

Informative Note

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European Law and Competition

Corporate, M&A and Private Equity

The New EU Regulation on Foreign Subsidies

What impact will the new EU Regulation on Foreign Subsidies have on my company?

Since 12 October 2023, all concentrations and bids in public procurement procedures are subject to prior notification to the European Commission (“EC”) if the companies concerned have received foreign subsidies that are likely to distort the internal market.

The aim of Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies that distort the internal market (“FSR”) is to contribute to the proper functioning of the internal market.

Thus, the FSR establishes rules and procedures for investigating foreign subsidies that distort the internal market and tools for correcting these distortions with a view to ensuring a level playing field. These distortions can occur in any economic activity and, in particular, in

operations that result in concentrations and through the participation in public procurement procedures.

Until the FSR entered into force, control by the EU specifically concerned (i) state aid designed by EU member states with the aim of preventing these measures from jeopardising the conditions of free competition in the EU market, (ii) concentrations incompatible with the internal market and (iii) foreign investments directly made in the EU, for reasons of security and public order.

In a nutshell, with the application of this regulation:

- Concentrations that fulfil the cumulative conditions that are set out in the FSR are subject to the legal obligation of prior notification to the Commission and are subject to the

obligation of non-implementation (standstill obligation) until a final decision of non-opposition. The definition of “concentrations” includes mergers, acquisitions of sole or joint control and full-function joint ventures.

- Notifications are made according to a specific form, following a specific procedure, and are preferably made electronically. They must be preceded by a request for allocation of the Commission team for the case and addressed to the Commission’s Register of Foreign Subsidies.
- The European Commission may, through the ex-officio examination procedure, examine foreign subsidies that it suspects are distorting or are likely to distort the internal market and have not been notified. ¹⁰

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