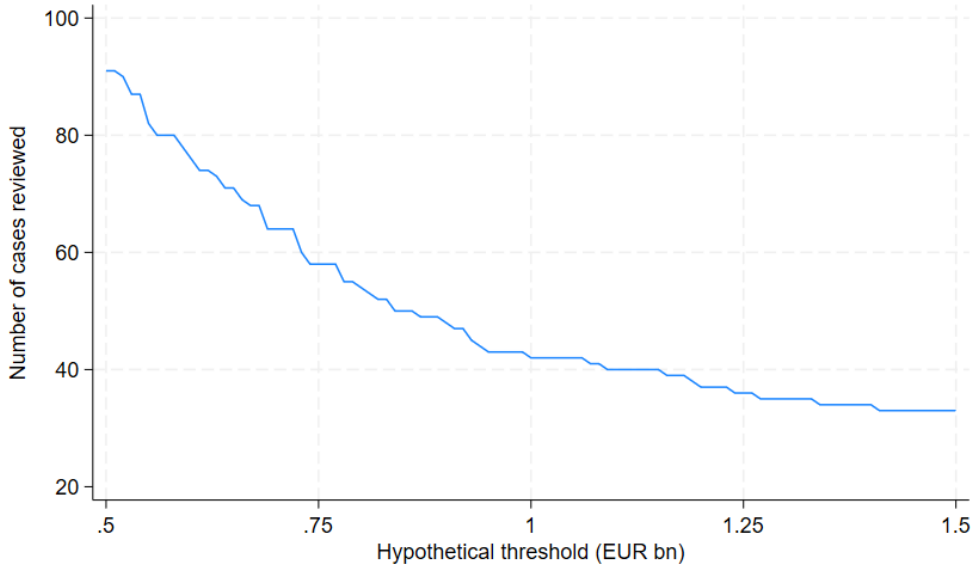
Figure 16 Reported turnover of the target, as per Article 20(3)(a)



Note: For the single merger case both parties' turnovers are reported on the graph above.

There is a relatively high volume of transactions close to the threshold. This is likely to be because lower value transactions occur more frequently. It also indicates that increasing the threshold would result in a notably lower number of notifications. The below illustrates the number of cases within the sample which would have been notified if the threshold for turnover were increased. With a threshold of EUR 600 million (an increase of 20%), 76 cases (of the 90 in the sample) would have been notified, a decrease of 16% in the FSR notifications; with thresholds at EUR 750 million (an increase of 50%), 58 cases would have been notified to the Commission, corresponding to a 36% reduction in the FSR notifications.

Figure 17 Number of cases in the sample if the turnover threshold (Article 20(3)(a)) were increased



Case Study (e&) : Article 20(3) – Notification thresholds

The target was established in the European Union, where it generated an aggregate turnover of EUR 1.8 billion. As with all other 90 cases in this study, the Commission only mentioned that the combined aggregate foreign financial contributions received in the last three years were more than EUR 50 million but detailed a breakdown of the value of FFCs later in its discussion.

4.4.1 Conclusion

Since the introduction of the FSR the turnover provided by the parties which triggered thresholds for assessment has remained relatively unchanged. There has also been a significant volume of cases close to the threshold since the FSR was implemented. Analysis suggests that an increase of 20% in the threshold for turnover (raising this from EUR 500 million annually to EUR 600 million) would reduce notifications by 16%.

4.5 Article 3 – Existence of a foreign subsidy

Article 3 of the FSR defines what constitutes a foreign subsidy. It sets out the conditions by which foreign financial contributions (FFCs) may be deemed foreign subsidies. An FFC is found to comprise a foreign subsidy if:

it is provided by a third country. "Third countries" do not consist only of central non-EU governments but also include any public or private entity whose actions may be attributable to non-EU governments. Some examples include state-owned banks, pension funds, and sovereign wealth funds.
it confers a benefit to an undertaking. For the FFC to provide a benefit, the recipient must gain in a way which would not have been available on the market. This means for example that a loan from a third country provided to a business entity may not constitute a foreign subsidy if provided at normal market terms. In such a case, there would be no benefit to the recipient.
that benefit is specific to certain undertakings or industries. For instance, a tax break provided to a particular industry could constitute a foreign subsidy only if it benefits specific undertakings or industries.
Article 3(2) provides a non-exhaustive list of potential measures which could constitute FFCs:

- **Article 3(2)(a) – Direct transfer of funds or liabilities**. This includes capital injections, grants, loans, loan guarantees, fiscal incentives, the setting-off of operating losses, compensation for financial burdens imposed by public authorities, debt forgiveness, debt to equity swaps, or rescheduling.
- **Article 3(2)(b) – Foregoing of public revenue otherwise due**, such as: tax exemptions or the granting of special or exclusive rights without adequate remuneration.
- **Article 3(2)(c) - Provision or purchase of goods or services**. This includes third countries purchasing goods or services from a business entity and supplying goods and services.

Any measure above, if it could be attributed to a non-EU country, will likely be considered an FFC. This list, however, is not exhaustive. Other contributions not mentioned in Article 3 categories may also be considered FFCs. For an FFC, however, to be considered a foreign subsidy, it must confer a benefit which is specific.

In practice, the Commission has combined the analysis of FFCs/potential subsidies (Article 3) with the analysis of foreign subsidies most likely to distort the internal market (Article 5). Consequently, for the purposes of analysis, FFCs have often been

grouped by the Commission into Article 5 and non-Article 5. A brief description of the Article 5 is provided in the next sub-section before the Commission's approach to implementing Articles 3 and 5 across the 90 cases is discussed from Section 4.7 onwards.

4.6 Article 5 – Foreign subsidies most likely to distort the internal market

Article 5 lists categories of foreign subsidies "most likely" to distort the internal market. FFCs flagged as potentially Article 5 therefore usually receive the greatest scrutiny from the Commission. The list of subsidies in Article 5 is, thus, also used to inform the decision making on the existence of subsidies in Article 3 as Article 5 stipulates the types of FFCs most likely to be distortive foreign subsidies.

There are five categories of foreign subsidies listed in Article 5(1):

- **Article 5(1)(a) – Subsidies to an ailing undertaking.** These are foreign subsidies granted to an ailing undertaking, defined as one which is likely to go out of business in the short to medium term in the absence of any subsidy, unless there is a restructuring plan that is capable of leading to the long-term viability of that undertaking and that plan includes a significant own contribution by the undertaking.
- **Article 5(1)(b) – Unlimited guarantees.** Guarantees that cover an undertaking's debts or liabilities without any limitation in amount or duration. Unlimited guarantees reduce risk for lenders which allows the recipient of the guarantee to benefit, for example, from preferential financial terms.
- **Article 5(1)(c) – Non-OECD-compliant export financing.** Foreign subsidies in the form of export financing that do not follow the OECD Arrangement on officially supported export credits.
- **Article 5(1)(d) – Subsidies directly facilitating a concentration.** Foreign subsidies that directly finance the transaction or otherwise make the transaction possible. These typically concern loans or capital commitments to the acquirer in a concentration.
- **Article 5(1)(e)** – Subsidies that enable an undertaking to submit a **tender that is unduly advantageous** in a public procurement procedure, within the meaning of Article 27. Here the concern is that subsidised bidders can undercut rivals and win contracts on the back of foreign support rather than genuine efficiency.

Any FFC potentially falling under the above articles have received additional attention from the Commission. For this type of FFCs, the parties to the transaction need to elaborate in the Form FS-CO if they constitute subsidies (i.e., provided by a third country, confers a benefit and is specific) and their possible impact on the internal market. Parties have the opportunity under Article 5(2) to provide relevant information as to why a foreign subsidy falling under Article 5(1) is not distortive given the specific circumstances of the case. The Commission then assesses the parties' submission and arguments, and decides accordingly.

4.7 Application of Article 5 in the Commission's approach

As discussed, Article 3 provides some common categories of FFCs. It further defines when an FFC constitutes a foreign subsidy – namely when it comes from a third country and confers a benefit which is specific to an industry or undertaking. Article 5 stipulates different foreign subsidies which are most likely to lead to distortion in the internal market.

This section analyses the Commission's approach to Article 5 FFCs, followed by an analysis of other FFCs not falling under Article 5. There are also common themes in the types of foreign subsidies reported by the parties when the acquirer is a fund, and the Commission's assessment of these. As such, the following subsections discuss Article 5 FFCs received by funds and non-funds separately.

Furthermore, the Commission's review of Article 5 FFCs received by the acquirer in the single case in the sample period (i.e., closed by June 2025), which led to an in-depth investigation is also discussed in boxes below. In this case, the Commission ultimately decided to launch an in-depth investigation following a preliminary review which identified several potentially distortive Article 5 foreign subsidies provided to the acquirer.

Finally, one instance where the Commission assessed foreign subsidies based on Article 5 that were received by the target are analysed in section 4.7.3.

Overall, Article 5 FFCs were mentioned far more frequently when the acquirer was a fund than when the acquirer was not. 43% of acquirer fund cases referenced Article 5 FFCs compared with 12% of non-fund acquirer cases.

4.7.1 Received by an acquirer that is a fund

There were 39 cases (43% of the sample) where the acquirer was a fund. 35 of these transactions were acquisitions of sole control and 4 resulted in joint control of the target entity.

Within this set of 39 cases where the acquirer was a fund, 27 cases (69% of acquirer fund cases) involved potentially Article 5 FFCs – those most likely to distort the internal market.[158] In 12 cases where the acquirer was a fund, no Article 5 FFCs were reported.

All FFCs identified in these 27 cases fell under Article 5(1)(d) – those which could directly facilitate the transaction. All 27 cases contained Article 5(1)(d) FFCs arising from capital commitment by LPs in the fund, whose actions can be attributed to third countries. These often appear to be from sovereign wealth funds or pension funds. Less than 5 out of the 27 cases also contained Article 5(1)(d) FFCs in the form of loans to the acquiring fund for the purpose of financing the transaction.

Across all 27 cases where the source of concern was a capital contribution, it was concluded that these investments were made on "pari passu" terms which were equal to those of private investors. This implies no benefit and that an FFC is not a foreign subsidy. As noted above, following the cut-off date for this study, the Commission has published Question 26 to the FSR Q&A, which introduces simplified reporting of the LP contributions in the Form FS-CO, which should reduce Article 5 FFC in the Form FS-COs of investment funds going forward.

The existence of a benefit is determined either by examining the terms and rights of public investors in comparison to those of private investors in the fund, or comparing them with terms typical on the market. When the terms were the same, this indicated that terms were "pari passu" between private investors and those agreed with an attributable entity and, therefore, no benefit was conferred. Similarly, at times the terms were compared against that available on the market for similar contributions. Where terms aligned, it was considered that commitments were made at market terms and again conferred no benefit. Overall, it seems that when the acquirer is a fund, capital commitments are frequently considered as potential Article 5 foreign

[158] This included one case where the parties reported FFCs as non-Article 5, but the Commission viewed them as Article 5.

subsidies. However, where they were provided at market terms or on terms equivalent to private investors, this excluded the existence of a foreign subsidy in all 27 cases.

In fewer than 5 cases, loans were identified as potential Article 5(1)(d) FFCs in addition to capital commitments made in the funds. These loans were provided to the acquirer by States with the express purpose of financing the transaction. However, when the terms of the loan were "pari passu" with other private lenders, or made at market terms no benefit was considered to arise and consequently no foreign subsidy. Again, it appears that "pari passu" or market terms were key to this finding.

Overall, across all cases where the acquirer was a fund, potential Article 5 foreign subsidies were ruled out based on "pari passu" terms. Though FFCs are often identified as potentially Article 5 when the acquirer is a fund, with 69% of acquirer fund cases involving potential Article 5 foreign subsidies, in no cases were these found to be foreign subsidies.

Finally, whilst most of the Article 5 FFCs discussed here concerned investments in funds made by entities attributable to States, it is worth noting that the Commission has since adjusted its approach to Article 5 FFCs received by funds. As of September 2025, FSR Q&A 26[159] now clarifies that investments in funds attributable are reportable in Table 1 of the FS-CO, alongside details of the FFC (including if it was made on "pari passu" terms or confers any control over the entity). Thus, going forward, the majority of the FFCs discussed in this subsection will not fall under Article 5 anymore.

4.7.2 Received by an acquirer that is not a fund

There were 51 cases (57% of the sample) where the acquirer was not a fund. Article 5 FFCs were reported far less frequently when the acquirer was not a fund. Only 6 of these 51 cases (12%) involved potential Article 5 FFCs compared with 69% when the acquirer was a fund. The FFCs which were identified fell under (all less than 5):

- **Article 5(1)(a)** – foreign subsidies to an ailing undertaking.
- **Article 5(1)(b)** – unlimited guarantees.
- **Article 5(1)(d)** – foreign subsidies which might directly facilitate the transaction including loans, and equity financing.

In all cases where potentially Article 5(1)(d) FFCs (i.e. directly facilitating the transaction) were identified, it was determined that these were provided at market terms and did not confer a benefit. These included loans granted by state-owned banks to the acquirer as well as equity financing provided by non-EU States. By comparing the terms of the loans with those typically available on the market, it was determined that these were provided on market terms. Equity financing was also found to be "pari passu" with private investors. Thus, it was determined that these FFCs did not confer a benefit and, therefore, did not constitute foreign subsidies.

With regards to the cases where FFCs potentially falling under Article 5(1)(a) were identified, these did not appear to be foreign subsidies because contributions did not appear attributable to third countries, and companies' performance appeared to improve on their own rather than as a result of foreign subsidies. Therefore, they did not appear to be foreign subsidies, and in any case could not be linked to the transaction at stake if they were.

[159] The FSR Question and Answers section is available at: https://competition-policy.ec.europa.eu/foreign-subsidies-regulation/questions-and-answers_en.

There were also cases where Article 5(1)(b) foreign subsidies in the form of potentially unlimited state guarantees enjoyed by the acquirers were identified. Unlimited guarantees may typically be thought to benefit the acquirer through an improved credit rating and enhanced financial terms. When examining the existence of an unlimited guarantee a range of evidence was considered. This may include exemption from ordinary bankruptcy proceedings, examining reports and credit ratings provided by reputable agencies; assessing financial indicators, such as the debt to EBITDA ratio of a firm, and comparing these with market benchmarks; and evaluating whether there is evidence that a State had both the incentive and the legal obligation to support the acquirer. It is further noted that State ownership alone is not sufficient to constitute an unlimited guarantee or a foreign subsidy.

While Article 5 FFCs were reported far less frequently when the acquirer was not a fund. In these cases, there has been a greater variety of FFCs identified, including Articles 5(1)(a), 5(1)(b), and 5(1)(d) FFCs. In relation to Article 5(1)(d) FFCs, those which might directly facilitate the concentration, foreign subsidies were excluded based on "pari passu" or market terms. This means that there was no benefit and that the respective FFCs did not constitute foreign subsidies. In this respect, the approach was similar as when the acquirer was a fund.

Case Study (e& case): Potential Article 5 foreign subsidies

The Commission found that the existence of an unlimited guarantee provided to e& by the UAE legal framework was an Article 5(1)(b) foreign subsidy. The guarantee was deemed attributable to the UAE government, as it originated from legislation exempting e& from standard insolvency procedures, in addition to the other indicators used by the Commission. The Commission did not estimate the value of this guarantee. The Commission determined that it conferred a clear benefit by enhancing e&'s creditworthiness and access to favourable financing. It was also found to be specific, being legally limited to State-owned companies in the UAE. As such, the Commission determined this was an Article 5 foreign subsidy.

The Commission also examined EIA, the sole owner of e&, which benefited from the same unlimited guarantee which it confers to e&. The Commission, however, considered that this was identical to the foreign subsidy assessed with regards to e& and did not have any additional distortive effects.

Moreover, the Commission considered that the unlimited guarantee to e& itself could also 'directly facilitate the concentration' according to Article 5(1)(d) FSR, as it was liable to improve the conditions by which e& had financed the acquisition. However, as the Commission ultimately found no distortion in the acquisition process, it did not reach a conclusion as to whether the identified measure qualified under Article 5(1)(d).

The Commission further considered a term loan of EUR [500-1,000] million provided to e& to "directly facilitate the concentration". The loan originated from UAE state-owned banks and made it a potential Article 5(1)(d) foreign subsidy. However, as with several Article 5(1)(d) loans cited above, the Commission held that the terms of the loan were "pari passu" with that available on the market ("pari passu"), and thus, did not confer a benefit.

4.7.3 Article 5 FFCs received by the target

The above sections concern Article 5 FFCs received by the acquirer. There were also a few instances in the sample where Article 5 FFCs received by the target were reported. These were all cases where the seller was a fund and the disclosed FFC concerned a capital commitment made in the target's funds. These FFCs, however, were

determined to be made at "pari passu" terms with private investors and did not constitute subsidies.

4.7.4 Conclusion

The purpose of Article 5 is to identify those foreign subsidies which are most likely to distort the internal market.

This is pursued through an evidence-based and effects-driven methodology. When assessing Article 5 FFCs evidence supplied by the parties are consistently considered as well as external sources. For example, with respect to Article 5(1)(d) direct transfers such as capital commitments, equity investments, and loans, the existence of a benefit is assessed by comparing terms against private investors or the market. This reflects the use of information provided by the parties (e.g., private investors' terms) as well as external information (e.g., comparable terms available on the market). This consistent approach provides parties with predictability while allowing a thorough assessment.

Similarly, when assessing Article 5(1)(b) foreign subsidies in the form of unlimited guarantees, no foreign subsidy was inferred solely based on state ownership alone. The Commission considered a broader range of supporting evidence to determine the existence of an unlimited guarantee.

Taken together, this illustrates a reliance on multiple sources of evidence rather than presuming a foreign subsidy exists based on State ownership or State contributions alone.

One pattern which emerges in the analysis is that when the acquirer is a fund, Article 5 FFCs in the form of LP commitments made by entities, whose actions can be attributed to non-EU States are more frequently reported than when the acquirer is not a fund. In 69% (27 total) of fund acquirer cases Article 5 FFCs were reported. This occurred in just 12% (6 total) of non-fund acquirer cases.

It is clear that this frequency of Article 5 FFCs when the acquirer is a fund seems to be driven by capital commitments made in funds attributable to States. All 27 reported cases involved an Article 5 FFC in the form of a capital commitment (as well as potentially further Article 5 FFCs). However, across all of these the capital commitments were found to confer no benefit (through examining terms) and were not considered foreign subsidies. Article 5 is intended to identify foreign subsidies most likely to be distortive, but none of these were found to be foreign subsidies. This suggests that there may be a degree of tension between the intended scope of Article 5 and some of the FFCs, which fall under it in practice. This does not imply that these FFCs or any others which fall outside the scope of Article 5 FFCs are not potentially distortive. It does suggest however that changes to the FSR which render such FFCs which reduce the frequency these are reported as Article 5 might reduce the administrative burden on the Commission and the parties.

Indeed, the Commission clarified in September 2025 in the FSR Q&A 26 guidance that investments made by attributable LPs, under certain conditions, are to be reported in Table 1 of the Form FS-CO, alongside a description of the investment (including whether it is passive, pari passu with private investors, or grants control or influence). This should reduce the frequency such FFCs are reported as Article 5 by funds. Previously, funds likely categorised these as Article 5(1)(d) given the potential for such investments to be viewed as potentially facilitating the concentration. This change should lessen the administrative burden on notifying parties and the Commission, while retaining the ability to identify potentially problematic commitments based on their description in Table 1 (e.g., those which give control, or

are not made at pari passu terms). Had this adjustment been in place during the period reviewed, there would have likely been less than 5 cases in the 90-case sample where fund acquirers reported Article 5 FFCs, rather than 27. This should therefore reduce the burden of complying with and implementing the regulation whilst retaining its efficacy to identify distortive foreign subsidies.

Some cases that did not involve funds and where Article 5 FFCs were discussed contained Article 5(1)(d) (direct transfers in the form of loans or capital commitments). These were again ruled out because of "pari passu" terms. This suggests that a similar adjustment to that outlined above could improve efficiency in applying and complying with the regulation. Loans and capital commitments made to non-fund acquirers could be made non-Article 5 where parties can show that such a transfer was "pari passu" with the terms agreed with a private lender or investor. However, such a change would also have a far smaller effect than the capital commitments adjustment made for funds given that less than 5, rather than 27, of the 90 cases involved direct transfers to non-funds. Going forward, it would be appropriate to continue to assess whether any systematic differences between funds and non-funds arise and consider adjusting the regulation specifically for these two sets of acquirers if appropriate.

Whilst many types of Article 5 FFCs discussed in this subsection appear unproblematic, Article 5(1)(b) unlimited guarantees were discussed. Such FFCs were not reported frequently in the 90 case sample with less than 5 cases containing this type of FFC (both non-fund acquirers). In the e& case (see the grey boxes in this sub-section), a distortive unlimited guarantee was also found. Given the small sample size (less than 5 cases), it is not possible to draw robust conclusions regarding Article 5(1)(b), but the fact that unlimited guarantees were discussed suggests that this remains one of the more relevant categories of Article 5(1). It demonstrates that the categories in Article 5 are, in fact, relevant and effective in capturing cases requiring further inspection.

While the analysis outlines the approach taken by the Commission up until June 2025, the Commission's practice in past cases is not binding for future cases and may change based on learnings and revisions to the FSR Guidelines. The FSR Guidelines will continue to be the main reference point for the interpretation of the FSR.

4.8 Application of Article 3 and non-Article 5 FFCs in the Commission's approach

The below discusses non-Article 5 FFCs received by the acquirer and the application of Article 3 in these cases. Again, discussion where the acquirer is a fund is separated from where the acquirer is not.

4.8.1 Received by an acquirer that is a fund

Non-Article 5 FFCs were identified at a similar rate as Article 5 FFCs when the acquirer was a fund. The sample includes 25 cases involving non-Article 5 FFCs (64% of acquirer fund cases) compared with 27 (69%) mentioning Article 5 FFCs.

These FFCs were generally not considered Article 5 because they were not provided directly to the purchasing fund. Instead, non-Article 5 FFCs were provided to:

- A fund's portfolio companies (21 cases).
- Other funds managed by the same entity, including capital commitments into those funds or their portfolio companies (8 cases).

- The entity which manages the fund but not the fund itself (and not for the purposes of financing the transaction) (less than 5 cases).

FFCs provided to portfolio companies

The sample includes 21 cases where FFCs were provided to portfolio companies owned by the acquiring fund.

Within this subsample, FFCs were limited to the categories listed in Article 3(2). They consisted of:

- **Article 3(2)(a)** – Loans and grants: 11 cases.
- **Article 3(2)(b)** – Tax credits: 17 cases.
- **Article 3(2)(c)** – Procurement of goods and services: 6 cases.

In all of these cases the Commission deemed it unlikely that the identified FFCs were linked to the transaction. The Commission often based this on the notifying parties' evidence that FFCs were received by portfolio firms for domestic activities. The Commission usually determined that such FFCs were absorbed by the portfolio firms, regardless of whether they were loans, grants, tax breaks, or a procurement of goods and services. Sometimes, the Commission relied on the fact that funds' ownership terms explicitly stated that they were not able to absorb FFCs received by their portfolio companies. At times, the Commission also discussed that the firm in question was not in an industry linked to the target. For these reasons, the Commission ruled that FFCs received by portfolio firms were not linked to the transaction at stake across all 19 cases.

FFCs provided to other funds managed by the parent of the acquiring fund

The Commission also examined, in 8 cases, FFCs provided to other funds managed by the same entity as the acquiring fund. These concerned both:

- **Article 3(2)(a)** – Capital commitments or LPs in other funds; and
- **Article 3(2)(b)** – FCCs in the form of tax breaks provided to the portfolio firms controlled by other funds.

In some of the cases concerning capital commitments in other funds, the Commission determined that these could not plausibly be linked to the transaction at stake.

In cases where Article 3(2)(a) FFCs were mentioned the Commission did find that commitments made in other funds were linked to the transaction. In these cases, the Commission found that commitments made by states in these other funds were made at "pari passu" terms so did not confer a benefit. This meant they were not foreign subsidies.

In the cases where tax breaks received by another fund were discussed, these were not found to be linked to the transaction at stake. This was because the tax breaks did not appear to have a material impact on the financing of the transaction.

Predominantly, when FFCs were received by another fund, or by a portfolio firm, the Commission ruled these out based on not being linked to the transaction at stake. The Commission appeared less concerned with whether an FFC constitutes a foreign subsidy in such cases. This is likely because FFCs provided to portfolio firms or other funds can often be ruled out straightforwardly from being linked to the transaction. They are not used to finance the transaction and/or are absorbed by the respective portfolio firms. This provides the Commission with a clear rationale for excluding an FFC from being a foreign subsidy in the concentration.

In the less than 5 cases where FFCs provided to other funds were linked to the concentration, the Commission did consider whether these conferred a benefit but concluded they were made "pari passu" with private investors.

FFCs provided directly to the entity managing the fund

Finally, there were also some cases where the entity managing the fund received FFCs not reportable as Article 5. These included contributions to pension funds of the managing entity, and low tax rates enjoyed by the entity managing the fund. The former were ruled out as not linked to the transaction. When the latter were mentioned, the Commission at times drew on State Aid law in determining that a low tax rate which was in any way specific (even if it applied to the majority of undertakings in a geography, but some undertakings in specific industries paid higher rates of tax) met the conditions for specificity and constituted a foreign subsidy. However, these foreign subsidies were also ruled out as linked to the transaction.

4.8.2 FFCs received by an acquirer that is not a fund

For non-fund acquirers, non-Article 5 FFCs were identified far more frequently than Article 5 FFCs. 78% (40 total) of these cases involved non-Article 5 FFCs compared with 12% for Article 5 FFCs. Non-Article 5 FFCs were broken down as follows for non-fund acquirers:

- **Article 3(2)(a)** – a transfer of funds (31 cases). These included loans, grants, and joint capital commitments made by non-EU countries to the acquirer.
- **Article 3(2)(b)** – a foregoing of revenue (26 cases) in the form of a tax reduction.
- **Article 3(2)(c)** – procurement of goods and services (20 cases). These were mainly purchases made by a non-EU country of the acquirer's goods and services but also included some purchases made by the acquirer from a non-EU country.
- **Other types of FFCs** (less than 5 cases). These included fixed fuel price receivables, market capacity payments made to a producer of electricity, and aid in the form of a variable premium.

With regards to potential Article 3(2)(a) FFCs, the most frequently mentioned FFCs (22 cases) concerned debt vehicles such as loans, bonds, or credit issued by a non-EU country to the acquirer. For loans, the Commission typically examined the terms at which the loan was provided and concluded these were equivalent to market terms.

Grants were also mentioned in 11 cases where the acquirer was not a fund as an Article 3(2)(a) FFC. The Commission usually determined these were not linked to the transaction. This was usually based on examining conditions attached to the grant, for example being used for research and development. In other cases, the Commission emphasised that grants were unlikely to have cross-subsidised the acquiring entities. Thus, the Commission typically excluded grants based on a lack of link to the transaction.

There were some cases where capital commitments or injections were mentioned as Article 3(2)(a) when the acquirer was not a fund. Across these cases, the Commission excluded these FFCs from consideration as they did not confer a benefit to the acquirer. To reach this conclusion, the Commission typically compared the terms at which entities attributable to States offered commitments with the terms agreed with private investors or that available on the market. Across these cases, the Commission found these to be equivalent meaning that capital commitments did not provide a benefit. Thus, these FFCs were ruled out as foreign subsidies.

Across Article 3(2)(b) FFCs which concerned tax reductions, the Commission's approach varied in whether it discussed the potential for these to benefit the acquirer or not.

- In less than 5 cases, the Commission concluded that these tax advantages were specific, conferred a benefit, and were foreign subsidies. This was usually because

tax breaks were specific to certain sectors or industries, and by definition, provided a financial benefit. However, in all cases the Commission also concluded that they were not linked to the transaction at stake.

- In the other 22 other cases where Article 3(2)(b) FFCs were discussed, the Commission did not rule on whether these were foreign subsidies. Instead, the Commission determined that they were not "foreign subsidies in the concentration" by focussing on whether they were linked to the transaction. To assess this, the Commission usually considered the activities for which the tax benefits were received, and if received by subsidiaries, whether these were active in the European Union. Based on this, the Commission ruled out these FFCs as being linked to the transaction and excluded them from further assessment.

FFCs identified as Article 3(2)(c) – procurement of goods and services – were typically found to have been provided at market terms. This was usually assessed by the Commission examining whether goods or services were tendered competitively, and whether the price paid was on comparable market terms. In other cases, Article 3(2)(c) FFCs were found not to be linked to the transaction. Overall, in all of these cases the Commission found no foreign subsidy in the concentration.

To reach its conclusion, the Commission typically looked at the terms an FFC was provided at when assessing if it conferred a benefit. As with acquirer funds, the Commission compared these against the terms available in the market or that agreed by the acquirer with private entities. When examining whether FFCs were linked to the concentration, the Commission considered whether it was likely that contributions were absorbed in the geography, or by the entities who received them. They examined aspects such as the conditions attached to contributions, or the connection between subsidiaries and the acquiring party. Across all non-Article 5 FFCs received by non-fund acquirers, the Commission found no foreign subsidies in the concentration.

Case Study (e& case): Non-Article 5 FFCs

The European Commission analysed FFCs received by both e& and the EIA. In the assessment, the Commission relied on standards and State Aid practices or other areas of EU law to underline their findings.

For e& it considered two further kinds of FFCs:

- e&'s licence for the provision of telecommunications services in the UAE
- Regulated telecommunication prices in the UAE.

The licence to provide telecommunications services in the UAE was discussed as a potential Article 3(2)(b) foreign subsidy. This was because the Commission considered that the license provided by the UAE government to e& could give rise to the foregoing of revenue that is otherwise due. This was because the Commission considered that e& may benefit from the "special right" to provide telecommunications services in the UAE without having to provide sufficient remuneration to the UAE government. In this context, the Commission interpreted "special right" by analogy to Article 106(1) TFEU as well as Article 1(6) Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services. When assessing a potential benefit, the Commission applied the European Electronic Communications Code (Directive (EU) 2018/1972) and the Notice on the notion of State Aid. The Commission concluded that the "special right", enjoyed by e& did not constitute a foreign subsidy. This was because the Commission considered that the legal standard to prove inadequate renumeration was not met. Thus, there was a lack of evidence that e& benefitted from the telecommunications license without adequately renumerating the UAE government.

With regards to regulated telecommunications prices in the UAE, the Commission did not explicitly discuss whether these constituted FFCs, or under which category of Article 3(2) they fell. Instead, these were mentioned in the opening discussion under Article 10(3). The Commission considered the potential benefit and focussed on establishing a relevant benchmark with which to compare regulated prices against. The Commission, inter alia, relied on a WTO Trade Policy Review which stated that the prices for telecommunications in the UAE were competitive. A similar finding was established through references to statements in the RFI of the UAE Telecommunications and Digital Government Regulatory Authority and the lack of third-party evidence. The Commission concluded that it could not prove a benefit to the requisite legal standard.

Concerning the FFCs of **EIA**, the Commission received inadequate responses to multiple RFIs and therefore proceeded under the "facts available" rule (para. 193). It assessed three kinds of FFCs to the EIA:

- Direct grants to the EIA from the UAE Ministry of Finance of EUR 100 to 500 million on a yearly basis between 2020 and 2023. These totalled between EUR 300 to 1 500 million.
- Loans, and repayable advances to the EIA from the UAE Ministry of Finance of more than EUR 1 000 million in 2021 and 2022 and between EUR 500 million and 1 000 million in 2020, for a cumulative amount of between EUR 2 500 million and more than EUR 3 billion
- A revolving credit facility loan to the EIA by UAE banks.

All grants, loans, and repayable advances were considered to take the form of a transfer of funds or liabilities within the meaning of Article 3(2)(a) and were attributable to the UAE. On the basis of the "facts available" rule of Article 16(3) FSR, the existence of a benefit was largely assumed. For the grants, the Commission additionally focused on the fact that free financing to EIA was considered, by its nature, selectively beneficial.

The revolving credit facility meant that EIA could repeatedly withdraw, repay, and redraw funds up to a set limit with UAE banks. The Commission did not define this as a type of FFC within Article 3(2). Instead, the Commission focussed on attributability and whether the banks which provided this service were attributable to the UAE. The Commission dismissed a parallel approach posited by the notifying party which used international trade law under WTO rules (paras. 216 – 217) to provide a narrow reading of state-controlled undertakings to those exercising government functions. The Commission stated that the *Stardust Marine* (C-482/99, EU:C:2002:294) standards from State Aid practice – contrary to what was argued by the notifying party – applied to the case at hand. The Commission concluded that attribution was demonstrated because it was unlikely that the State was not involved in the relevant measure. To assess the degree of state involvement, the Commission examined the ownership structures of the relevant companies. This included considering:

- The presence and function of government representatives on supervisory boards.
- The extent to which decision-making processes allowed governmental influence.
- The broader role of the state within the UAE banking sector (viewed strategic for UAE), and the scope of the revolving credit facility (para 219).

On the basis of the "facts available" rule of Article 16(3) FSR, the existence of a benefit was largely assumed. This was because the relevant UAE banks did not provide information on whether their contributions were "pari passu" with that of non-state-controlled banks or whether the conditions of the revolving credit facility were in line with normal market conditions.

4.8.3 FFCs received by the target

The above sections concerned FFCs reported by acquirers. However, the Commission also examined some cases where non-Article 5 FFCs were received by the seller or target entity. In all, these were transactions which resulted in joint control of an entity. These concerned:

- Article 3(2)(a) FFCs in the form of loans, capital commitments and credits provided to the seller or target.
- Article 3(2)(b) FFCs which were tax credits received by the seller.

Across all reportable FFCs, these were ruled out on the basis of not being linked to the transaction or not conferring a benefit. Only in a limited number of cases did the Commission find a seller to have benefitted from FFCs.

4.8.4 Conclusion

As with Article 5 FFCs, the Commission assessed benefits by comparing capital contributions, loans or purchases against the terms available in the market or from private lenders and investors. The Commission drew on the parties' submissions to achieve this or compared with typical market terms in the sector. The Commission also at times mentioned that FFCs were not linked to the transaction as they did not materially impact its financing.

Similar to section 4.7, there also appear to be clear differences in the Commission's assessment of non-Article 5 FFCs when the acquirer is and is not a fund.

When the acquirer was a fund, it was evident that FFCs were deemed to not fall under Article 5 when the recipient was not the acquiring fund itself. Instead reported FFCs were received by other funds managed by the same entity, the fund's portfolio firms, or the parent entity which managed the fund. Most often such FFCs were excluded from the assessment based on not being linked to the transaction.

While the FSR states that the assessment of distortions in public procurement cases should be "limited to the public procurement procedure in question" (Article 27 FSR) and the Commission has taken a similar approach in the assessment of distortions in the in-depth concentration investigation, the regulation does not explicitly state that FFCs are only relevant if they are directly linked to the specific transaction. Furthermore, in public procurement cases, the Commission has sometimes concluded that the original purpose of the FFC is irrelevant and that it does not have to be directly linked to the specific tender (see Section 5.1.6). A consistent approach and further clarification on the necessity of a link between an FFC and a transaction (or tender) could be useful.

Based on the Commission's approach in the above-mentioned cases and depending on clarification on whether the presence of a link is a necessary condition for an FFC to be a relevant foreign subsidy, the Commission could also consider exempting FFCs received by other funds when these funds are not able to cross-subsidise the acquiring fund. Similarly, FFCs given to portfolio companies could also be exempted when there are explicit agreements in place which prevent funds from absorbing FFCs given to portfolio firms. This may reduce reporting and assessment burdens for the parties and the Commission respectively.

Whilst there were less than 5 cases where this was mentioned, there were instances where FFCs were identified in the form of low tax rates in the acquirer's tax residence was deemed to be a foreign subsidy. The Commission made this determination drawing on similar cases under State Aid practice. Whilst this foreign subsidy was ultimately ruled out based on not being linked to the transaction, it shows the

potential relevance of this type of FFC and the Commission's active consideration thereof.

Indeed, when the acquirer was not a fund, tax breaks more broadly were often not explicitly ruled out as foreign subsidies. Instead, they were excluded from further assessment based on not being linked to the transaction at stake. This is likely because tax breaks may be difficult to rule out as foreign subsidies; they by definition confer a benefit and are often specific to an industry or sector. The regulation may require adjusting to take account of this. The conditions regarding specificity could be relaxed; a tax break could be required to be more specific rather than industry- or sector-wide. However, any change to the regulation would of course need to be considered against the risk that potentially distortive tax policies are not identified and assessed.

With regards to the 90-case sample as a whole, it is notable that almost all the non-Article 5 FFCs discussed in the sample fell under one of the categories of Article (3)(2). There were only less than 5 cases where FFCs outside of Article 3(2) were mentioned (compared with 65 non-Article 5 cases in total). This illustrates that Article 3(2) is relatively comprehensive in covering the different types of FFCs which are likely to arise.

However, with regards to the case study involving e&, the Commission did identify several unique FFCs which did not fall into a category under Article 3(2) as well as more 'conventional' Article 3(2)(a) FFCs and found these to be foreign subsidies. This demonstrates that whilst Article 3(2) sets out types of contributions which are likely to be FFCs, the Commission exercises its scope to any type of foreign contribution, and indeed, may find these to be foreign subsidies. This case also demonstrates the Commission's active use of the 'best facts available' rule as per Article 16 FSR, when the parties provide incomplete information.

Whilst the above outlines the approach taken by the Commission regarding non-Article 5 FFCs, the Commission's practice in past cases is not binding for future cases. The FSR Guidelines will continue to be the main reference point for the interpretation of the FSR.

4.9 FFCs excepted from disclosure under Annex 1

Under Annex 1 of the FSR Implementing Regulation, the notifying parties are exempted from disclosing the following FFCs:

- Deferrals of tax payments or tax holidays.
- Tax reliefs to avoid double taxation.
- Purchases or provision of goods or services (excluding financial services) at market terms in the ordinary course of business.
- Individual FFCs below EUR 1 million.
- When the acquirer is a fund, certain exclusions for contributions granted to other funds managed by the same entity, subject to conditions.[160]

Across the sample of 90 cases, there were 11 cases in which non-reportable FFCs under Annex 1 of the Implementing Regulation were exempted. It should be noted that it is likely that there are more cases of exempted FFCs.

[160] These conditions include: proof that other funds have had no economic and commercial interaction with the acquiring fund in the last three years; and that the fund is subject certain Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers or equivalent legislation in a third country.

Of these, more than half were cases where the acquirer was a fund. Most exceptions came because the parties showed that the FFCs in question were provided to other funds besides the acquiring fund. The Commission agreed with the parties' assertion that these were not able to cross-subsidise or finance the transaction and fell under the Annex 1 exception.

There were also some additional cases where Annex 1 exceptions were provided when the acquirer was not a fund. These were given because the Commission agreed that there was no benefit from FFCs (purchases of goods and services or transfers were "pari passu"); or because either the EUR 45 million cumulative threshold regarding total contributions from a country or the EUR 1 million threshold regarding individual contributions was not reached.

There were also 6 cases in the sample where parties were granted waivers (separately from Annex 1 exceptions) from providing further information on FFCs.

There were no FFCs exempted under Annex 1 in the in-depth investigation.

4.10 Article 4 – Distortion in the Internal Market

4.10.1 Definition

Article 4 defines when a distortion in the internal market is deemed to exist. This occurs if a foreign subsidy is considered to improve the competitive position of an undertaking in the Internal Market, and as a result, potentially harms competition.

Article 4(1) sets various factors which foreign subsidies are assessed against to determine whether a distortion is likely. These are:

- **Article 4(1)(a)** – Amount of the foreign subsidy.
- **Article 4(1)(b)** – Nature of the foreign subsidy. This includes whether the subsidy is for example a tax break or loan.
- **Article 4(1)(c)** – Situation of the undertaking. This includes the beneficiary's size, sector, and the markets concerned.
- **Article 4(1)(d)** – Level and evolution of economic activity in the Union. The Commission examines how active the beneficiary is, or is planning to be, in the Union and how the subsidy affects that activity.
- **Article 4(1)(e)** – Purpose and conditions of the subsidy. The stated objective (for example, regional development or environmental goals) and any conditions attached may be relevant both to the likelihood and seriousness of distortion.

Article 4 also states that foreign subsidies below EUR 4 million in three consecutive years are unlikely to distort the internal market.

It also states that where foreign subsidies to a single undertaking are below the amount of de minimis aid as defined in Article 3(2) of the Regulation (EU) No 1407/2013 for three consecutive years, these shall not be considered to constitute a foreign subsidy. This amount is EUR 200,000.

Finally, Article 4 states that any subsidy aimed at relieving damage caused by natural disasters or exceptional occurrences will not be viewed as a foreign subsidy.

4.10.2 Approach by the Commission

Across all 90 cases, which do not include in-depth investigations, there were less than 5 cases where the Commission found potentially distortive foreign subsidies. As

discussed above, these concerned unlimited guarantees which were analysed, although no definitive conclusion was ultimately reached regarding their existence. In these cases, the Commission assessed whether the unlimited guarantee had the potential to distort the Internal Market.

In the limited set of cases which were assessed, the acquirer was owned by other entities who did not receive foreign subsidies as well as the firm which received the unlimited guarantee.

When making its assessment, the Commission considered both whether the foreign subsidy distorted the acquisition process itself and whether the merged entity could benefit from the subsidy after completion. It found that the acquisition process was not distorted where the relevant transactions were financed by parties other than the entity benefiting from the unlimited guarantee. The Commission also assessed whether the guarantee could be passed on to the merged entity post-transaction, for example through preferential financing or altered investment incentives. Based on the available evidence, it concluded that this was unlikely and therefore found that the transactions did not warrant an in-depth investigation.

These were the only cases (excluding the in-depth investigation) where the Commission explicitly found foreign subsidies in the concentration. For this reason, this set of less than 5 cases where unlimited guarantees were discussed were the only cases where the Commission conducted a full analysis of Article 4 outside of the in-depth investigation.

In some other cases, the Commission found that FFCs were not linked to the transaction or did not constitute a foreign subsidy in the concentration. The Commission has clarified that lack of link assessments are an implicit invocation of Article 4. As such, the Commission's assessment of Article 4 depends on the complexity of the case.

Alongside implicitly invoking Article 4, the Commission also used other aspects of Article 4 when ruling out potential foreign subsidies. These included: considering the value of a potential foreign subsidy (Article 4(2)(a)); and examining the nature of the foreign subsidy and any conditions attached (Article 4(2)(b)). With respect to the latter point, there are cases where the Commission examined the conditions of grants or tax breaks and found these were provided on the condition that activity takes place domestically.

There were also 6 further cases where the Commission still discussed distortion (based on Article 4) despite having determined that there were unlikely to be foreign subsidies in the concentration. This included cases where the Commission had already concluded that all FFCs were provided on market terms, or were not linked to the transaction but discussed potential distortions nonetheless.

Across these 6 cases, the size of the FFC was mentioned in all cases as evidence that distortion was unlikely.

In some of these cases, the Commission also used the fact that the target was sold via a competitive auction in its analysis. The Commission did this to emphasise that other firms were not precluded from purchasing the target even if foreign subsidies existed. In some cases, the Commission specified that the acquirer had submitted a bid equal to, or lower than, other bidders; or that the acquirer was the only entity to submit a bid. Overall, the Commission used this as evidence that other entities had not been prevented from purchasing the target based on price. The Commission interpreted this as supporting that any FFCs, even if foreign subsidies, had not distorted the purchase of the target.

Case Study (e& case): Article 4 and assessing distortion

In assessing potential distortions in this case, it is clear that the Commission closely followed the wording of Article 4(1) FSR in their analysis. In this case, the Commission indeed utilised the entire range of indicators listed in Article 4(1)(a) to Article 4(1)(e) above.

The decision provides insight into how the Commission conducts an inquiry when a detailed assessment under Article 4(1) is required. In the context of the improvement of the competitive position, the Commission examined whether the foreign subsidy could alter the conditions under which the beneficiary is able to pursue economic activities in the internal market. The Commission focussed its assessment on economic factors such as cost of capital, access to liquidity, financial resilience, or access to subsidised assets or services. These elements featured prominently in the decision's analysis, including the role of subsidised financial capacity, the ability and incentive to deploy subsidised resources, and the concrete risk that these resources may be used to support economic activities within the Union. The Commission also identified various channels through which an improvement could materialise. These included: enhanced credit ratings, increased access to unconditional or advantageous funding, and the capacity to sustain more aggressive commercial strategies.

Conversely, the decision also sheds light on how the Commission examines whether the foreign subsidy actually or potentially negatively affects competition under Article 4(1). The Commission analyses how the foreign subsidy alters, or could alter, the outcome of competitive interactions in the internal market. The analysis is inherently counterfactual, assessing how competition would have evolved absent the foreign subsidy. The Commission underlines that distortions do not need to have already occurred; it is sufficient that they are liable to arise in the future. This prospective dimension of the FSR seems to mirror merger control and is reflected in the Commission's consideration of future capital expenditure plans, anticipated investment decisions, upcoming auctions, and other forward-looking competitive dynamics. Within this framework, the Commission generally identifies a broad set of factors relevant to the evaluation of competitive harm. These include: the risk of outbidding financially constrained competitors; the possibility that competitors may be prevented from participating in certain economic activities; the role of the foreign subsidy in enabling the beneficiary to undertake activities it would not otherwise be able to perform; and the ability and incentive to assume higher commercial risks. The Commission also considers elements such as competitive fragility in the relevant markets, the financial position of competitors, the strategic rationale of the transaction, and the capacity of the beneficiary to discipline or constrain competitors or to recoup the costs of aggressive commercial behaviour.

The distortion test used in concentration cases

Similar to another case highlighted above, the Commission examined both distortions in the acquisition process, and distortions in the activities of the combined entity post-transaction.

This two-step test comes from the fact that the Commission must always "establish a relationship between the foreign subsidy and activities of the undertaking in the internal market which are open to competition". This involves identifying the specific activities likely to be affected by the foreign subsidy. Such activities may encompass not only the beneficiary's existing operations within the European Union but also areas in which it is reasonably expected to become active. This includes future investments, or the provision and procurement of goods and services. For concentration, two activities are concerned: the transaction itself and the operational

activities after the transaction.

The Commission did not find any distortions in the acquisition process. Consequently, the Article 5(1)(b) foreign subsidy (unlimited guarantee), and other non-Article 5 foreign subsidies were not confirmed in this context. To rule out distortion in the acquisition, the Commission considered several potential channels through which competition between potential acquirers could have been affected. First, it examined whether the foreign subsidy enabled the acquirer to outbid competing purchasers. Second, it assessed whether the existence of the foreign subsidy could have deterred other potential bidders by allowing the acquirer to submit an offer above market value. Third, it evaluated whether the foreign subsidy was necessary for financing the transaction, either for enabling the acquisition to occur at all or enabling it under the same financial conditions. In the circumstances of the e&/PPF transaction, the Commission found none of these mechanisms to be present. No other credible bidders had shown interest in acquiring the target; the ultimate transaction price reflected market value; and the acquirer was financially capable of completing the transaction without reliance on the foreign subsidy.

The Commission did, however, find potential for distortion to occur post-transaction. In its examination the Commission stressed the need for an in-depth examination of which activities were "previously subject to competitive constraints" when determining what areas distortion might occur. This was not limited to the target's pre-transaction activities, but, as the Commission explicitly noted, extended to the activities of all parties to the concentration. In the case at hand, the Commission focused on the provision of retail mobile telecommunications services by the target. This was because, in the Commission's assessment, this activity was most likely to experience distortion because, "an overwhelming share of the Target's revenues and cash flows is generated by the provision of retail mobile telecommunications services". It was also associated with substantial planned investments (paras 298, 301, 302). By contrast, other telecommunications services in which the target was only marginally active were not examined in the distortion analysis. Initial information also showed that the target was a marginal player. The Commission explained that distortive effects for these activities were less likely to materialise and, in any event, would not differ in nature from those assessed for the core retail mobile telecommunications services.

The Commission therefore assessed the Article 5(1)(b) unlimited guarantee for potential distortion post-concentration. In accordance with Article 5(2) the Commission only assessed the parties' attempts to demonstrate that the unlimited guarantee would not materially affect the financing conditions or the operations of the combined entity. The arguments put forward were rejected. The Commission emphasised that the possibility of debt or equity financing had to be eliminated rather than limited, or that *"pari passu"* terms had to be enforced. The Commission concluded that instead there were "no restrictions whatsoever" on the e&'s ability to provide financing to the target. This strengthened the finding that the unlimited guarantee was relevant for the assessment.

The Commission also focused its analysis on the potential interaction between the unlimited guarantee and other foreign subsidies received by the EIA. These were direct grants, loans, and the revolving credit facility provided by UAE banks. The Commission concluded that these combined foreign subsidies were likely to confer beneficial financing to the post-transaction entity and lead it to exhibit greater indifference to financial risk. The Commission cited improved credit ratings for the target and enhanced liquidity or financial resilience provided by the other foreign subsidies. In evaluating the scale of these effects, the Commission compared the volume of subsidies with the target's internal-market turnover and projected future business volumes. While the volume of the subsidies was considered very high

("several billion euros"), the target's annual turnover in the internal market only amounted to a fraction of this, so the foreign subsidies "could contribute significantly to the activities of the combined entity in the internal market". It also considered the nature of the various foreign financial contributions, distinguishing between indefinite grants and temporary measures such as loans or repayable advances, as well as their unconditional character.

For the assessment of actual or potential negative effects on competition, the decision focussed on future investments in the provision of retail mobile telecommunications services. The Commission supported this reasoning by referring to its own White Paper on 'How to master Europe's digital infrastructure needs?' and evidence from the European Telecommunications Network Operators' Association. The Commission also applied these considerations to the specifics of the case. It concluded that access to foreign subsidies would "fundamentally alter the position of the Target" in relation to future investment requirements. This would occur through substantially greater access to financing. Competitors meanwhile would be in a comparatively weaker financial position. The Commission further found that strengthened financial capacity could distort the outcome of future spectrum auctions, noting both the historical willingness of the target to pay above-market prices and the increased incentives to do so when supported by foreign subsidies. Finally, the Commission identified a risk that the merged entity could pursue aggressive commercial strategies that would not be financially viable absent foreign subsidisation. This illustrates how foreign financial contributions may shape future competitive dynamics in multiple ways.

4.10.3 Conclusion

The Commission does not find cause to employ a detailed assessment using Article 4 frequently. While the Commission has discussed distortion in more cases than those where it was strictly required, less than 5 of these cases actually required an Article 4 assessment. The other 6 cases (similar to remaining cases of the sample) were already excluded based on other criteria, such as FFCs not constituting foreign subsidies. Not assessing Article 4 for cases that are already ruled out (i.e. a sequential and conditional approach) is useful to conduct the assessment efficiently and to reduce the administrative burden for the Commission.

The Commission's approach to implementing Article 4 involves a two-step process. The Commission first seeks to establish that a foreign subsidy is liable to improve the competitive position of an undertaking, and then analyses whether this improvement is likely to have a negative effect on competition in the internal market. In the cases from the sample of 90 where the Commission found a foreign subsidy in the concentration, the Commission determined that these were not liable to improve the competitive position of the undertaking. This was because, across the less than 5 cases, the Commission ultimately ruled that it was unlikely preferrable financing received by an acquirer because of their unlimited guarantee would actually be passed on to the target. This demonstrates that as part of the first step, the Commission appears to focus on the undertaking itself and the direct effect of any foreign subsidy rather than effects on competition in the market more generally.

Some insights regarding methodology can be gleaned from the Commission's assessment of distortion in the other 6 cases. However, conclusions should be drawn with caution as in these cases, the Commission had already ruled that any FFCs were unlikely to be foreign subsidies in the concentration. Thus, an assessment was not strictly required. Across all of these cases, the Commission used value of FFCs – in effect invoking Article 4(1)(a) – as part of its assessment of distortive effects. In some cases (less than 5 total) the Commission further discussed the bidding process by which the target was sold to support a lack of distortion. This involved assessing

whether rival bidders had offered similar (or even higher) prices for the target. This helped to determine if any FFCs had distorted the acquisition process itself. Overall, it suggests that the Commission employs the different factors set out under Article 4(1) and draws on external sources of evidence where necessary.

Whilst no foreign subsidies were found to distort the market amongst the 90 case sample, distortions were found in the case study involving e&. This case therefore provides the only insight into the Commission's full use of Article 4 amongst the cases assessed in this study. In its assessment, the Commission considered the potential interactions between various forms of foreign subsidies. They determined that the combination of different foreign subsidies could lead the post-transaction entity to benefit significantly from favourable financing and be less averse to financial risk. The Commission determined that this had the potential to improve the competitive position of the post-transaction undertaking, and negatively affect competition in the Internal Market. This provides insight (albeit just one example) into how the Commission has applied Article 4 so far. It first assesses how foreign subsidies may improve the position of the undertaking in the market, and how interactions between different subsidies may do this, and then assesses how competition in the Internal Market may be affected. A finding that competition in the Internal Market is likely to suffer leads to a finding of distortion under Article 4.

While the analysis outlines the approach taken by the Commission up until June 2025, the Commission's practice in past cases is not binding for future cases and may change based on learnings and revisions to the FSR Guidelines. The FSR Guidelines will continue to be the main reference point for the interpretation of the FSR.

4.11 Article 6 – Balancing test

Article 6, which defines "the balancing test", states that even if a foreign subsidy is found to cause a distortion in the meaning of Article 4, the Commission may balance these negative effects against any positive effects arising from the subsidy. These include economic activity induced by the subsidy, and any effects consistent with broader policy objectives in the Union.

It also states that the Commission must take these positives into account when assessing any redressive measures or commitments made by the parties.

Across all 90 cases, there were no instances where the Balancing Test was applied. This was because there were no instances where the Commission found a foreign subsidy which was likely to lead to a distortion.

Case Study: Acquisition of PPF by e&: Article 4 and assessing distortion

While the balancing test was applied in the e&/PPF decision, it did not play a large role. In the present case, the Commission ultimately concluded that there were no positive effects "that should be balanced against the distortion identified", "nor taken into account when deciding to accept commitments and the nature and level of commitments".

Still, the Commission's discussion is informative with regards to the application of Article 6 and why it did not view it as pertinent here. The Commission emphasised the optional nature of the balancing test, noting the permissive wording of Article 6(1) FSR ("may"). In its discussion, the Commission reiterated the structure of Recital 21 FSR: that positive effects on the development of the relevant subsidised economic activity or broader European Union policy objectives may be weighed against the negative effects of the foreign subsidy; and that measures falling within the types "most likely" to distort the internal market were, as a matter of principle,

less likely to be outweighed by such positive effects. The latter point was confirmed in the present case, given that one of the identified measures was an unlimited guarantee, explicitly listed under Article 5(1)(b) FSR as a category particularly likely to distort competition.

The decision highlighted that the balancing test is information-driven. Recital 21 and Article 6(1) both indicate that the Commission undertakes the test "on the basis of information received". This approach was further confirmed in the assessment itself, where the Commission noted that the notifying party failed to provide any evidence suggesting that the foreign subsidies contributed to alleged positive effects and that no other relevant information had been submitted by third parties. The overall outcome confirmed that the balancing test under the FSR is not an exercise to be undertaken ex officio.

The case also highlighted the relationship between the foreign subsidies and the alleged positive effects. The Commission demonstrated that Article 6(1) requires a causal link between the foreign subsidies and the alleged positive effects. It is not enough that the economic activity in question generates benefits; the foreign subsidies themselves must be responsible for producing those benefits. Applying this framework to the facts, the Commission noted that whilst the notifying party did identify a series of purported positive effects in the internal market in the form of synergies, these effects, even if substantiated, were attributable to the concentration and the post-transaction commercial integration of the parties, not to the foreign subsidies. As a result, they could not play any role in the balancing test.

4.12 Article 9 – Ex officio review of foreign subsidies

The FSR empowers the Commission to investigate alleged distortive foreign subsidies through ex officio cases. This means launching investigations on its own initiative, outside the normal notification process.

Since the introduction of the FSR (and as of the study's cut-off point in June 2025) there have been three ex-officio cases launched by the Commission in the public domain. These concern (i) several companies active in the EU wind sector, including a Chinese producer, Goldwind, (ii) a Chinese producer of security scanning equipment, Nuctech, and (iii) in the context of the construction of new reactor units at Dukovany and Temelín nuclear power plants, a Korean company, Korea Hydro & Nuclear Power, and its subcontractors (names not disclosed)[161].

Since all investigations are ongoing, the analysis in this section is based on publicly available information only.

The investigation into the wind turbine manufacturer began in April 2024.[162] On 3 February 2026, the Commission opened an in-depth investigation into Goldwind based on sufficient indications of distortive foreign subsidies identified in the preliminary review phase. The possible foreign subsidies investigated by the Commission include grants, preferential tax measures, and preferential financing in the form of loans. The Commission has preliminary concerns that these foreign subsidies may improve

[161] Although ex officio investigations for the purposes of this Study are tackled under Section '4 Review of the Commission's case practice – concentration cases', both DG COMP and DG GROW are responsible for ex officio procedures. In particular, the ex officio investigation initiated by the Commission in the context of the construction of new reactors units at Dukovany and Temelín nuclear power plants was initiated by DG GROW.

[162] Reuters (2024) 'EU to investigate Chinese wind turbine suppliers' (10 April 2024). Available at: https://www.reuters.com/business/energy/eu-investigate-chinese-turbine-suppliers-wind-parks-2024-04-09/ (Accessed: 11 February 2026)

Goldwind's competitive position in the internal market and may negatively affect competition for the supply of wind turbines and related services in the EU.

The investigation into Nuctech also began in April 2024. It was the first time the Commission used its dawn raid powers under the FSR. Commission officials carried out unannounced inspections at Nuctech's premises in the Netherlands and Poland. During these inspections, officials requested access to email accounts stored on servers in China. Nuctech challenged the legality of this Commission's request, which was dismissed by the General Court (T-284/24 R) and the Court of Justice (C-720/24 P(R)) in interim relief proceedings. On 11 December 2025, the Commission announced that the investigation would move to the in-depth phase.[163] [164]

In 2025, the Commission launched an ex officio investigation into Korea Hydro & Nuclear Power regarding alleged foreign subsidies in relation to the construction of new reactors units at Dukovany and Temelín nuclear power plants in the Czech Republic. The case was in the preliminary review phase at the time the study was produced.[165]

4.12.1 Conclusion

The Commission has begun to make use of its ex officio powers under the FSR. As of the study cut-off (June 2025), it had opened three investigations covering renewable energy, security scanning equipment and nuclear-related procurement. These remain ongoing, meaning that any assessment at this stage is necessarily limited to publicly available information. Nonetheless, the scope of the cases and the procedural steps taken (including the use of dawn raids in the Nuctech investigation, and the move to an in-depth phase) suggest that the Commission utilises its ex officio tools where concerns arise.

4.13 Conclusion and recommendations

This chapter reviews how the Commission has implemented and enforced the FSR across concentration cases between October 2023 and June 2025. Much of the analysis was completed in 2025 before the introduction of the FSR Guidelines. The analysis draws on a representative sample of 90 cases and the one detailed case study analysing the only in-depth investigation that was closed by the Commission by June 2025.

Overall, it appears that FFCs reported by the parties are rarely found to constitute foreign subsidies in the concentration. It is even less frequent that FFCs are found to distort the internal market. Given the low number of potentially problematic cases, the Commission could consider if there are some simplifications in the reporting requirements or an adjustment of the notification thresholds that could reduce administrative burden without unduly increasing the risk of not identifying a potentially problematic concentration.

[163] European Commission (2024) Daily News: 'Commission carries out unannounced inspections in the Netherlands and Poland' (MEX/24/2247, 23 April 2024). Available at: https://ec.europa.eu/commission/presscorner/detail/en/mex_24_2247 (Accessed: 11 February 2026)

[164] European Commission (2025) 'Foreign Subsidies Regulation: Commission opens in-depth investigation into Nuctech's activities in the EU' (IP/25/3019, 11 December 2025). Available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_25_3019/IP_25_3019_EN.pdf (Accessed: 11 February 2026)

[165] Euractiv (2025) 'Commission letter raised questions over Czech nuclear deal' (13 May 2025). Available at: https://www.euractiv.com/news/commission-misled-press-over-french-pressure-on-czech-nuclear-deal/ (Accessed: 11 February 2026)

The Commission complies with the procedural rules and the time limits set out in the Article 25 FSR. All preliminary reviews took 25 working days from formal notification, consistent with the mandatory standstill period set out in Article 24(1)(a) FSR. There was a decrease of 33% in the median working days taken for the pre-notification phase which suggests that Notifying Parties and/or the Commission have become more familiar and efficient in complying with the regulation. Nonetheless, the pre-notification phase is still considerable, given that it makes up nearly half of the time from Draft Notification to the end of the standstill period (in the median case between October 2024 to April 2025).

While the data does not facilitate a comprehensive analysis, there is no clear trend in the turnover of notified transactions over time. An analysis of the sample indicates that raising the turnover threshold from EUR 500 million to EUR 750 million might reduce the number of notifications by 36%.

Under the FSR, Articles 3 and 5 provide the legal framework for the assessment of foreign subsidies. Article 3 defines what constitutes an FFC, and the criteria which must be met for these to comprise foreign subsidies. Article 5 identifies foreign subsidies which are most likely to be distortive.

In the analysis, there is a clear difference in the frequency Article 5 and non-Article 5 FFCs have been identified when the acquirer is and is not a fund. The table below presents these frequencies.

Table 68 Frequency of FFC type by acquirer type

	Article 5	Non-Article 5	Total
Fund	27 (69%)	25 (64%)	39
Non-fund	6 (12%)	40 (78%)	51

Note: Percentages are shares of total cases across acquirer types (i.e., funds and non-funds) rather than by FFC type.

For fund acquirers, Article 5 FFCs occur much more frequently than for non-fund acquirers. Non-Article 5 FFCs in turn occur slightly more often when the acquirer is not a fund than when it is.

The high frequency of Article 5 FFCs when the acquirer is a fund appears to be driven by capital commitments made in funds attributable to non-EU states. While all 27 fund acquirer cases involved an Article 5 FFC in the form of a capital commitment (in addition to potentially further Article 5 FFCs), they were all found not to confer a benefit. That such FFCs were so frequently reported as Article 5, but never found to constitute foreign subsidies, suggests that Article 5 might not be the best categorisation for these categories of FFCs. A change in line with these findings has, in fact, been made (as of September 2025 and after the cut-off for this study) with capital commitments in funds attributable to States no longer being considered Article 5 if they are passive and "pari passu" with private investors. Had this change been in place for the period covered by the study there would have been less than 5 cases involving funds who received Article 5 FFCs, implying a lower relative occurrence of Article 5 FFCs for funds compared with non-funds. Going forward, however, the Commission should continue to assess whether any systematic differences between funds and non-funds arise.

Most of the 6 non-fund cases where Article 5 FFCs were discussed contained Article 5(1)(d) (direct transfers in the form of loans or capital commitments) (4 cases total). These were also ruled out on the basis of "pari passu" terms. Whilst a similar adjustment to that outlined above could be implemented here – for instance deeming loans and capital commitments made to non-funds non-Article 5 where they are made at "pari passu" terms – the effect would be markedly smaller, as it only relates to less

than 5 cases out of the 90 case sample. This suggests that there may be less rationale for an adjustment to the regulation here.

Unlimited guarantees also arose as potentially the most problematic form of Article 5 FFC. Whilst there were less than 5 cases in the 90 case sample where these were mentioned, some of these were found to constitute foreign subsidies. Similarly, in the acquisition of PPF by e& (see the grey boxes in the sub-sections above), a distortive unlimited guarantee was also found. Whilst the small sample size where unlimited guarantees were mentioned limits inferences, the fact that some of these were found to constitute foreign subsidies, whilst no others in the 90 case sample were, suggests that this may be one of the more relevant categories of Article 5(1). The analysis overall suggests that the categories covered in Article 5(1) are comprehensive and effective in capturing cases which require further inspection.

As with Article 5 FFCs, there appear to be clear differences in the Commission's assessment of non-Article 5 FFCs when the acquirer is and is not a fund.

When the acquirer was a fund, FFCs were mostly deemed non-Article 5 when the recipient was not the acquiring fund itself, but other funds managed by the same entity, the fund's portfolio firms, or the parent entity which managed the fund. Most often such FFCs were ruled out based on a lack of link with the transaction.

The Commission could consider therefore exempting FFCs provided to funds which are not able to cross-subsidise the acquiring fund. Likewise, FFCs given to portfolio companies could also be exempted when legal agreements mean funds are unable to absorb FFCs given to portfolio firms, or this has not been found to occur in the past. This may reduce reporting and assessment burdens for both the parties and the Commission.

When the acquirer was not a fund, tax breaks were assessed more often but frequently not explicitly ruled out as foreign subsidies. Instead, they were excluded from further assessment based on not being linked to the transaction at stake. This may be because tax breaks can be difficult to rule out as foreign subsidies; they are beneficial and often specific to an industry or sector. If the purpose of the FSR is not to class such tax incentives as foreign subsidies, the regulation may require adjusting. To this end, the conditions regarding specificity in particular could be relaxed; a tax break could be required to be more specific rather than industry- or sector-wide. However, any change to the regulation would need to be balanced against the risk that potentially distortive tax regimes are not identified and assessed. Similarly, a consistent approach and further clarification on the necessity of a link between an FFC and a transaction (or tender) could be useful.

Overall, it is notable that almost all the non-Article 5 FFCs which were discussed in 65 cases among the 90 case sample fell under one of the categories of Article (3)(2); there were less than 5 cases where FFCs did not. This illustrates that Article 3(2) is relatively comprehensive in covering the different types of FFCs which are likely to arise.

With regards to Article 4, the Commission rarely requires a detailed assessment of distortion. Within the sample of 90 cases, less than 5 cases involved a foreign subsidy in the concentration that required an Article 4 assessment. Not assessing Article 4 for cases that are already ruled out (i.e. a sequential and conditional approach) is useful to conduct the assessment efficiently and to reduce the administrative burden for the Commission.

The Commission's application of Article 4 follows a two-step approach, which is apparent both in the single case in the sample that required an Article 4 assessment and in the case study involving e&. The Commission first assesses whether a foreign subsidy is liable to improve the competitive position of an undertaking, before

considering whether any such improvement is likely to have a negative effect on competition in the internal market. In less than 5 cases within the sample where a foreign subsidy in the concentration was identified, the Commission concluded at the first step that subsidies were not liable to improve the undertaking's competitive position, and these transactions therefore did not proceed to the second step.

By contrast, the e& case study provides the only example in the scope of this study of the Commission applying Article 4 in full. In that case, the Commission examined potential interactions between different forms of foreign subsidies and concluded that their combined effect could allow the post-transaction entity to benefit significantly from favourable financing and exhibit a reduced aversion to financial risk. The Commission found that this could improve the undertaking's competitive position and, in turn, negatively affect competition in the internal market. While based on a single case, this suggests that the Commission considers both individual subsidies and their combined effects when assessing whether a foreign subsidy is likely to be distortive.

The Commission could also consider whether it is possible that efficiencies could be gained with regards to the implementation of the FSR. The Commission might, for instance, review whether the burden could be lessened by focussing its assessment on conditions (other than benefit and specificity) which would rule out foreign subsidies in the concentration and would be less challenging to assess. For example, the Commission has ruled out FFCs in some cases based on their value; or based on there being no link to the transaction. These conclusions were typically reached having already carried out a detailed assessment of whether FFCs constituted foreign subsidies. Similarly, the Commission assessed distortions in 6 cases where foreign subsidies tied to the transaction had already been ruled out. It may therefore be worth the Commission considering which assessments are strictly necessary to reach a conclusion on whether foreign subsidies exist in the concentration, and whether, where multiple routes are available, there is scope to prioritise the least burdensome approach.

While the analysis outlines the approach taken by the Commission up until June 2025, the Commission's practice in past cases is not binding for future cases and may change based on learnings and revisions to the FSR Guidelines. The FSR Guidelines will continue to be the main reference point for the interpretation of the FSR.

5 Review of the Commission's case practice – public procurement cases

This section analyses how the **FSR** has been implemented in public procurement cases from October 2023, when the reporting obligation started to apply, until June 2025. It is structured as follows:

a) cases with decisions to initiate an in-depth investigation,
b) cases with decisions declaring a tender irregular,
c) Article 28(1) threshold analysis across all procurement cases, and
d) a sample of 30 cases, for which no decision was adopted.

Particular attention was given to specific Articles of the FSR, as discussed in more detail below.

While the analysis outlines the approach taken by the Commission up until the study's cut-off date (June 2025), the Commission's practice in past cases is not binding for future cases and may change based on learnings and revisions to the FSR Guidelines. The FSR Guidelines will continue to be the main reference point for the interpretation of the FSR.

The interpretations and descriptions of legal terms included in this section, such as the concepts of "benefit", "selectivity" and "attributability" are intended solely to facilitate reading. They should not be understood as reflecting the precise definitions of these concepts or the Commission's official interpretation.

It should also be noted that this report is a review of the FSR and the Commission's assessment. As such, references made to 'the Commission' should not be interpreted as a direct or formal assessment by the Commission.

5.1 Decisions to initiate an in-depth investigation

As set out in **Articles 30(1) and 10(3) FSR**, the Commission shall open an in-depth investigation under Article 11 where there are sufficient indications, based on submitted notifications, declarations or other information gathered during the preliminary review, that a foreign subsidy liable to distort the internal market exists. During the in-depth investigation, the Commission shall assess the foreign subsidies identified and gather all necessary information pursuant to Articles 13, 14 and 15 for the purpose of determining whether the foreign subsidies actually or potentially distort the internal market and whether any proposed or alternative measures can effectively remedy that distortion.

As of the cut-off date (June 2025), the Commission had adopted **three decisions** initiating in-depth investigations in public procurement cases. This section evaluates how the Commission applied the FSR when deciding to open these in-depth investigations, with specific reference to **Articles 3, 4, 5, 6, 28 and 30 FSR.** The findings draw on publicly available material and information provided by the Commission. The analysis is conducted at an aggregate level and is not specific to individual cases. Any case-specific details are based on information disclosed in the published summary notices. Any non-publicly available information is presented in a way that does not directly identify the specific case or involved parties.[166]

[166] For reasons of anonymisation, references are made in the plural. Certain observations may relate to one, two or all of the cases examined.

5.1.1 Overview of the decisions

The first decision dated 16 February 2024, concerns a Chinese train manufacturer participating in a **Bulgarian tender** for electric "push-pull" trains.[167] The contracting authority estimated the contract value at around EUR 610 million. Following an unsuccessful open procedure, it was converted into a negotiated procurement without prior publication. The Commission received a notification pursuant to **Article 29(1) FSR.**

The second and third decisions, both dated 3 April 2024, concern **the same Romanian tender** for the design, construction and operation of a photovoltaic park. The contracting authority estimated the contract value at around EUR 375 million. The consortium in the second decision is composed of a Romania-based (leader), a German (member) and a Ukrainian (main subcontractor) company,[168] while the consortium in the third decision consists of the UK-based subsidiary of a Chinese company (leader) and the Hong Kong-based subsidiary of the same company (member).[169] The Commission treated both submissions as falling within **Article 29 (1) FSR.**

All three decisions cite **Article 10(3) FSR** as the legal basis for initiating the in-depth investigation.

The remainder of this section follows the order of Articles of 30, 28, 5, 3, 4 and 6 FSR.

5.1.2 Article 30 – Procedural rules

Article 30 FSR sets the procedural time limits in public procurement cases for the Commission's preliminary review and where applicable, the decision to open an in-depth investigation and the investigation itself. These time limits start only once a notification is considered complete. While this subsection primarily examines how the Commission has applied Article 30 in practice and assesses whether the timelines are fit for purpose, it also provides insights into Articles 13, 28 and 29 FSR and Article 7 and Annex II of the FSIR, where relevant.

In contrast, there were also instances[170] demonstrating how notifying parties' misunderstandings of Article 28(1), gaps in the information provided and delays on their part, **significantly prolonged the pre-Article-30 phase**. In such situations, the Commission repeatedly had to prompt compliance and compile missing information before the preliminary review could even begin.

Where no notification was received after the offer submission deadline, contracting authorities had to be contacted. The Commission sought clarification on whether notifications or declarations had been submitted. Contracting authorities subsequently called on all bidders to comply within the **10-working-day period foreseen by**

[167] European Commission (2024) *Summary notice concerning the initiation of an in-depth investigation in case FSP.100147 pursuant to Articles 10(3)(d) of Regulation (EU) 2022/2560.* C/2024/1913. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52024XC01913 (Accessed: 5 February 2026)

[168] European Commission (2024) *Summary notice concerning the initiation of an in-depth investigation in Case FSP. 100151, pursuant to Articles 10(3)(d) of Regulation (EU) 2022/2560*. C/2024/2830. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52024XC02830 (Accessed: 9 February 2026)

[169] European Commission (2024) *Summary notice concerning the initiation of an in-depth investigation in Case FSP. 100154, pursuant to Articles 10(3)(d) of Regulation (EU) 2022/2560*. C/2024/2832. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52024XC02832 (Accessed: 9 February 2026)

[170] While the plural (i.e. 'instances', 'cases', 'submissions', etc.) is being used throughout this section, it does not necessarily imply that it relates to more than one case, it may refer to a single case.

Article 29(3) FSR. In such instances, the economic operators appeared to comply with the deadline given to them.

In cases where submissions contained significant gaps, the Commission issued **Incompleteness Decisions** by the **20th working day** after the Commission received the initial declarations/notifications. These were adopted under **Articles 29(4) FSR and Article 7(1) FSIR.** Incompleteness Decisions were issued where **notifiable FFCs under Articles 28(1)(b) and 29(1) FSR,** or **reportable FFCs under Annex II FSIR** were missing. This included situations where the Commission – through its own verification – identified **specific notifiable/reportable FFCs that had not been disclosed**. Moreover, in such decisions, the Commission clarified that even where no FFCs were notifiable, they should nonetheless have been declared under Sections 7.2 and 7.3 of Annex II FSIR.

In some cases, notifying parties acknowledged that they had **misunderstood Article 28(1)**, believing that only distortive foreign subsidies required disclosure.

Incompleteness Decisions required **full disclosure within 10 working days**, which was always respected. They typically resulted in the submission of further details, some revealing **additional potential FFCs beyond those already identified by the Commission**. Notifications were treated as complete **only once all relevant details of FFCs had been provided, and thereby triggering the 20-working-day preliminary review period** pursuant to Articles 7 FSIR and 30(2) FSR. There were also instances in which national procurement rules affected the availability of certain information at the preliminary review stage, such as situations where financial offers could not be shared with the Commission because they were accessible only at a later stage of the procurement procedure, including to the contracting authorities themselves.

Across the three cases, the Commission completed its preliminary review and adopted its decision to initiate an in-depth investigation **within the 20-working day limit under Article 30(2) and (3) FSR**.

The opening of in-depth investigations was followed by the Commission beginning its investigative work in each case. However, in all three cases, the notifying parties withdrew shortly after the in-depth investigations began. Therefore, the investigations did not reach their conclusion and no information on the steps taken during the investigation were available for the purpose of this study.

The first investigation closed following **the withdrawal of the notifying party on the 27th working day of the investigation phase.**[171] Similarly, the two consortia in the second and third investigations **withdrew on the 24th working day.**[172]. Accordingly, in all three cases, the 110-working-day in-depth investigation period in Article 30(5) did not need to be fully exercised. **These early withdrawals mean that early case practice has not yet tested the full 110-working day phase or the functioning of Article 30(5) FSR. Further evidence from future cases will therefore be necessary to assess whether this timeframe is appropriate.**

The withdrawals could signal that concerns identified during the preliminary review **correctly captured elements the FSR is designed to deter**. In this sense, the

[171] European Commission (2024) *Statement by Commissioner Breton on withdrawal by CRRC Qingdao Sifang Locomotive Co., Ltd. from public procurement following the Commission's opening of an investigation under the Foreign Subsidies Regulation*. Available at: https://ec.europa.eu/commission/presscorner/detail/en/statement_24_1729 (Accessed: 9 February 2026)

[172] European Commission (2024) *Statement by Commissioner Breton on withdrawal of LONGi Solar Technologie GmbH and Shanghai Electric from public procurement following the Commission's opening of an investigation under the Foreign Subsidies Regulation.* Available at: https://ec.europa.eu/commission/presscorner/detail/en/statement_24_2570 (Accessed: 9 February 2026)

initiation of an in-depth investigation itself may be sufficient to lead **a bidder that may benefit from an unduly advantage to exit from the tender** and therefore **to prevent a potential distortion of the internal market without requiring a full investigation to run its course**.

Conclusion

Overall, early case practice indicated that the efficiency of the system is highly dependent on the quality and the timeliness of submissions. Across all three decisions, the Commission met the statutory deadlines and did not invoke the possible extension of 10 working days under Article 30 FSR. However, in several cases, a substantial portion of the assessment took place before the Article 30 deadlines formally began.

The FSR provides the Commission with the adequate tool to carry out its work. Nevertheless, notifying parties' absent filings, misunderstandings of the scope of FSR obligations and declarations/notifications that were initially incomplete can prolong the overall process. This illustrates that **approximately one year after the FSR entered into force**, economic operators participating in public procurement cases were **still familiarising themselves with the scope and structure of the notification regime**.

Information requests with **two-working-day deadlines**, were often used to obtain information necessary for a complete notification, which should have been already provided proactively by notifying parties. Some notifying parties requested additional time to respond because of their need to collect and verify information across multiple entities with complex group structures. **Incompleteness Decision** proved to be a necessary tool in ensuring full disclosure and enabled that the Article 30 preliminary review period begins only once all required elements are in place, as intended by FSR.

National procurement constraints may affect the availability of certain information at the preliminary review stage. Nevertheless, the Commission has been able to obtain the information necessary to carry out its assessment and adopt a decision.

The 20-working-day deadline for the preliminary review under Article 30(2) FSR appears to be appropriate. The FSR provides tools (notably requests for information and Incompleteness Decisions) **to obtain further information before the deadline starts to run, in cases where submissions are incomplete.** Based on the cases examined, there is no evidence of a need to adjust procedural timelines. Rather, given that many of the delays have so far arisen from misinterpretations of the notification requirements among economic operators, **targeted guidance or training initiatives** for these stakeholders may be more effective in reducing early-stage bottlenecks.

5.1.3 Article 28 (1) and (2) – Notification thresholds

The first three in-depth investigation decisions provide insight into how economic operators understand and apply the Article 28(1) and (2) thresholds, the completeness of notifications, and the relationship between threshold triggers and potential distortions. The overall appropriateness of the notification thresholds needs to be assessed not solely in light of these three decisions, but in the wider context of the individual contract values in all notifications, which is discussed in a separate section below. Evaluation points such as internal and external compliance costs or potential impact of sector-specific threshold cannot yet be meaningfully assessed since the decisions contain no information on compliance costs and the current sample is too limited to draw reliable sectoral conclusions. The analysis in this subsection therefore focuses on the aspects that early case practice can reasonably provide insights on.

Based on the three cases, it emerges that some economic operators experienced difficulties in interpreting the EUR 4 million threshold under Article 28(1)(b) FSR. In some cases, notifying parties stated that they had not received any ***'individual'*** FFC equal to or exceeding EUR 4 million per third country. It is not clear whether this wording reflected the operator's interpretation or was merely a matter of phrasing. If intentional, it may indicate a **possible misunderstanding of Article 28 threshold**, which is clearly defined by reference to the **aggregate** amount of FFCs received from a third country. Such a **narrow reading** increases **the risk that potentially relevant FFCs may not be captured**, particularly where **multiple FFCs of smaller amount cumulatively exceed the threshold**.

Some notifying parties demonstrated another incorrect interpretation of the threshold. In some cases, they acknowledged that they had **misunderstood Article 28(1) requirements**, initially believing that **only distortive** foreign subsidies required disclosure. Subsequent clarifications confirmed that the obligation applies to **all FFCs** once the dual thresholds are met, irrespective of whether the contributions have any distortive effect. The notification obligations were described by some notifying parties as ***'complex'*** and therefore, additional time was requested to correct submissions and provide full disclosure.

In other instances, a different type of misreading emerged. Some notifying parties reported only the FFCs received directly by themselves (notifying entity) and omitted those granted to **holding companies and subsidiaries without commercial autonomy,** which nevertheless fell within the scope of Article 28(1)(b) FSR. In these cases, the Commission had to request detailed information regarding FFCs received across the relevant corporate group. Crucially, it also encompassed FFCs received by the parent company, the **parent's holding companies and subsidiaries without commercial autonomy**. These requests were addressed by notifying parties and led to further disclosure of FFCs received at the group-parent level.

Where necessary, the Commission sought further clarification regarding the **ownership structures** of notifying parties and requested information on FFCs granted to relevant entities up to **the ultimate parent entity and to subsidiaries of the** notifying parties.

Beyond entities falling within the scope of Article 28(1)(b) FSR, the Commission raised questions regarding FFCs received by certain group entities outside the direct ownership line. Where appropriate, information was requested on FFCs received by **subsidiaries of higher-tier parent companies**. This **horizontal assessment, covering sister subsidiaries,** was applied in several cases and is in line with the FSR Guidelines,[173] which explain that the Commission may request information on FFCs granted to group entities outside the scope of Article 28(1)(b) FSR, if there are indications that such FFCs could enable the economic operator **to submit an unduly advantageous tender**.

These examples illustrate that economic operators may not always have a clear understanding of the scope of the notification obligations under Article 28(1)(b) FSR and of the broader group entities that may still be examined as part of the Commission's assessment in certain circumstances. The aforementioned misunderstandings indicate that even large, internationally active economic operators **lacked clarity on multiple aspects of Article 28**. This created **a material risk of systemic under-reporting,** increasing the Commission's verification burden. These observations suggest that **clarifying wording adjustments**, additional **guidance**

[173] European Commission (2026) *Guidelines on the application of certain provisions of Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market*. Available at: https://competition-policy.ec.europa.eu/document/download/c43a346a-fd4c-4268-aed0-ab0c8578022d_en?filename=empty_file_en.pdf (Accessed: 9 February 2026)

and training, and **accessible materials for economic operators and contracting authorities** (e.g. **flyers with practical dos and don'ts**) could be beneficial. The Commission already has a strong record of organising **training initiatives** in competition law (e.g. for operators and national competition authorities) and **similar FSR capacity-building activities for economic operators and contracting authorities** could support the preparation of initially complete FSR submissions by notifying parties and ease the Commission's administrative burden.

Article 28 thresholds successfully captured cases in which the existence of potentially distortive foreign subsidies could not be excluded. However, this finding is somewhat self-evident in the context of decisions initiating an in-depth investigation, as such decisions necessarily presuppose the presence of indications requiring further scrutiny.

In each case, **the estimated contract values significantly exceeded the Article 28(1)(a) and (2) thresholds**. This suggests that **a higher contract-value threshold would likely not have excluded these cases**. Nevertheless, given the small sample, this does not provide sufficient evidence to conclude that increasing the thresholds would not risk missing other potentially problematic cases.

The more substantive question of whether thresholds correlate with confirmed distortions, cannot be answered on the basis of early case practice because all three investigations were closed following the withdrawal of the economic operators, preventing the conclusions of the in-depth investigations. More importantly, the process generated a substantial administrative burden for the Commission as significant time appeared to be spent on cross-checking public information, reconstructing ownership structures, requesting missing information and adopting Incompleteness Decisions. In practice, cases therefore became extensive and administratively burdensome fact-finding exercises for the Commission.

Conclusion

Overall, even within this small set of three cases, economic operators demonstrated three distinct misunderstandings of the Article 28 thresholds, namely:

a) lack of clarity between individual and aggregate values,
b) incorrect assumption that only potentially distortive foreign subsidies required disclosure, and
c) failure to recognise that subsidiaries without commercial autonomy and holding companies must be included.

These findings point to the need for clearer wording, additional guidance and targeted training. Accessible practical materials for economic operators and contracting authorities such as flyers with key dos and don'ts could also be beneficial.

Based on the limited number of in-depth investigation decisions, there is insufficient evidence to draw definitive conclusions on the appropriateness of the Article 28 thresholds. Early case practice does not, however, suggest that the thresholds are at an inappropriate level. In the cases examined, both the estimated contract values and the amounts of FFCs were well above the applicable thresholds such that any potential increase would not result in false negatives. Further case practice will be required to assess the suitability of the thresholds more conclusively.

As noted above, the main challenge continues to lie in the quality and completeness of notifications and declarations driven by economic operators' incomplete or incorrect understanding of Article 29(1)(b) and their recurring difficulties in identifying all relevant entities within the corporate group. These shortcomings limit the practical effectiveness of Article 28 and could be addressed through clearer guidance and simplified language.

5.1.4 Article 5 – Categories of foreign subsidies most likely to distort the internal market

The three in-depth investigation decisions provide only **limited evidence** on the Commission's implementation of Article 5 because **none of the notifying parties reported any FFCs potentially falling within the categories listed in the Article**.

Despite this, at the preliminary stage the Commission actively examined the information available to assess whether any of the Article 5 categories could be relevant. Where the Commission detected measures in financial statements that could potentially constitute foreign subsidies within the meaning of some specific points of **Article (5)(1) FSR**, it stressed that this was not a definitive characterisation as the terms and conditions of these measures would **need to be examined during the in-depth investigation** to determine whether they satisfied the criteria in Article 5(1) points.

A second way in which Article 5 played a role in the early decisions, concerns **unduly advantageous tenders**, which fall under **Article 5(1)(e).** All three decisions referred to this concept as part of the preliminary assessment. However, only some cases explicitly drew on Article (5)(1)(e), the others applied the underlying logic. This suggests that even when Article 5(1)(e) is not explicitly invoked, it is inherently relevant and still serves as a **conceptual anchor for identifying potential distortions**.

Conclusion

Overall, early practice highlights a structural issue. The fact that economic operators claimed that FFCs they reported were not of an Article 5 type may reflect **economic operators' lack of familiarity and understanding of the classification** rather than their absence, particularly because the Commission found initial indications of potentially Article 5-type FFCs. This emphasises the importance of the Commission **verifying** the information provided by notifying parties and **making its own assessment and interpretation of the facts**.

Since notifying parties did not self-identify any Article 5-type FFCs and all three investigations were withdrawn before completion, the Commission did not reach a conclusion on whether potentially distortive FFCs it had preliminarily identified actually constituted a distortion. As a result, early practice **does not yet show** whether FFCs falling under Article 5 would, in practice, be confirmed as distortive, nor whether distortion might systemically stem from other types of FFCs not captured by the Article 5 categories.

5.1.5 Article 3 – Existence of a foreign subsidy

The three decisions offered **substantial evidence** on how the Commission has implemented and enforced Article 3 FSR. The Commission followed a **structured approach**. It first **identified FFCs** within the meaning of **Article 3(2) FSR**, then assessed whether these contributions could **potentially be considered as foreign subsidies** within the meaning of **Article 3(1) FSR.** To achieve that, it systematically considered three aspects as required by Article 3(1) FSR: whether FFCs (i) **conferred a benefit**, (ii) were **limited**, in law or in fact, and (iii) were **attributable to a third country**. Despite factual differences between the cases, the approach is very consistent and several patterns emerge.

Application of Article 3(2)

The Commission systematically mapped most of the reviewed FFCs onto the categories of financial contributions under Article 3(2) FSR. The analysis shows that all types of financial contributions as set out in Article 3(2) FSR have been identified across the three cases, pointing to the practical relevance of these categories. For a small number of FFCs, it did not explicitly refer to the specific Article 3(2) sub-points but the description of nature and characteristics of those FFCs nonetheless allowed their categorisation to be inferred.

Article 3(2)(a)

Transfer of funds or liabilities were the most prominent category across all decisions. The Commission often went beyond notified FFCs and identified substantial **government grants, financing framework agreements with deposits, loans and capital injections**, from **financial statements** and publicly available sources. In those instances, the Commission treated them as **Article 3(2)(a) FFCs** even in the absence of sufficient information provided by the notifying parties regarding their purpose or conditions. Moreover, in some cases, the Commission identified **fiscal incentives** as FFCs within the meaning of **Article 3(2)(a)**.

Article 3(2)(b)

In some cases, the Commission treated **tax reliefs, tax exemptions, fiscal refunds and preferential tax rates** as FFCs under **Article 3(2)(b)**, to the extent that they involved the **foregoing of revenue** otherwise due.

Article 3(2)(c)

Under **Article 3(2)(c) FSR,** the Commission considered numerous **public procurement contracts** awarded to notifying parties and entities within their group (including **subsidiaries of holding companies)**, as potential FFCs, because **they may have been awarded on non-market terms**. **Additionally, framework sales, purchase and service agreements between state-owned higher-tier parents and first-tier parents** were examined. Where pricing was at least partly linked to prices or guidelines set by public authorities, these agreements were treated as **FFCs in the form of provision or purchase of goods and services**.

Article 3(2) second paragraph

Across all three cases, in line with **Article 3(2) second paragraph**, the Commission **attributed FFCs to a third country** where they were granted by:

a) central or sub-central public authorities,
b) state-owned or state-controlled banks and financial institutions,
c) parent or higher-tier parent companies which are organised as state-owned enterprises, or
d) other entities whose actions could be linked to a third-country state.

There were instances where the Commission uncovered **additional ownership layers, including state-owned enterprises at the top of the corporate structure** and treated these as part of the chain that links FFCs to a foreign state. In some cases where the FFCs in question were classified as "government grants" or "refunds" in publicly available financial statements, the Commission relied on such evidence at the preliminary review stage to support the attribution of those contributions to entities whose actions were attributable to a third country.

Conclusion

Overall, the Commission's application of Article 3(2) is comprehensive and **coherent**. It captures not only direct transfers of funds but also tax measures, public

procurement contracts and intra-group transactions involving state-owned enterprises. In some cases, it also **makes use of publicly available information to identify FFCs that were not notified**.

Application of Article 3(1)

Conferral of a benefit

Once FFCs were identified, the Commission assessed whether they conferred an economic benefit that would not have been obtained under **normal market conditions**. The benchmark throughout was the conditions that would have applied in a competitive market.

For the identified **government grants**, the Commission considered that, **by their very nature,** they **improve the financial situation** of the recipient compared with a scenario without such transfers. Even where there was limited information on the specific purpose or conditions, the Commission treated the mere fact of a grant as a sufficient indication of benefit at the preliminary review stage.

For loans and export credits granted by state-owned banks and for state guarantees provided by state-owned enterprises, the Commission focused on **the absence of evidence** demonstrating that the terms were at market conditions. It emphasised that such instruments generally allow beneficiaries to obtain financing on more favourable terms such as lower interest rates than those available on the market. Given the nature of the instruments and the lack of evidence or arguments to the contrary, the Commission considered that it **could not exclude the existence of a benefit**.

For **tax exemptions and similar measures**, in principle, the Commission set out a **three-step analysis framework** based on:

a) "system of reference" i.e. normal taxation rules,

b) deviations from that system, and

c) possible justification by the nature or general scheme of the tax system.

At the preliminary stage, however, the Commission emphasised that it had only limited information on the purpose, conditions and nature of these FFCs, which prevented a full application of this analysis framework. Even though the Commission could not yet complete the three-step analysis, it concluded that the size and breadth of the tax measures made it **plausible** that they mitigated charges that would otherwise have been borne by other undertakings in comparable situations and hence **may confer a benefit**.

Lastly, for **public contracts and framework agreements**, the Commission focused on whether there were indications that the terms deviated from those that would have been obtained in a competitive market. The **absence of contract values for some public procurement contracts** – which might have been under non-market terms – reinforced **the Commission's doubts** and supported the view that the existence of **a benefit could not be excluded**.

In some decisions, the Commission had to make inferences **because of the lack of evidence** and concluded that the parties could have derived a benefit. **Where notifying parties do not provide detailed information on conditions and pricing, the Commission did not automatically assume that markets were competitive and transactions occur on normal market terms.** This cautious approach is justified by the 'best evidence available' rule in Article 16 FSR. It is also consistent with Article 10(3), which requires only sufficient indications at the opening stage and in practice it **places the responsibility on notifying parties to substantiate the claims that FFCs did not confer a benefit.**

Specificity

The Commission then considered whether the identified benefits were **limited**, in law or in fact, to one or more undertakings or industries, as explained in **Article 3(1) FSR**. For **grants, loans and guarantees** granted directly to a particular group entity, the Commission considered that they **appeared to be limited to those undertakings** and therefore potentially *specific*. For **tax measures,** the Commission acknowledged that some schemes were presented as general or region-wide but noted that **the available information was not sufficient to confirm that they were genuinely of a general nature.** In light of the **magnitude of the amounts** involved and the **lack of details on eligibility criteria**, it did not exclude the possibility that those FFCs were effectively limited to a subset of undertakings or sectors. For **framework agreements and intra-group sales and services**, the Commission considered these to be *specific* by design as they were between parties within the same group. At the preliminary review stage, the Commission treated any FFC directed at a particular company or granted through intra-group arrangements as *specific* prima facie, especially where the notifying parties failed to provide detailed information on the eligibility conditions.

Single economic unit

The decisions also show how **the Commission links Article 3(1) FSR to group structures by using the 'single economic unit', a concept also used in State Aid and competition law (in line with Recital 9 FSR)**. The Commission identified parent and higher-tier parent companies that directly or indirectly own notifying parties. It then observed **intra-group financing, inventory flows or guarantees** as indicators of a **functional integration of activities**. On this basis, it concluded that the relevant entities formed part of the same economic unit. Therefore, **claims by notifying parties that subsidiaries had complete commercial autonomy were not accepted in the absence of supporting evidence**. The Commission instead pointed to **capital links, financial flows and intra-group support** disclosed in financial statements to justify the contrary view. This approach **reinforces the need for notifying parties to provide comprehensive information on group structures and intra-group transactions.**

Conclusion

Overall, the three decisions suggest that the Commission applied Article 3 in a **structurally consistent** manner across different cases. It systematically relied on frameworks for transparency, consistency, and alignment with the FSR. The Commission also managed to identify relevant information that had not been fully or clearly presented by notifying parties, which supported their assessment. Moreover, it was necessarily cautious at preliminary review stages. The lack of information and evidence made it difficult for the Commission to assess the alignment with market standards, and it had to **rely on presumptions of benefit and draw inferences from the available information**, in line with Article 16 FSR. In some cases, the Commission had to reconstruct large parts of the factual picture including ownership structures, financing flows and intra-group arrangements.

The decisions show that the Commission used established concepts, such as **"single economic unit"** which is also used in State Aid assessments. This concept played a central role and **FFCs granted to higher-tier parent companies** were routinely treated as **capable of benefitting notifying parties in the absence of ring-fencing evidence**. Additional guidance on how economic operators can demonstrate evidence of market terms, provide adequate detail on tax schemes and substantiate commercial autonomy within corporate groups may therefore be helpful.

5.1.6 Article 4 – Distortions in the internal market

Article 4 is actively applied across all three decisions and a consistent analytical pattern emerges. The Commission used the **indicators in Article 4(1) FSR** to examine three linked questions:

a) whether identified FFCs could plausibly have **improved the competitive position** of the notifying parties in the procurement process,
b) whether such an improvement could have enabled **the submission of an unduly advantageous tender,** and
c) based on the first two, whether **potential distortion in the procurement procedure could be inferred**.

In accordance with Article 10(3) FSR, the Commission considered these questions only to determine whether **sufficient indications existed** to justify an in-depth investigation, with the definitive assessment to follow in that subsequent phase.

In some instances, the Commission's Article 4 analyses were comparatively limited (given that they were conducted prior to in-depth investigations), but they were nevertheless structured. After **comparing the size of potential subsidies with the value of the notifying parties' bid** (which in some instances exceeded the bid value by more than 4.5 times), the Commission applied the **indicators in Recital (19) and Article 4(1) FSR**. It reviewed the **amount, nature, conditions of foreign subsidies, the situation of the undertaking and market entry**. Particularly, the Commission compared the **notifying parties' prices** against the **contracting authorities' cost estimate** and against **the competing bids**. Where **unusually large price gaps** were observed, these were treated as concrete evidence that the foreign subsidies have improved the notifying parties' competitive position and distorted the internal market.

In other cases, the Article 4 assessments were more detailed. In those instances, the Commission anchored its analyses in **Articles 4, 27, 5 and Recitals 19, 20 FSR**. Particular emphasis was placed on the Article 4(1) indicators (namely the **amount and nature** of potential foreign subsidies) and on the concept of **unduly advantageous tender** as set out in Recital 20.

Article 4(1) indicators

For the first indicator, the **amount of the foreign subsidy**, the Commission compared the **absolute value** of potential foreign subsidies with **the estimated aggregate value of the relevant contract**. Even where information on individual FFCs was missing or where national procurement rules limited the Commission's access to detailed pricing information, **the substantial gap between the amount of FFCs and the estimated contract value** was treated as sufficient to preclude excluding the possibility that these FFCs enabled notifying parties to submit unduly advantageous tenders.

For the second Article 4(1) indicator, the **nature of the foreign subsidy**, there were instances where notifying parties had not provided complete information on the purpose, conditions and intended use of the FFCs. In those situations, the Commission examined **intra-group financial flows and internal financing agreements** to assess whether the FFCs could have been used, even indirectly, in support of the tender in question.

Where no indication was provided by notifying parties **that the use of the FFCs was ring-fenced to the direct recipient,** the Commission did not exclude the possibility that they could have been distributed within the group. In cases where **evidence of intra-group financing** was available, FFCs were considered to be capable of plausibly reaching notifying parties. The Commission's concerns were reinforced by indications

of **financial assistance within the group, including to subsidiaries located in third countries involved in the tender**, as well as by the evidence that certain subsidiaries were **loss-making**. These elements **were treated as supporting the possibility** that the FFCs could have enabled an unduly advantageous tender.

In some cases, as mentioned earlier, the Commission also identified indications of measures potentially falling under some specific sub-points of **Article 5(1) FSR**. If such measures were ultimately found to **meet the specific conditions of Article 5(1)**, they would be regarded as particularly distortion prone. However, given the limited information available on their purpose and conditions, the Commission indicated that this issue would need to be further examined during in-depth investigations.

The analysis shows that the Commission has used the range of indicators included in Article 4(1), pointing to their relevance and applicability.

Arguments raised by notifying parties

The Commission also addressed several **arguments raised by notifying parties** during its distortion analyses. Claims that aggregate foreign subsidies were small relative to revenue, were dismissed as **the relevant benchmark is their value compared to the contract value**. Arguments that consortium members held only a limited share was also rejected, since **Recital (54) FSR** makes clear that **even key subcontractors or suppliers can distort the competition regardless of their consortium shares**. The Commission similarly dismissed claims that the offered price exceeded market standards or that pricing of a consortium member was in line with market benchmarks, as it noted that **the quality component of the award criteria, could still reflect an unduly advantage** where it accounted for a substantial share of the overall evaluation. Finally, some notifying parties argued that the grants were not awarded specifically for the tender projects in question. The Commission, however, underlined that the **original purpose of a foreign subsidy is not decisive** and that the relevant question is whether the FFCs could have improved the competitive positions of notifying parties in tenders.

Conclusion

Overall, the three decisions show that the Commission implemented Article 4 in a **structured and consistent** manner. Its reliance on the **Article 4(1) indicators** and on **comparative benchmarks** such as contract value and competing bids, was evident throughout. This shows that in practice Article 4 was not applied as a mechanical checklist but as **part of a holistic effects-based analysis**. Even when individual FFCs could not be fully detailed, the Commission concentrated on whether the **overall pattern of potential foreign subsidies could plausibly have improved notifying parties' competitive position**. The distortion analysis was also **sensitive to contextual factors**, including the composition of award criteria, financial interdependence within corporate groups and the presence of loss-making subsidiaries, and it recognised that **distortion in procurement cases may arise through channels other than price**. The Commission frequently resorted to **precautionary inference** and treated **unresolved uncertainties** as **distortion-relevant signals**, which was legally consistent with Article 10(3) FSR. Where the purpose and conditions of FFCs or competitive market terms could not be verified, the Commission did not disregard the possibility of an unduly advantageous tender, which seems to be in line with 'best evidence available' rule. For economic operators, **future guidance and training could help clarify how to substantiate non-price competitive dimensions, how to demonstrate ring-fencing or limited use of FFCs, and how intra-group financial flows should be evidenced, which would also ease the Commission's administrative burden.**

5.1.7 Article 6 – Balancing test

The three in-depth investigation decisions provide very limited insight into the application of Article 6 FSR. Notifying parties generally did **not put forward any arguments regarding positive effects of the foreign subsidies,** and the Commission likewise did not identify **such indications** on its own. Consequently, Article 6 did not play a substantive role in the preliminary reviews.

While the balancing test could have become relevant at a later stage of the in-depth investigations, the withdrawal of all three cases prevented any further assessment. Therefore, the Commission has not yet articulated whether and how it would weigh negative and positive effects, what evidence would be expected and how the balancing test would be in practice.

5.2 Decisions declaring a tender irregular

Under **Article 29(4) FSR**, if a notification remains incomplete even after the Commission has requested its completion, the Commission shall adopt a decision declaring the tender irregular and instruct the contracting authority to reject the tender. Up until the study's cut-off date (June 2025), **two such decisions** have been adopted.

Since these cases were terminated before their preliminary reviews were concluded, the Commission focused on the legal basis for the finding of incompleteness, the specific information missing from the notifications and verifying that such information should have been included. Accordingly, following a brief overview of the cases, the analysis in this section is structured around three elements. First, it examines how **Articles 29 and 30** operate together in these cases, especially in relation to procedural obligations and timelines. Second, it assesses the application of **Article 28(1) and (2)**, mirroring the analysis in the previous section. Third, it identifies **common patterns in missing information required under Annex II FSIR** and **explains why these gaps led the Commission to consider the notifications incomplete**.

Articles 3, 4, 5 and 6 FSR are not analysed in this section, as these decisions were adopted before these Articles became operationally relevant (their relevance was effectively overtaken by the incompleteness of the notifications).

As no publicly available documents have been published in relation to these cases, the factual details are presented only in anonymised in a way that does not identify the specific case or involved parties.[174]

5.2.1 Overview of the decisions

Only non-identifying information relevant to the analysis below, is included.

The two decisions concerned different procurement processes. Across the two cases, the following characteristics were present in one or both:

- Ownership chain including a **state-owned** company
- **Multi-stage** procurement procedure
- Tender divided into **multiple lots**

[174] For reasons of anonymisation, references are made in the plural. Certain observations may relate to one or both cases examined.

- Initial notification followed by an updated one

5.2.2 Articles 29 and 30 - Procedural rules

In the cases[175] involving **multi-stage** procurement procedures, the timelines followed the sequencing set out in **Article 30(6) FSR** and clarified in **Recital 44 FSR**. In such procedures, two notifications were submitted at different stages of the procurement processes. The Commission conducted initial 20-working-day reviews of the first notifications, suspended its assessments after that period and resumed them only once the subsequent notifications were submitted together with the final-stage offers.

The suspension of the preliminary reviews after 20 working days in the multi-stage procedures did not prevent the Commission from **issuing information requests between stages, based on recital 44 FSR**. Across all cases, the **information requests were used** to request detailed information on notified, declared or potentially missing FFCs. The deadlines for replies were **four working days**, which were longer than the two-working-day deadlines observed in the in-depth investigation cases discussed earlier. Those deadlines were respected by notifying parties and replies were submitted on time.

In certain instances, the information provided in response to information requests was considered insufficient. The Commission therefore issued further communications (requests or letters) stressing the missing elements, which resulted in back-and-forth exchanges between the Commission and the notifying parties and ultimately led to the submission of supplementary information.

In both cases, prior to the adoption of the Irregularity Decisions, **Incompleteness Decisions** (as the ones mentioned in the previous section) were adopted **within 20 working days following receipt of the notifications**. With those Incompleteness Decisions, notifying parties were asked to submit updated notifications containing complete information within ten working days, in line with **Article 29(4) FSR**. In some instances, notifying parties did not comply with certain requests. Within 20 working days following the subsequent communications or updated notifications, the Commission adopted the decisions declaring the tenders irregular. As the FSR does not specify a time limit between an Incompleteness Decision and an Irregularity Decision, **the Commission's actions appear to be consistent with Articles 29(4) and 30 FSR**.

Conclusion

Overall, **the timelines in both cases appear to comply with the procedural rules set out in Articles 29 and 30 FSR**. The Commission seems to adhere closely **to the 20-working-day limit for the preliminary review,** and the optional 10-working-day extension does not appear to have been activated. For **multi-stage** procurement procedures, although the **suspension of the reviews under Article 30(6) FSR** was not always clearly visible in the recorded timelines, the preliminary reviews were suspended after the initial 20-working day review and resumed upon submission of the subsequent notification. In addition, given that the FSR does not specify a maximum number of working days between an Incompleteness Decision and an Irregularity Decision, the intervals observed between those decisions appear to fall within the discretion left to the Commission.

[175] While the plural (i.e. 'cases', 'submissions', etc.) is being used to refer to the analysis in this section, it does not necessarily imply that it relates to both cases but could relate to one of the two cases only.

5.2.3 Article 28 (1) and (2) - Notification thresholds

The limited inclusion of Article 28 FSR in the available case material, restricts the insights that can be drawn. Across the two cases, the Commission confirmed that the contract values met the notification thresholds. In tenders divided into lots, the Commission verified that the **estimated/maximum contract value** exceeded the **Article 28(1)(a) threshold** and that the aggregate value of the lots for which notifying parties applied, met the condition in **Article 28(2) FSR**.

Meeting the threshold under Article 28(1)(b) FSR triggers the obligation to complete Sections 1-6 and 8 of Annex II FSIR. Where notifying parties consider that certain FFCs are non-notifiable for any reason, they must nonetheless be listed under Sections 7.2 and 7.3. Across some cases, the Commission found that these requirements had **not been correctly applied**. Certain potential FFCs had **not** been listed under Section 7.2 and 7.3 or notified, **even though they were ultimately found to satisfy the Article 28(1)(b) threshold** according to the Commission's assessment. Likewise, in some instances, notifying parties acknowledged that they had received FFCs above EUR 4 million per country but did not provide **the corresponding information required under Annex II FSIR**. These patterns suggest that **misapplication of Article 28(1)(b) contributed directly to the incompleteness findings** of the Commission.

Moreover, although some of the FFC amounts identified were **significantly above the thresholds**, the small number of cases provides limited insight into the overall suitability of the threshold.

5.2.4 Annex II FSIR - Types of information required by the Form FS-PP

The Irregularity Decisions reveal several recurring shortcomings in how notifying parties interpreted and applied the information requirements under Annex II FSIR. While some issues mirror those observed in the in-depth investigation cases, what distinguishes these two Irregularity Decisions is that they involved not only initially incomplete filings but also **refusals by notifying parties to provide missing information even after it had been requested by the Commission and following the adoption of Incompleteness Decisions.**

Across some cases, with the help of **documents submitted by notifying parties and publicly available information**, the Commission identified some FFCs that should have been notified or declared but were not. Moreover, a number of FFCs that were notified, **lacked essential details such as amounts, granting entities, descriptions of purpose, conditions and use, which constitute the minimum information required under Annex II FSIR**. Even though missing information at the notification stage was a contributing factor, the refusal to provide the requested information (after information requests) was the determining factor for the Irregularity Decisions.

In some cases, the Commission also identified information it considered **doubtful or incorrect**. Under **Article 7(4) FSIR, incorrect or misleading information is sufficient to render a notification incomplete**. For example, some notifying parties claimed that the reduced tax amount for the most recent financial year had not yet been calculated at the time of notification and therefore was not included. The Commission, however, **expressed doubts** about this explanation. In another instance, the Commission identified an **objectively incorrect statement** regarding certain bonds. Although notifying parties claimed that these bonds had not yet been legally issued, the Commission found that they had in fact already been issued. Moreover, some notifications lacked the most recent financial statements. The Commission also identified gaps in the information provided on certain recent FFCs,

despite having explicitly requested that information and despite publicly available information (and other submitted documents) indicating the likely magnitude or existence of additional transactions.

These two Irregularity Decisions reveal **four broad categories of misinterpretation or incorrect application of Annex II FSIR by notifying parties**, especially regarding which FFCs must be reported and what level of detail must accompany them:

- Some notifying parties appeared to assume that only FFCs received along the direct ownership line were subject to FSR scrutiny, which mirrors similar misunderstandings observed in the in-depth investigation cases. In some of the irregularity cases, **notifying parties did not recognise that FFCs granted to sister companies and higher-tier parent companies, although outside the scope of Article 28(1)(b) FSR, may nonetheless be relevant under the FSR and still be examined under some circumstances, as clarified in the FSR Guidelines**.[176] The Commission treated this point as particularly important in the cases when the ultimate parent is a **state-owned enterprise**. Moreover, some **consolidated financial statements** covering notifying parties, their parents and sister companies, explicitly stated that the parent exercised control over the included subsidiaries (including notifying parties). **Notifying parties' claims of commercial and financial independence in those cases were therefore considered to be unconvincing by the Commission**. **Consolidated accounts also obscured which entity within the groups received each FFC**, reinforcing the possibility that contributions may have been **received directly by notifying parties or indirectly transferred to them**.
- When an FFC was granted elsewhere within the group, some notifying parties misinterpreted their obligations by asserting ring-fencing or financial independence **without providing substantiating evidence**. **Table 1, Section C of Annex II FSIR** empowers the Commission to request clarification and further information to verify such claims and **once requested, this information must be disclosed irrespective of notifying parties' own assessment of relevance**. This requirement was overlooked by some notifying parties in certain instances and contributed to the Commission's conclusions that notifications were incomplete.
- The Irregularity Decisions also show that some notifying parties seem to have **misread the exception rules in Annex II FSIR**. In some instances, notifying parties assumed that an FFC could be omitted from the notification simply because, in their assessment, it was not linked to the tender in question or did not enable an unduly advantageous tender. However, this reflects a misunderstanding as those questions are assessed under Articles 4 and 5 FSR, not Article 3 FSR. Therefore, **a measure may be unrelated to the tender or may not confer an unduly advantageous position and yet still qualify as an FFC under Article 3 FSR**. Excluding them from the notification on that basis was therefore not valid. Similarly, some notifying parties **misinterpreted the exception in Table 1.B(6)(c) of Annex II FSIR**. The **market-terms exception applies only to the purchase or provision of goods and services, and it cannot be used to justify the exclusion of intra-group transactions or other FFCs**. Moreover, financial services are explicitly excluded from this exception and must therefore be disclosed. In addition, as discussed above, even if a measure may ultimately prove to be exempt, once the Commission requests additional information to verify market

[176] European Commission (2026) *Guidelines on the application of certain provisions of Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market*. Available at: https://competition-policy.ec.europa.eu/document/download/c43a346a-fd4c-4268-aed0-ab0c8578022d_en?filename=empty_file_en.pdf (Accessed: 9 February 2026)

terms, disclosure becomes mandatory under **Table 1, Section C of Annex II FSIR**.

- There were also misunderstandings concerning **the relevant date for determining whether tax credits and framework agreement fall within the three-year reporting period**. Some notifying parties relied on the **Commission's FSR Q&A (Question 3)**[177] to justify using the original date of signing as the moment of granting. However, this did not take into account for the fact that these FFCs had been **amended or renewed** and their limits had changed. Such **modifications** meant that the exclusions claimed were not justified.

Conclusion

Overall, the two Irregularity Decisions unveil **multiple misinterpretations by notifying parties**, some mirroring those seen in the in-depth investigation cases, others newly observed. Taken together, they underline **the potential benefits from further guidance and training for economic operators on the scope and application of Annex II FSIR,** as discussed above.

5.3 Article 28(1)(a) threshold analysis across all procurement cases

Article 28 FSR sets out the thresholds under which economic operators must submit a notification in the context of public procurement procedures. As discussed above, the small number of decision cases makes it difficult to draw firm conclusions on the suitability of the Article 28 thresholds or to assess the potential impact of any hypothetical changes to the thresholds. This section therefore examines how these thresholds operate across **all** procurement cases up to the study's cut-off date (June 2025)(2,503 cases, as described in detail in Section 5.4.1), to assess their distribution across notifications and declarations and to explore the potential implications of changes to the thresholds in descriptive terms.

Under Article 28(1) FSR, two conditions must be met for a notification obligation to arise under the FSR:

- **Article 28(1)(a) – Contract value equal to or exceeding EUR 250 million.** This threshold applies to the estimated value of the public procurement contract, as determined by the contracting authority/entity. Where the procurement is divided into lots, this threshold is assessed on the basis of the total estimated value of all lots.
- **Article 28(1)(b) – Receipt of aggregate FFCs equal to or exceeding EUR 4 million per third country in the last three years.** This requirement concerns the total amount of FFCs received by the economic operator, including its subsidiaries without commercial autonomy and holding entities, from a **single** third country over the relevant three-year period. The EUR 4 million threshold is **cumulative**: multiple FFCs of smaller amount from the same third country must be aggregated for the purpose of assessing whether the threshold is met.
- **Article 28(2) – Lot-based procurement procedures.** In procedures divided into lots, the notification obligation applies where (i) the estimated total value of the procurement exceeds the threshold in Article 28(1)(a), (ii) the tenderer participates in several lots whose combined value meets or exceeds **EUR 125 million**, and (iii) the threshold in Article 28(1)(b) is also met.

[177] European Commission (No date) *Questions and answers*. Available at: https://single-market-economy.ec.europa.eu/single-market/public-procurement/foreign-subsidies-regulation/questions-and-answers_en (Accessed: 9 February 2026)

However, data limitations prevent a comprehensive analysis of the Article 28(1)(b) and Article 28(2). Therefore, this section focuses on the Article 28(1)(a) contract value threshold.

Distribution of estimated contract values across all procurement cases

The below figure illustrates the estimated contract values for notifications and declarations in the sample. The figure does not include cases, in which a specific value was not available (i.e. no value was provided, or it was only indicated that the value was larger or smaller than a specific amount).

Ideally, the analysis would have addressed three related questions:

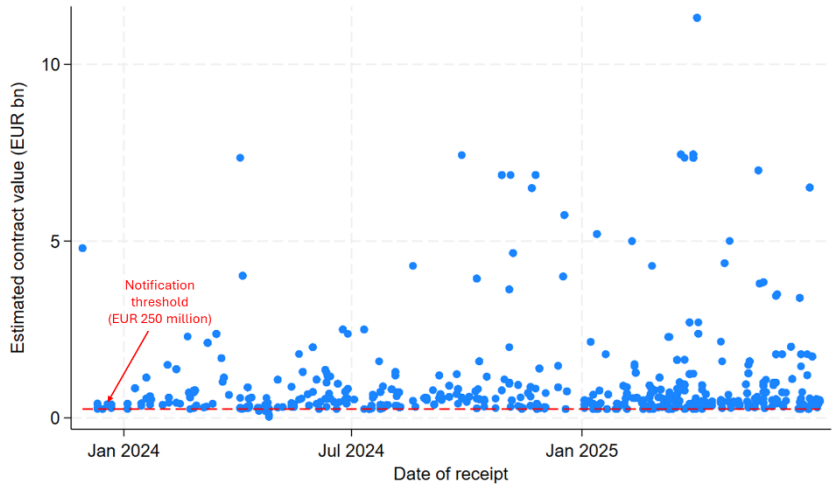
a) Whether the introduction of the FSR led to changes in contract values, in particular whether there was any intentional adjustment to keep contract values below the threshold. Assessing this question would require data from both before and after the introduction of the FSR. As the available data cover only the post-FSR period, such an analysis is not possible.

b) Whether there are changes over time in contract values. Examining this would help assess whether any observable trend could plausibly be linked to the FSR and would also provide useful context for evaluating the potential impact of hypothetical changes to the threshold. Based on the available data, no clear trend over time is observed, as shown in Figure 18.

c) Whether a significant number of cases are clustered close to the threshold. This is relevant for assessing how a hypothetical change in the thresholds might affect the number of submitted cases and in turn, the Commission's administrative burden. The data suggest that in many cases, contract values are close to the threshold, which may indicate that raising the threshold could be worth considering.

It should be emphasised again that a comprehensive analysis would require the number and distribution of public procurements that are not notified because they are below the threshold.

Figure 18 Estimated contract value, as per Article 28(1)(a)



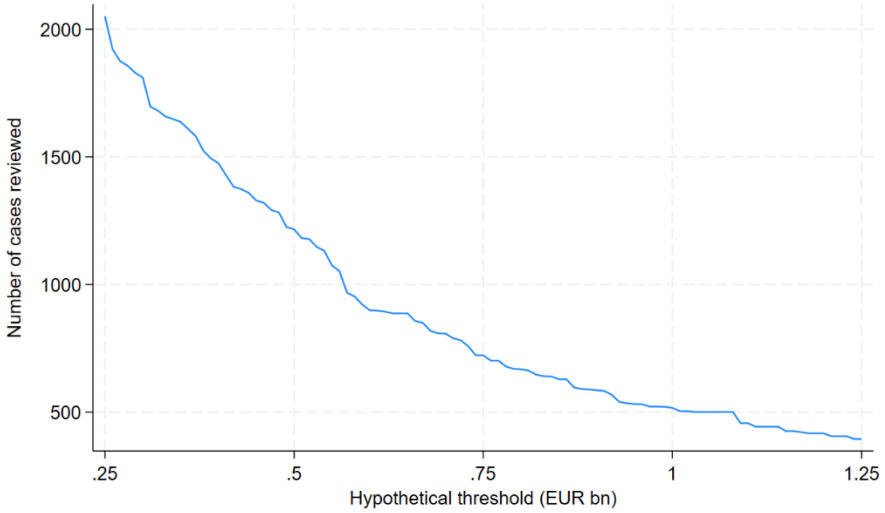
Source: London Economics based on the data shared by the Commission.

Potential effects of increasing the contract value threshold

The below figure illustrates the number of cases within the sample which would have been reviewed if the threshold for the estimated contract value were increased. With a

threshold of EUR 500 million, around 1,216 cases would have been submitted to the Commission (as opposed to 2,062 in the sample for the current threshold of 250 million), corresponding to a 41% reduction in submissions. These figures do not include the 441 cases, for which a specific contract value was not available.[178]

Figure 19 Number of cases in the sample if the estimated contract value threshold (Article 28(1)(a)) were increased



Source: London Economics based on data shared by the Commission.

It is also worth noting that the Commission opened only three in-depth investigations in relation to public procurement cases between October 2023 (when reporting obligations began) and the cut-off date (June 2025). This represents a relatively small proportion given that a total of 2,062 cases were notified to the Commission in the period. For this reason, it is important to assess if a higher threshold or a simplified procedure could help lessen the administrative burden without curtailing the objective of the FSR.

Conclusion

Overall, the descriptive evidence does not point to a clear trend that would be linked to the threshold set out in the FSR but suggests that raising the Article 28(1)(a) would lead to a non-negligible reduction in submissions. Given the high number of notifications and the relatively low proportion of potentially problematic cases which resulted in-depth investigations, it may be worthwhile considering the feasibility of adjusting the threshold.

5.4 Analysis of a sample of all procurement cases without decisions

This section examines the broader set of public procurement notifications and declarations that did not result in an in-depth investigation or an Irregularity Decision. The analysis seeks to capture the wider picture of emerging practices under FSR to identify insights into potential simplifications or revisions to the Commission's practice.

Contrary to the decisions analysed in Sections 5.1 and 5.2, a key limitation for this analysis is that the available sources provide only limited information on the Commission's approach or findings beyond the conclusion not to open an

[178] Although a specific contract value was not available for this review, the Commission clarified that these 441 cases exceeded the FSR threshold.

investigation. For this reason, this section provides limited direct evidence on the Commission's case practice and draws more extensively on deductions on recurring misinterpretations by notifying parties and potential inconsistencies.

5.4.1 Sampling approach and descriptive statistics of the selected cases

Sampling approach

A total of **2,503 notifications and declarations had been filed by June 2025**, the cut-off date for this analysis, excluding 70 pre-notifications. The sources used for this analysis did not yield direct insights into the Commission's case practice and provided only limited indications of its approach and considerations. For this reason, **a relatively small sample of 30 cases** was selected for the analysis. Although every effort was made to ensure broad coverage, the small sample size means that **the sample is not representative, and findings should be interpreted with caution**.

The sampling process was designed to balance representativeness with analytical value, ensuring that the selected cases captured a meaningful cross-section of early FSR practice in public procurement. Half of the cases were selected from notifications and the other half from declarations, as shown in Table 69. This 50-50 split was chosen because notifications are more likely to involve complex cases and a higher burden under the FSR and hence were **intentionally oversampled.**

Sample characteristics

Table 69 Procurement cases by submission type

Type of submission	All cases		Sample	
	Count	%	Count	%
Declaration	2,106	84.1%	15	50%
Notification	397	15.9%	15	50%
Total	**2,503**	**100%**	**30**	**100%**

Source: London Economics based on data shared by the Commission.

The following tables present descriptive statistics on key characteristics of the full set of cases and the selected sample. They illustrate how closely the distribution in the selected sample reflects that of the full set of cases.

Table 70 Procurement cases by Contracting Authority/Entity's country

Country	All cases		Sample	
	Count	%	Count	%
France	535	21.4%	8	26.7%
Germany	492	19.7%	5	16.7%
Italy	343	13.7%	4	13.3%
Sweden	187	7.5%	2	6.7%
Denmark	181	7.2%	2	6.7%
Netherlands	172	6.9%	3	10%
Romania	155	6.2%	2	6.7%

Country	All cases		Sample	
	Count	%	Count	%
Poland	103	4.1%	3	10%
Austria	61	2.4%		
Latvia	46	1.8%		
Belgium	39	1.6%		
Spain	39	1.6%	1	3.3%
Czechia	31	1.2%		
Finland	24	1%		
Ireland	24	1%		
Slovakia	22	0.9%		
European Union	15	0.6%		
Bulgaria	10	0.4%		
Croatia	7	0.3%		
Estonia	5	0.2%		
Slovenia	4	0.2%		
Hungary	3	0.1%		
Norway	3	0.1%		
Greece	2	0.1%		
Total	**2,503**	**100%**	**30**	**100%**

Source: London Economics based on data shared by the Commission.

In the full set of cases, France has the largest share at 21%, followed by Germany and Italy at 20% and 14% respectively, and Sweden and Denmark each accounting for around 7%. The sample mirrors this pattern for the first three countries.

Table 71 Procurement cases by procedure type

Type of procedure	All cases		Sample	
	Count	%	Count	%
Multi-stage	1,359	54.3%	16	53.3%
Open	1,124	44.9%	13	43.3%
Other	13	0.5%	1	3.3%
N/A	7	0.5%		
Total	**2,503**	**100%**	**30**	**100%**

Source: London Economics based on data shared by the Commission.

The largest procedural category in the full set of cases is multi-stage procedures with 54%, followed by open procedures, with around 45%. The selected sample **reflects a similar distribution**.

Table 72 Procurement cases by year

Year	All cases		Sample	
	Count	%	Count	%
2024	1,392	55.6%	20	66.7%
2025	1,005	40.2%	9	30.0%
2023	106	4.2%	1	3.3%
Total	**2,503**	**100%**	**30**	**100%**

Source: London Economics based on data shared by the Commission.

Regarding the year of submission, most cases in the sample were filed in **2024 (66.7%)** and a smaller share in **2025 (30%)**. Only one case was dated from 2023 (3.3%). The temporal distribution of the sample broadly aligns with that of the full set of cases.

Table 73 Procurement cases by sector

CPV division	All cases		Sample	
	Count	%	Count	%
Construction work	657	26.2%	9	30.0%
IT services: consulting, software development, Internet and support	419	16.7%	4	13.3%
Medical equipment, pharmaceuticals and personal care products	214	8.5%	3	10.0%
Transport equipment and auxiliary products to transportation	173	6.9%	3	10.0%
Transport services (excl. waste transport)	143	5.7%	1	3.3%
Sewage, refuse, cleaning and environmental services	124	5.0%	1	3.3%
Electrical machinery, apparatus, equipment and consumables; lighting	105	4.2%	3	10.0%
Petroleum products, fuel, electricity and other sources of energy	90	3.6%	3	10.0%
Office and computing machinery, equipment and supplies except furniture and software packages	83	3.3%		
Architectural, construction, engineering and inspection services	82	3.3%	1	3.3%
Business services: law, marketing, consulting, recruitment, printing and security	82	3.3%	1	3.3%
Agricultural, forestry, horticultural, aquacultural and apicultural services	47	1.9%		
Repair and maintenance services	47	1.9%	1	3.3%
Laboratory, optical and precision equipment (excl. glasses)	36	1.4%		
Radio, television, communication, telecommunication and related equipment	31	1.2%		

CPV division	All cases		Sample	
	Count	%	Count	%
Financial and insurance services	30	1.2%		
Health and social work services	30	1.2%		
N/A	30	1.2%		
Postal and telecommunications services	22	0.9%		
Software package and information systems	15	0.6%		
Supporting and auxiliary transport services; travel agencies services	14	0.6%		
Public utilities	8	0.3%		
Food, beverages, tobacco and related products	5	0.2%		
Construction structures and materials; auxiliary products to construction (except electric apparatus)	4	0.2%		
Furniture (incl. office furniture), furnishings, domestic appliances (excl. lighting) and cleaning products	3	0.1%		
Other community, social and personal services	3	0.1%		
Printed matter and related products	3	0.1%		
Industrial machinery	2	0.1%		
Recreational, cultural and sporting services	1	0.0%		
Total	**2,503**	**100 %**	**30**	**100 %**

Source: London Economics based on data shared by the Commission.

In terms of sectoral distribution, *construction work* represents the largest category in the sample with 30% (compared to 26% in the full set of cases), followed by *IT services* with 13% (compared to 17% in the full set of cases) and *medical equipment* with 10% (and 8.5% in the full set of cases).

Table 74 Procurement cases by value of contract/lot

Contract value (EUR million)	All cases		Sample	
	Count	%	Count	%
0-250[179]	12	0.5%		
250-500	962	38.4%	12	40%
500-1,000	733	29.3%	10	33.3%
1,000-5,000	413	16.5%	5	16.7%
5,000-10,000	84	3.4%	1	3.3%
>10,000	21	0.8%		

[179] The notification obligation does not apply below EUR 250 million. Nevertheless, the dataset includes 12 cases with estimated contract values below this threshold.

Contract value (EUR million)	All cases		Sample	
	Count	%	Count	%
N/A	278	11.1%	2	6.7%
Total	**2,503**	**100%**	**30**	**100%**

Source: London Economics based on data shared by the Commission.

Similarly, the distribution of contract values in the sample **broadly reflects** that observed in the full dataset. The most frequent value range is EUR 250-500 million, representing 40% of the sample and around 39% of full dataset, followed by the EUR 500-1,000 million and EUR 1,000-5,000 million brackets.

Even though Article 29(1) FSR requires submissions at each stage of the multi-stage procurement procedures, the sample shows that this was not consistently the case. In some cases, submissions covered only one stage, which may reflect ongoing or cancelled procedures, or the withdrawal or exclusion of the economic operators prior to the second stage. In other instances, multiple submissions occurred, but not because of different stages but either because different economic operators within the same case submitted separate forms, or because an initial declaration was later followed by a notification.

5.4.2 Insights from information requests

Across the sample, **information requests** were a frequent feature of the Commission's preliminary review process. These interactions provide indirect insight into the Commission's preliminary assessment approach, the aspects it scrutinises more closely, the types of information it considers necessary for the preliminary review and the gaps it seeks to address.

On average, **1.75 information requests were issued per case,** with a maximum of five in a single case. The number of questions per request varied considerably, **averaging 3.1 questions** (ranging from 1 to 10). **Where multiple requests were issued within the same case, later exchanges tended to contain more questions** as they built on earlier requests by pursuing unresolved points and seeking more granular clarification. This pattern is visible in the fact that **the initial requests in each case contained an average of only 2.5 questions**, which is lower than the overall average.

Procedural pace

The preliminary review phase appears to be **procedurally swift**. The Commission's requests for additional information were typically issued within short timeframes and responses were expected within similarly compressed deadlines. The average deadline was **four working days after the date of the request**, and the median was three working days, with a range from two to eight working days.

The data on request and response timing were incomplete; however, the available evidence indicates **varying levels of compliance with response deadlines**, **including instances of delays** (ranging from one to thirteen working days).

Main topics covered in information requests

The scope of questions varied depending on the case and the level of information originally provided by the Parties. The questions covered, for instance, the following topics:

- Ownership structure of the notifying party/parties,

- Details of FFC(s) reported by notifying party/parties in line with Article 4(1) FSR,
- Details on potentially notifiable FFC(s) not included in the form, that were identified by the Commission through financial statements or publicly available sources,
- List of public contracts and contract details,
- Annual reports, quarterly statements and/or (official and unofficial interim) financial statements with notes,
- (Where applicable) Terms of partnerships between a group entity (other than the notifying party) and external (non-group) companies that may have links to a third country,
- For Section B(6)(c) FSIR exceptions, evidence required to verify claimed exceptions e.g. terms of contracts, and
- Follow-up questions from earlier requests where earlier replies did not answer all elements requested.

Details requested for each individual FFC

The Commission requested highly granular details on **individual** FFCs, complementing the initial aggregate reporting. The requested information covered, for instance, the following items:

- Date of receipt of the FFC and, if applicable, the exact period over which the FFC has been granted,
- Exact amount in EUR, including used amounts, total granted and remaining amount available,
- Name and description of the legal entity/entities receiving the FFC,
- Name and description of the entity/entities granting the FFC, identifying under which of the categories in Article 3(2), second sentence, points (a), (b) and (c) the entity falls,
- Description of the FFCs, including:
    - the reason for granting the FFC,
    - the underlying legal basis,
    - any requirements or obligations associated with receiving the contribution,
    - the purpose and conditions of use, and
    - the restrictions on use or confirmation that no usage restrictions apply (in which case, how the FFCs were used and allocated within the group)
- Information on whether according to notifying parties, the FFC confers a direct and/or indirect benefit on the receiving entity and on notifying parties, their holding companies, or any subsidiaries lacking commercial autonomy (including potential benefits derived from altered/tailored specifications in the case of direct award contracts, compared with open calls for tender),
- Reference of the FFC in the financial statements, including respective page number(s) and accounting entry/entries under which the FFC is accounted for,
- Quantification and explanation of the accounting benefit stemming from the FFC according to notifying parties, e.g. illustrating the effect it has in the Balance Sheet, P&L and Cash flow statement, and
- Information regarding the specific (i.e. selective) nature of the respective FFC according to notifying parties, explaining whether the FFC is limited, either in fact or in law, to one or more undertakings or industries.

If the FFCs reported by notifying parties were not broken down into individual values, the Commission also requested **value breakdowns.**

These questions above were asked regardless of the type of FFC. However, the Commission also requested more specific information for certain types of FFCs. These included:

- For purchase of goods and services:
    - Identification of the products/services provided,
    - Date of the publication of the call for competition (or other means),
    - Web reference/location of the publication,
    - Date of the award of contract,
    - Name of partner to the contract (if any),
    - For direct awards: reasons for the application of a direct award.
- For tax advantages:
    - Name, web reference and provision of the applicable tax law providing for the tax advantage,
    - Amount of tax that would have had to be paid in the absence of the tax advantage.
- For credits (e.g. R&D credits):
    - Eligibility criteria,
    - How the relevant companies fulfilled those criteria.

Given that the requested information is relevant to the Commission's ability to assess FFCs, the **recurring need to obtain this information through requests suggests that initially submissions often lack sufficient granularity for preliminary assessment and might indicate a gap in the economic operators' understanding of notification obligations**. **Strengthening guidance, offering targeted training or revising the Forms FS-PP to include more precise and mandatory fields** may reduce initially incomplete filings and ease the procedural burden on the Commission by reducing the need for repeated requests.

Clarification points

The Commission often provides several clarification points to provide context on the actual questions, including the following:

- Facts and observations about the submissions or about the information identified through public sources,
- Statements on the current state of the case (for example, questions already answered in a previous request and those still outstanding),
- Explanations related to incomplete notifications, including the requirement to complete Sections 3.2 and/or 3.3 and even when no FFCs fall under those sections, to provide supporting documents under Section 3.6 to verify that all FFCs are below the EUR 1 million threshold,
- For some declarations, clarification about why a notification rather than a declaration was required, referencing items in the financial statements and citing Recital 12,
- Reminders that the scope of the Commission's assessment may extend beyond the linear ownership structure of the notifying parties and that contributions received by the other group entities may also be relevant in line with the FSR Guidelines,[180]

[180] European Commission (2026) *Guidelines on the application of certain provisions of Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market*. Available at: https://competition-policy.ec.europa.eu/document/download/c43a346a-fd4c-4268-aed0-ab0c8578022d_en?filename=empty_file_en.pdf (Accessed: 9 February 2026)

- References to Article 10 FSR and indications that the Commission had "sufficient indications" that FFCs constituting foreign subsidies had been granted to notifying parties.

Variation in responsiveness

Considerable variation was observed in the completeness and responsiveness of notifying parties to the Commission's requests. While some provided comprehensive information addressing all requested elements, others submitted partial information which triggered a follow-up request unless an explanation why the requested information could not be provided, was given. The following illustrative examples highlight the range of responsiveness.

In some instances, notifying parties indicated practical constraints in accessing historical or group-level information, particularly where corporate restructurings or separations had occurred. In such cases, parties explained that only publicly available information could be provided. In other instances, notifying parties questioned the relevance of certain requested information and argued that measures received at higher levels of corporate structure were not relevant to the procurement procedure. These arguments were sometimes based on the nature of commercial relationships within the group, including intra-group transactions conducted at arm's length conditions.

Procedural completeness issues were also observed. In some instances, initial submissions were considered incomplete to the extent that essential identifying details or mandatory declarations were missing and requiring resubmission even before any information request was issued.

In some cases, a more substantive misunderstanding involved notifying parties drawing analogies with EU public procurement law and interpreting these as limiting the territorial scope of the FSR. Such reasoning conflated the scope of EU procurement directives with that of the FSR and overlooked the fact that the FSR explicitly applies to potentially foreign-subsidised EU **and non-EU undertakings** participating in public procurement procedures in the EU.

While these misunderstandings were ultimately addressed through the preliminary review process, their recurrence highlights gaps in notifying parties' understanding of the FSR's scope and requirements. This reinforces the practical need for more structured guidance and training for economic operators.

5.4.3 Insights from submissions

Level of detail in submissions

The analysis covered 30 cases, of which 13 used online forms, 14 manual forms, two submitted an online form followed by a manual form, and one case contained no form.

The difference in length between the submitted forms was substantial and seems to depend on the choice of format (i.e. online versus manual). Online forms were considerably shorter than the manual forms. However, much of the length of manual forms reflects the presence of the full Annex II FSIR template, rather than substantive answers.

In general, manual forms offered greater flexibility and allowed notifying parties to insert information more freely. However, this flexibility also appeared to generate uncertainty about the meaning of certain parts of the form. In a number of manual submissions, notifying parties seemed unsure which parts of the template were questions requiring answers and which were informational paragraphs. For instance, in

some manual submissions, section 3.1 of the form was treated as a question that required an answer, so additional text was provided, even though the online form does not permit any text entry in that section. **Such differences may create inconsistencies across submissions and additional burden on notifying parties and the Commission.**

The manual template in Annex II FSIR is a helpful tool for notifying parties completing forms offline. However, not all manual submissions followed the template as designed. In some instances, sections that should have been included (such as Section 1) were missing, and while in others, sections that should not appear (such as Section 7 in a notification) were included. These inconsistences signal that some economic operators may be uncertain about the expected structure of the form, which suggests potential **value in additional clarifications** or a **more standardised/restricted template for manual submissions**. Moreover, **contracting authorities could formally encourage the use of the Annex II FSIR templates or online forms, as they could help produce more consistent submissions across cases.**

There were some empty notifications which reported no notifiable FFCs or provided no explanation on whether any exceptions applied. In such cases, it would be useful for notifying parties to indicate clearly whether any notifiable FFCS are covered by exceptions and to explain the basis for those exceptions with supporting evidence where possible. If no notifiable FFCs exist, a declaration may be more appropriate.

Section 1 of Form FS-PP

In the manual template, this section is detailed and includes multiple references to the European Single Procurement Document (ESPD),[181] explaining the procedures to follow depending on whether the ESPD is submitted in full, in part or not at all. This structure is comprehensive, but it can also be lengthy and may be difficult for stakeholders to navigate, particularly as it relies heavily on cross-references to external documents such as Annex 2 of Implementing Regulation 2016/7.

In most cases, key procurement information that is part of the ESPD, such as the number of lots or estimated/maximum contract value excluding VAT, was not included in the submitted manual forms, but can generally be found via the public procurement link (if accessible). Although the Commission can obtain these details independently or from contracting authorities, their consistent omission suggests that economic operators are not always aware of which procurement information is relevant or required for assessment under the FSR.

By contrast, the online form is more straightforward, with no reference to the ESPD. Its Section 1 focuses only on factual information, namely the identity of the procurer (name and country), the type of procedure, the public procurement title, a short description, the file reference number and the public procurement link. However, it does not include fields for the number of lots or the estimated contract value.

These differences indicate that **greater alignment between the manual and online forms could improve clarity and promote more consistent inclusion of essential procurement information. Introducing explicit fields for these key elements in both formats** could also support systematically complete submissions.

Section 2 of Form FS-PP

A recurring pattern suggests that several notifying parties remained uncertain about **the distinctions between:**

[181] The European Single Procurement Document (ESPD) is a self-declaration form that allow companies to confirm they meet the required eligibility and selection criteria without submitting full supporting documents at the initial stage.

entities participating together in a procurement procedure,
entities whose capacities are relied upon to meet selection criteria, and
subcontractors.
In one instance, three economic operators participating together in the same tender, each submitted separate forms and marked "yes" for all these three categories for the same set of companies. It is not clear whether this was intentional or the result of a misunderstanding. If the latter is the case, it could indicate uncertainty and lead to inconsistent reporting and unnecessary duplication of information. Moreover, similar inconsistencies appeared in other cases involving multiple economic operators participating in the same tender, where the categories listed above were interpreted differently across submissions. These suggest ongoing **uncertainty among economic operators about which entities must be listed under which category, how many forms should be submitted and how information should be coordinated**. **Clearer guidance on the distinctions between these categories and on how joint or linked economic operators should structure their submissions could help reduce such inconsistencies.**

In a small number of submissions, Sections 2 included useful information such as **organisational charts** and explanations of notifying party's ownership structure, including holding companies and subsidiaries. However, most submissions did not provide such information. **Incorporating more targeted fields and questions in Section 2 regarding ownership structure could reduce the need for subsequent information requests, since this issue was frequently the subject of follow-up questions.**

Section 3 of Form FS-PP

This section appears only in notification forms, as required. In one instance, the information for this section was provided in an annex of an online form.

A minority of forms explicitly indicated that the FFC information they included, covered notifying parties, as well as their holding companies and subsidiaries without commercial autonomy. However, **in most forms, FFCs granted to group entities were missing**.

No submission in the sample included FFCs that may fall under Article 5(1), points (a) to (c) and (e) FSR. However, nine forms included FFCs that do **not** fall under Article 5 FSR. Of those nine, eight completed Table 1 in Annex II FSIR. The remaining submission left Table 1 intentionally blank, as the FFCs were considered to be excepted from the reporting obligation in line with Section B(6) of that Annex.

Among the eight cases with completed Table 1, on average, 2.8 third countries and 11.4 FFCs were listed. The third countries in these tables included Benin, Brazil, Canada, Costa Rica, India, Iraq, Japan, Libya, North Macedonia, Norway, Philippines, Qatar, Saudi Arabia, Serbia, Singapore, Switzerland, Taiwan, Türkiye, United Arab Emirates, United Kingdom and United States (incl. Puerto Rico). The types of FFCs in these tables included tax advantages, fiscal incentives, purchase of goods and services, grants, financing instruments, overdraft facilities, automatic direct debit systems, guarantees and loans. Aggregate estimated value ranges were provided for each third country listed in the tables. In some cases, the descriptions and details of the reported FFCs were insufficient, which led the Commission to information requests.

In one instance, a waiver was requested for a parent company which was a financial institution. The justification referred to the nature of its business and large volume of financial service contracts.

Introducing separate tables for different economic operators, separate sections explicitly for holding companies and subsidiaries without commercial autonomy, and more targeted fields for required FFC details

(such as those listed above in the information request analysis) in the form template, could help notifying parties to submit clearer and more complete information.

Sections 4 and 5 of Form FS-PP

Sections 4 and 5 were left blank in all forms in the sample or contained a very brief note, stating "not applicable".

Section 6 of Form FS-PP

Seven cases in the sample included annual accounts or reports in Section 6. In some cases, these were attached as annexes, while in others, links were provided. In one case, information on ownership structure was also included in Section 6.

Section 7 of Form FS-PP

Section 7 should not be completed for notifications, yet two manual notification forms included this section. **Online forms prevent such misunderstandings, although they allow less flexibility for additional comments.**[182]

Table 2 of Annex II FSIR was not included in any forms in the sample, except one. That table included a non-notifiable FFC granted by a third country and provided details such as the type of FFC, beneficiary, reason, description and granting entity.

5.4.4 Conclusion

Overall, information requests focused on several recurring issues, including:

- ownership structures,
- details of notified FFCs,
- potentially notifiable FFCs not included in the forms,
- public contracts,
- financial statements,
- missing information,
- clarifications required to verify claimed exceptions.

The frequency of these issues, together with the recurring misinterpretations and inconsistencies in the notifying parties' submissions suggest that there is scope to improve the structure and instructions of submission templates. In particular, clearer guidance, more targeted questions and a more standardised template for manual submissions (and fields for online submissions) could reduce inconsistencies from economic operators and the need for information requests.

5.5 Conclusion and recommendations

This chapter reviewed how the Commission has implemented and enforced the FSR in public procurement cases since October 2023, when the reporting obligation started to apply, until the study's cut-off date (June 2025). The analysis covered three categories of cases: (i) cases with decisions to initiate an in-depth investigation, (ii) cases with decisions declaring a tender irregular, and (iii) a sample of 30 cases for which no decision was required. In addition, Article 28(1)(a) threshold was analysed across all public procurement cases.

[182] Annexes can still be (and in some instances have been) attached in the online version if needed.

The analysis of the Commission's early case practice provided a **coherent picture of a regulatory framework that was functioning as intended.** However, initially incomplete notifications and incorrect understanding of their obligations by some economic operators limited the efficiency and effectiveness of some processes.

Across the three categories of cases, the Commission has applied both the assessment framework and procedural rules of the FSR in a structured and internally consistent manner. The application of Articles 3, 4 and 5 FSR demonstrated a clear analytical logic and the procedural tools under Articles 29 and 30 FSR have enabled the Commission to manage initially incomplete filings while respecting the statutory timelines. Taken together, early practice did **not** indicate structural shortcomings in the legal framework or an evident need to recalibrate the procedural deadlines or thresholds at this stage. However, given the limited number of decisions and the early stage of enforcement, these conclusions should be interpreted with caution and should be revisited as further case practice develops.

Instead, the analysis consistently pointed to **information asymmetries and interpretative challenges of economic operators** as the main limitation. Recurrent misinterpretations of Article 28(1)(b) FSR, difficulties in identifying relevant entities within their complex corporate groups and initially incomplete reporting of FFCs have increased the Commission's administrative burden, heightened its need to thoroughly verify information provided by notifying parties, and its reliance on information requests and Incompleteness Decisions.

While the evidence based on all procurement cases does not suggest a clear trend in contract values over time, it indicates that raising the Article 28(1)(a) FSR threshold would substantially reduce submission volumes. While evidence to draw definitive conclusions is insufficient, the disparity between the number of notifications and the small proportion of cases resulting in in-depth investigations is notable and a higher threshold could be considered. Any assessment of such an adjustment would require balancing the need to reduce submission volumes with the need to maintain the effectiveness of the FSR.

These findings suggest that improvements to the functioning of the FSR in public procurement could be achieved through both regulatory changes and strengthened support for economic operators. **Targeted guidance and training initiatives on recurring issues** such as the identification and aggregation of FFCs, the treatment of complex corporate group structures and the evidentiary standards required to substantiate economic operators' claims (e.g. on market terms, ring-fencing or limited use of FFCs) could substantially improve the quality and completeness of submissions.

Moreover, the recurring issues observed in information requests highlight that there is scope for procedural simplification through **more structured and standardised notification/declaration tools**. **Integrating more granular and mandatory fields into the Forms FS-PP**, both for online and manual submissions, reflecting information frequently requested through information requests (e.g. ownership structures, detailed FFC characteristics, financial statements and evidence supporting claims) could reduce the number of initially incomplete submissions. Complementing these changes with **accessible, practical materials for economic operators and contracting authorities such as concise guidance notes or dos and don'ts flyers** could further ease compliance and improve efficiency in the application of the FSR in public procurement cases.

Abstract
This study reviews the early implementation, enforcement and potential simplification of the EU Foreign Subsidies Regulation (FSR), drawing on stakeholder surveys, analysis of international subsidy control developments and Commission case practice in concentrations and public procurement. Stakeholders generally understand the FSR's objectives, but report significant administrative burdens, delays and legal uncertainty, particularly around the broad definition and reporting of foreign financial contributions. Internationally, third-country subsidy control regimes have evolved only gradually since the FSR's adoption, leaving the EU's system distinctive in its comprehensive ex ante and ex post control. Regarding case practice, the Commission applies a structured, evidence-based and effects-driven methodology. In concentration cases, foreign financial contributions are frequently reported, especially by investment funds, but are rarely found to constitute distortive foreign subsidies. In public procurement, the framework appears coherent and effective, though operational challenges arise from incomplete or incorrect bidder submissions and recurring misunderstandings of notification obligations. Overall, the FSR is functioning as intended and is capable of identifying potentially distortive foreign subsidies, but targeted refinements could improve efficiency and legal certainty, including clearer guidance, more proportionate reporting obligations, adjusted thresholds and more standardised notification tools.

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