

# FSR Getting Real: EU Targets Chinese Subsidies

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Since 12 October 2023, the notification obligations under the EU's new Foreign Subsidies Regulation (*FSR*) have been in force. Meanwhile, a number of cases were notified to the European Commission (*Commission*) and practical experience gathered. The Commission has recently announced its first in-depth investigation concerning a Chinese railway company. This case shows that the Commission is determined to use its new powers under the FSR. This briefing summarizes once again companies' obligations pursuant to the FSR and provides some practical guidance from the first months of application.

## **What are the obligations for companies under the FSR?**

The FSR obliges companies operating in the EU to notify or declare foreign financial contributions when certain thresholds are reached in mergers or bids for public contracts:

### *Notification obligation for concentrations*

Concentrations trigger a notification obligation if two cumulative thresholds are met:

- The combined turnover of at least one of the merging undertakings, the acquired undertaking or the joint venture established in the EU, exceeds EUR 500 m in the EU, and
- all undertakings involved in the concentration were granted combined foreign financial contributions of more than EUR 50 m in the three financial years preceding the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

### *Notification and declaration obligation for bids in public procurement procedures*

Regarding bids in public procurement procedures, the notification requirement applies where

- the estimated contract value is equal to or exceeds EUR 250 m, and
- the bidder, including its subsidiary companies without commercial autonomy and its holding companies, as well as main subcontractors/suppliers were granted foreign financial contributions of at least EUR 4 m per third country.

In cases where the value of the procurement exceeds EUR 250 m but the threshold of EUR 4 m in foreign financial contributions from a single country is not reached, companies must provide a declaration. This means that they must submit an overview of the foreign financial contributions received.

A detailed overview of the obligations under the FSR and the required preparation can be found in our [last briefing](#).

## **What's new?**

The Commission has recently opened its first in-depth investigation into a bid in a public procurement procedure, just four months after the FSR came into force. The investigation follows a notification by CRRC Qingdao Sifang Locomotive (*CRRC*), a Chinese state-owned company, in a Bulgarian public procurement procedure for 20 electric trains. In its initial review, the Commission found that there are sufficient indications that CRRC has been granted foreign subsidies that distort the Internal Market. The Commission now has until 2 July 2024 to take its final decision. If the Commission were to find that CRRC benefits from a foreign subsidy that distorts the Internal Market, it may prohibit the award of the contract to the company unless CRRC offers sufficient commitments.

Meanwhile, the Commission has also received a number of merger notifications under the FSR, which, however, have not led to in-depth investigations yet. Nonetheless, the CRRC case shows that the Commission is quite willing to use the FSR if it believes that the requirements are met.

The Commission has also recently published a [brief](#) on the first 100 days since the introduction of the obligation to notify concentrations. Besides an overview of the cases during this period, it also provides information on (i) how to understand the thresholds for concentrations and (ii) how and where to declare foreign financial contributions in the notification form. It also contains clarifications on the simplifications for acquisitions by investment funds.

In its brief, the Commission reiterates that not only subsidies in the strict sense, such as direct grants, are notifiable, but all foreign financial contributions. Experience from the first cases shows that it is mainly equity investments by foreign countries that have triggered the notification requirement. The Commission has also pointed out that it is very important that all foreign financial contributions are notified in full and in the correct categories set out in the form.

It is expected that the Commission will make full use of its powers under the FSR and scrutinise foreign subsidies closely in the future. From the beginning of March 2024, the review of concentrations under the FSR will be entrusted to a newly created Directorate in DG Competition. It has been set up specifically to ensure the proper enforcement of the FSR. The Commission therefore not only has the determination but is also gearing

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up necessary resources. Companies should take their notification and declaration obligations under the FSR seriously. In case of non-compliance with the FSR provisions, the Commission can impose severe fines of up to 10% of the companies' turnover.

BLOMSTEIN closely monitors any new developments regarding the FSR. For questions regarding the impact of the FSR on concentrations, please contact [Max Klasse](#) and [Jasmin Sujung Mayerl](#). With regard to public procurement procedures, [Pascal Friton](#) and [Ramona Ader](#) are happy to answer any questions that may arise.