

# EUROPEAN UNION'S FOREIGN SUBSIDIES REGULATION

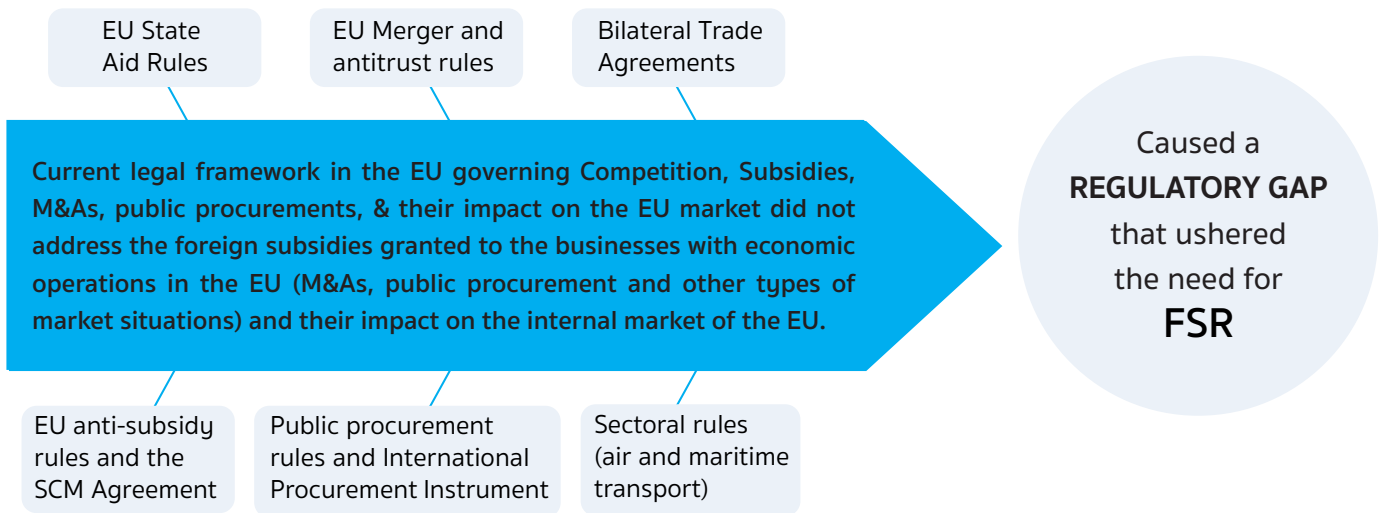


ACTECON

# EU's Foreign Subsidies Regulation

## FSR: What is it?

The FSR is a new legislation allowing the European Commission (EC) to investigate into the financial contributions granted by non-EU countries to the companies engaging in economic activities in the EU.



### Foreign subsidy

refers to any form of direct or indirect financial contribution, such as grants, loans, tax incentives, or guarantees, provided to companies by:

- (i) foreign governments, or
- (ii) public or private entities whose actions can be attributed to the foreign governments.

### WATCH OUT!

The FSR will have far-reaching implications on a business, if it:

- (i) has operations in the EU market, and
- (ii) has received some form of financial contribution from non-EU countries

### TIMELINE







# Investigative Tools and Procedure

	M&A Transactions	Public Procurement
<i>Ex Ante</i> mandatory filing regime	<p><b>Turnover threshold:</b> At least one of the merging companies, the acquired company or the joint venture is established in the EU and generates an EU turnover of <b>at least €500 million</b> in the previous financial year; and</p> <p><b>Foreign financial contributions:</b> Combined foreign financial contributions exceeding <b>€50 million</b> in the three years prior to the conclusion of the agreement, announcement of the bid, or the acquisition of controlling interest.</p>	<p><b>Contract value:</b> The contract value is <b>equal or above €250 million</b>; or the aggregate value of the lots applied for is <b>equal or above €125 million</b>; and</p> <p><b>Foreign financial contributions:</b> The bidding party and its main subcontractors receive aggregated foreign financial contributions <b>equal or above €4 million</b> in the past three years prior to the notification.</p>
<i>Ex Officio</i> investigation regime	The EC can conduct <i>ex officio</i> investigation on all potentially distortive foreign subsidies on its own initiative, or following information received by Member States or EU companies against any market situation.	

## PROCEDURE

### Preliminary Review

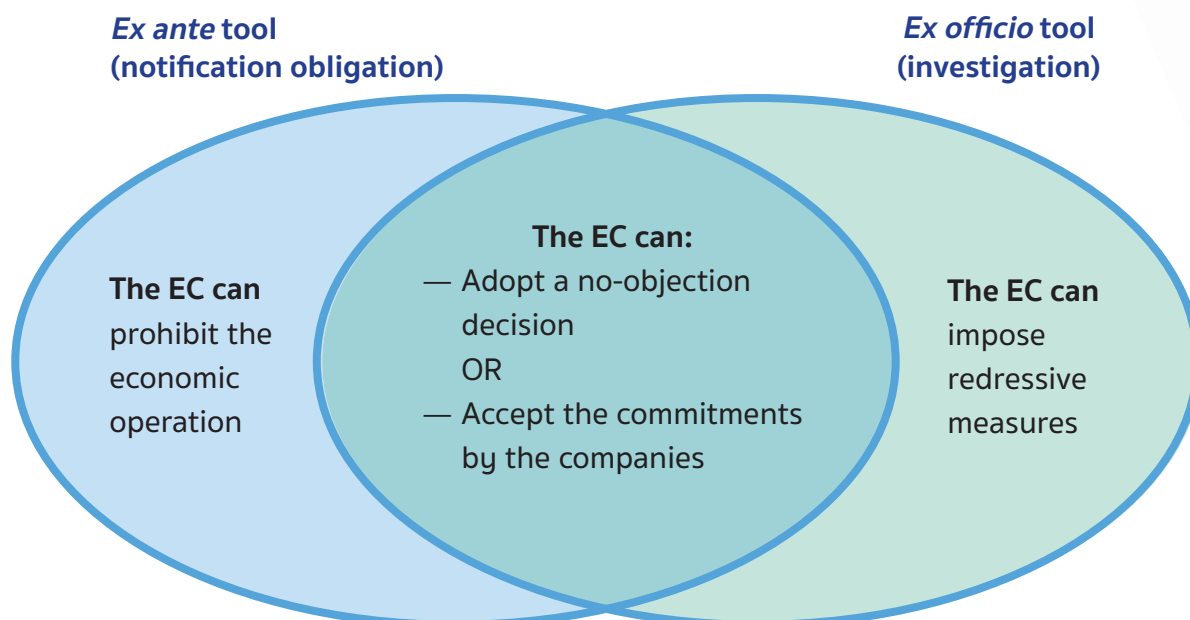
No evidence of distortive foreign subsidy

No objection

Sufficient evidence of distortive foreign subsidy

In-depth investigation

# Powers of the European Commission



## PENALTIES

### Notification Obligations

The EC can impose **fin**es of up to **10% of the parties' aggregate turnover** in the preceding financial year for:

- failing to notify a notifiable transaction or bid;
- failing to comply with the European Commission's decision.

### Incorrect or Misleading Information

The EC can impose **fin**es of up to **1% of the parties' aggregate turnover** in the preceding financial for:

- intentionally or negligently supplying incorrect or misleading information.

# Draft Implementing Regulation



## PUBLICATION OF DRAFT

- On 6 February 2023, a draft Implementing Regulation was published.
- It clarifies the practical and procedural aspects related to the application of the FSR and contains standard notification forms



## CONSULTATIONS & FEEDBACK

- To allow the interested parties to participate in the consultations and framing of the new rules, the draft is **open for feedback until 6 March 2023**.



## ADOPTION OF FINAL VERSION

- On the basis of the draft and stakeholders' input, the EC will then adopt a final version of the Implementing Regulation in the second quarter of 2023, in time for the start of the FSR's application on 12 July 2023.

## Implications for Companies

The FSR imposes obligations, breach of which may cause severe implications including fines.

- 1- Companies must develop a clear understanding and tracking system to maintain data of the subsidies they have received as the EC requires information concerning foreign subsidies received in the preceding three years in case of notifiable transactions, and it may require such information up to ten years in case an *ex-officio* investigation is initiated.
- 2- Companies need to assess the potential impact of the foreign subsidies on the EU's internal market by reviewing existing business operations and contracts and conducting thorough examination of the subsidies received.
- 3- Companies must diligently develop a robust compliance program in accordance with the FSR requirements.
- 4- Companies need to factor in the potential impact of FSR in their deal timelines.
- 5- As it can be inferred from the draft Implementing Regulation, gathering great volumes of information would create immense workload. The companies are advised to start the information gathering process prior to the initiation of an investigation.
- 6- Companies should play an active role in providing feedback, especially with regards to draft Implementing Regulation and participate in the consultations with the EC.

This document was prepared in March 2023.





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