BUSINESSEUROPE

FOREIGN SUBSIDY REGULATION – PUBLIC CONSULTATION

(18/11/2025)

1. General remarks

BusinessEurope welcomes the Commissions review of the implementation on the Regulation (EU) 2022/2560 of 14 December 2022 on foreign subsidies that distort the internal market (or 'FSR'). BusinessEurope has previously in March 2025 provided input regarding the main difficulties and challenges in the practical application of the FSR. The following input and insights reiterate and elaborate these points and bring forward suggestions for improvement or clarification that we consider necessary.

Overall, the FSR is perceived as an important instrument for achieving a level playing field in the internal market, but it should not impact adversely the competitiveness of the European economy. The stringent requirements and administrative burden introduced by the FSR have in fact the potential to impact Europe's competitiveness globally, possibly discouraging investments from international companies and ultimately jeopardising the access of European citizens to innovative products.

The first cases in which the Commission has initiated an investigation confirm the necessity of this regulation. A more targeted, and proportionate approach will enable the FSR to effectively address only those cases with a genuine impact on competition, while supporting growth, innovation, and investment in the EU. We urge the Commission to review the regulation, exploiting the potential for harmonisation with other regimes and aiming for the simplest, most effective model for the years to come.

Must urgently, we call attention to the substantial administrative burden which FSR entails for companies. These have disproportional impact on European companies and must be addressed. Under the current system, European companies that operate globally are unduly burdened, as they are required to file a notification if they receive foreign financial contributions and want to participate in larger public procurements or undertake mergers or acquisitions.

Because the FSR bases its notification system on the very broad concept of "foreign financial contribution", rather than the narrower concept of "foreign subsidy", European companies operating globally must gather an enormous amount of information, which usually isn´t readily available. Since a financial contribution can include any financial measure and doesn´t have to benefit the receiving company, the amount of information that needs to be collected is very considerable and difficult to provide for the respective companies. **Thus, we would like to reiterate that the definition of foreign financial contribution must be clarified.**

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In addition, most of the currently required information categories do not correspond to actual business and/or accounting practices and are therefore not readily available in a central database. This makes it a very tedious, manual task involving many different internal stakeholders around the world to collect the relevant information. The administrative burden for any company participating in procurement processes or large-cap transactions is therefore still very high, despite simplification efforts achieved through the implementing regulation. Gathering such information, developing and regularly updating the internal reporting processes and working with the Commission require significantly more time, resources and manpower that can't be reasonably intended by the regulation. **We remain concerned that in most cases this effort is disproportionate to achieve the goals set out in the Regulation**, and we encourage the Commission to consider how best to limit the amount of information on foreign financial contributions that needs to be collected and streamline notification requirements. This challenge is substantial, as companies struggle to reconcile new FSR information requirements with existing company processes, accounting standards, and available data structures. **Therefore, we recommend that the Commission focuses on genuine simplification and reducing the overall regulatory burden, potentially using approaches like those established through Omnibus regulatory packages**.

Drawing on the practical experience of companies, it is evident that the resource implications of the FSR, and the often-duplicative nature of compliance requirements, risk undermining the effectiveness of the regime. The regulatory framework must remain proportionate and fit for purposes to ensure a level playing field in the internal market without stifling business activity.

There are some relevant **concepts** in the application of the FSR that are still difficult to interpret and apply due to their **breadth and lack of specificity**. On the one hand the control regime established by the FSR is similar to and shares notions with merger control or State aid regimes (e.g. procedural steps, concept of economic concentration), as well as in public procurement (e.g. notion of economic operator), on the other hand there are specific concepts, such as 'balancing test', 'foreign financial contribution', 'foreign subsidy' or 'distortion of the internal market' specifically introduced for the purposes of the FSR.

In addition, certain concepts commonly applied under State aid rules are not treated the same way in the FSR. For example, under State aid rules, general tax regimes are not considered selective and therefore do not qualify as State aid. By contrast, under the FSR, any specific tax measure - regardless of whether it is non-selective and broadly applicable within a country - may still be regarded as a financial contribution.

The interpretation and application of concepts such as the above are key to, inter alia, assessing whether a merger or a tender offer is subject to the FSR, and eventually whether it requires the adoption of corrective measures or even whether it should not be authorized. However, there is currently **no consolidated decision-making practice** by the Commission, nor is there any case law that explains the wording which was newly introduced.

In response to this, the European Commission has published clarification documents and guidance documents (e.g. a 'Policy Brief' in February 2024; a 'Staff Working

Document' in July 2024). However, **more detailed guidelines - in the sense that they should form the basis for public decisions on this matter - would be desirable in order to identify clear and predictable criteria for the implementation of the FSR.**

Closely related to the above, the notification or disclosure obligations under the FSR entail a **high and complex burden for companies** involved in mergers or public bids in the EU. These companies are obliged to monitor exhaustively and continuously whether they have received any financial contribution relevant to the analysis, with doubts of interpretation as to whether a given measure constitutes a financial contribution. In addition, in case the thresholds foreseen in the FSR are met, companies have to prepare and provide a large amount of information and documentation to the Commission.

These obligations result in **increased costs** for companies, and they **create a legal risk** of penalties (or exclusion from tender processes) if complete or accurate information is not available. For example, in the area of public procurement, there are no clear criteria - or, alternatively, illustrative examples - for determining when a subsidiary of an economic operator lacks commercial autonomy, or whether the financial contributions of any portfolio company should be taken into account, or only those over which the economic operator has control.

It is therefore essential that the European Commission makes progress in **clarifying the key concepts of the FSR and provides criteria** to identify in a simple way which financial contributions are relevant in the analysis, thereby reducing the burden and associated costs.

2. Challenges and suggestions for improvement in the implementation of the Regulation

The most urgent point remains to reduce the administrative burden for European companies. Several areas remain where administrative burdens must be eased, and broad definitions (see next section) mean that an important administrative effort is required, combined with additional costs, to identify the transactions to which the regulation applies.

- ➔ Administrative burdens could be eased for example in the case of procurement by establishing a system by which either, at the beginning of each year, bidders, ideally once for the parent and affiliated companies, would fill in information once and for all for the entire year, or the information provided for a specific bid would be valid for the subsequent 12 months.
- ➔ It would be beneficial to remove the requirement to list <u>all</u> received foreign financial contributions when making a declaration under Article 29, otherwise the administrative burden will remain high even for cases formally declared "non-problematic".
- ➔ We additionally suggest introducing exemptions for low-risk foreign financial contributions, which are unlikely to distort the internal market. Contributions aimed at specific public policy objectives, which are aligned with policy objectives of the European Union should be exempted from notification

obligations. The Commission should publish its **simplified procedure** (Article 47(1)(a) FSR) for concentrations. Practice has shown that a large number of mergers do not distort the internal market, so that a simplified procedure could go as far as possible towards the objective of limiting the administrative burden for notifying parties. Further guidance should be provided on when mergers are not considered "critical" under FSR. Specifically, when it comes to Foreign Financial Contributions (FFC) that are not Article 5 FFCs, there is not sufficient guidance on what additional preliminary confirmations can be sought / provided to ensure the pre-notification process is not extensive. For example; proportionality principles - the acquiring entity has received non Article 5 FFCs that are de minimis in comparison to the transaction value or the operating cashflows of the acquiring entity.

- ➔ In relation to FFC, stakeholders note that the misalignment between the data required to calculate the notification thresholds and the information ultimately requested in the notification form results in companies being obliged to collect and process large amounts of data which, in practice, are not used in the Commission's assessment. Thus, it would be beneficial for the Commission to **align the scope of FFCs relevant for the notification thresholds with the scope of FFCs subject to reporting obligations**, in order to reduce inefficiency and alleviate unnecessary administrative burden.
- ➔ The European Commission should send a confirmation regarding the **completeness** of the notification.
- ➔ In certain instances, notifying parties are required to submit notification forms even when no reportable financial contributions exist. This situation, whereby empty forms must be notified, arises when the cumulative value of foreign financial contributions over the past three years meets the notification threshold, but none of the contributions are reportable due to the exception outlined in point 6 of the "*Instructions to provide information concerning foreign financial contributions that do not fall into any of the categories of Article 5(1), points (a) to (e) (Section 3.3)*" of the Implementing Regulation. This requirement imposes an unnecessary administrative burden without contributing to the substantive assessment of potential distortions.
  We therefore urge the European Commission to consider **waiving the obligation to notify in such cases, where no relevant data is available for review.**
- ➔ Relatedly, there is a clear need to address the issue of duplicate and unnecessary notifications, especially for subsidies that have already been reviewed and found to be non-distortive on the internal market.
  We propose that, for a set period (such as six months), previously assessed subsidies should be regarded as **"temporarily approved"** for subsequent notification purposes. This would avoid repetitive administrative work, reduce costs, and enhance certainty for companies and contracting authorities alike. Similarly, if a notification is technically required but there are no reportable

foreign financial contributions, the obligation should be waived. This situation does not improve regulatory control and merely adds to the administrative burden.

- ➔ Similarly, the current three-year review period for foreign financial contributions creates a heavy ongoing compliance task for businesses. The Commission should consider either shortening this period or **aligning it more closely with the calendar year or fiscal year**, to make the process more predictable and manageable.
- ➔ Clearer upfront guidance on the scope and application of waivers would also help to relieve unnecessary data-gathering**.**

Burdensome reporting exercises in connection with divestments: The DG Competition Q&A (Question 8) has clarified that Foreign Financial Contributions (FFCs) to already divested companies have to be taken into account for the purposes of determining whether the jurisdictional threshold of Article 20(3)(b) of Regulation (EU) 2022/2560 is met and are also reportable in line with the rules set out in the Form FS-CO.

The Commission's response places an additional onerous burden on institutional investors, such as private equity firms, which are already forced to take far-reaching measures to comply with the FSR. The portfolios of these companies are constantly changing and the Commission's approach results in sellers being obliged to collect up-to-date information on the FFCs of their portfolio companies at the time of divestment, a moment at which it can be very difficult to obtain the required information, as the parties already have a large number of other legal and administrative obligations to take care of and the incentive of the portfolio company to be helpful is limited. After the divestment is finalized, it is of course even more difficult for the seller to obtain the information.

Finally, it is also common for the portfolio companies themselves to buy and sell companies, which adds another layer of complication to the collection of information.

- ➔ There should be no requirement to notify foreign financial contributions received by subsidiaries that have been divested prior to the notifiable transaction.

Notifications/declarations in multi-stage procedures in public bids: Article 29 (1) sentence 4 of Regulation (EU) 2022/2560 ("FSR") stipulates that in a multi-stage procedure the notification/declaration shall be submitted as follows: "*In a multi-stage procedure, the notification or declaration shall be submitted twice, first with the request to participate and then as an updated notification or updated declaration with the submitted tender or final tender*."

This provision is not synchronised with EU public procurement law and causes massive practical uncertainties on the contracting authorities' side. This leads to unnecessary efforts and red tape for the EU Commission, the contracting authorities, and the bidders. Usually, the request to participate is to be submitted within 30 days of the publication of the tender, which is a period during which bidders need to determine whether they will submit a bid, and is not sufficient to gather the detailed data on financial

contributions from third countries. Often, bidders are asked to provide several updates of their FSR notification/declaration.

a) Multi-stage procedures are very complex. Frequently, the contracting authorities ask for non-binding indicative offers at an early stage of such procedures. As a matter of fact, a non-binding offer cannot be awarded but has the purpose of providing an indication on the supplies and their price for the contracting authority. For such non-binding offers a notification/declaration should not be required. However, in practice, contracting authorities frequently ask for (updated) FSR notifications/declarations already at the stage of such non-binding indicative offers.

b) In a negotiated procedure the initial tender of the bidders may only be awarded directly if the contracting authority reserves the right to do so, see Article 29 (4) of Directive 2014/24/EU:
"*Contracting authorities may award contracts on the basis of the initial tenders without negotiation where they have indicated, in the contract notice or in the invitation to confirm interest, that they reserve the possibility of doing so.*"

If the contracting authority does not reserve this right, there must be a second awardable tender by the bidders (i.e. the initial tender may be binding but is not awardable and the contracting authority is by law bound to conduct negotiations with the bidders in this case). To avoid uncertainties, contracting authorities in practice also frequently ask for an update of the FSR notification/declaration already with non-awardable initial tenders. This is not in line with Article 29 (1) sentence 4 FSR since it refers to the "final tender" (i.e. presumably the binding awardable tender following the non-awardable initial tender).

➔ Therefore, we suggest the Commission issue guidance to the Member States to **prevent this type of request** from contracting authorities.

c) Finally, contracting authorities regularly ask for more than one awardable tender ("best and final offers"). Article 29 (1) sentence 4 FSR that foresees that the notification/declaration shall only be submitted twice, does not correspond to this practice. If the bidders submit more than one awardable tender, an update should be required with every new awardable offer. To avoid unnecessary updates, a specific grace period for updates should be included.

➔ **Therefore, we suggest clarifying Article 29 (1) sentence 4 in the upcoming FSR Guidelines as well as in Guidance to the Member States, to ensure it is interpreted as follows**: "*In a multi-stage procedure, the notification or declaration shall be submitted with the request to participate and as an updated*

notification or updated declaration with any awardable tender, unless the period between the respective awardable tenders is shorter than 90 calendar days."

d) Applying the financial contribution threshold becomes particularly challenging when multiple participants submit a joint offer as a group of companies without legal personality. This arrangement often involves companies from different business groups sharing sensitive information and relying on the coordination of legal teams.

   Additionally, the main contractor is expected to be responsible for the notification. However, this entails costs for its internal teams and requires the exchange of potentially sensitive competitive information. In the case of subcontractors, the exclusion of notification to those that do not reach 20% of the tender value is positive but the threshold could be increased to avoid false positives. More generally, in case of groups of economic operators, it would be beneficial to also introduce a threshold that excludes from notification economic operators that do not have a significant participation in the groups of economic operators, thereby preventing unnecessary delays and costs.

   Furthermore, the main contractor should not be required to notify on behalf of companies outside its corporate group. The revised Regulation should mandate separate notifications for participants in groups of economic operators, relaxing the complexity of the process.

Notification obligations and reporting perimeter for mergers: Unlike in public procurement, where notification obligations provide necessary transparency regarding potential subsidies and are integrated into existing procedures, **the field of mergers is already effectively governed by the EU Merger Regulation**. The current design of the FSR, which mandates notification even for purely national transactions between EU entities, results in disproportionate administrative burdens and limited additional enforcement value.

➔ We propose that **concentrations already notified under the EU Merger Regulation should be exempt from parallel FSR notification** unless specifically requested by the Commission, based on clear legal criteria. This approach would minimize duplicative procedures, reduce unnecessary costs for companies, and enable the Commission to allocate its resources more efficiently.

Should the Commission maintain the need for a blanket notification system, it is imperative to **substantially raise the thresholds** so that only transactions with substantive relevance are subject to notification. This would allow the Commission to focus its limited resources on cases with genuine potential for market distortion while freeing businesses from costly and time-consuming notifications that yield no regulatory benefit. The FSR should better take account of the materiality principle, ensuring only

FFC of sufficient magnitude to potentially distort the internal market trigger notification requirements. This would maintain regulatory effectiveness while limiting the number of notifications and reducing burden for both the Commission and companies.

- Moreover, the current approach to the reporting perimeter for mergers (including sister companies in group structures or non-controlled overseas entities) is impractical and out of alignment with accounting standards.

➔ We urge the Commission to limit reportable financial contributions to a company's parent and subsidiaries, following clear and predictable accounting rules

➔ The Commission should work towards the objective of **narrowing the number of cases where a notification is required**. The present scope and the expansion of the scope as outlined in point 81 of the Guidelines raise significant concerns as it can require information that is virtually impossible to collect in practice and creates considerable legal uncertainty and compliance risk.

Reporting of FFC received by jointly controlled joint ventures[1] : The Commission seems to require a full attribution of foreign financial contributions received by a jointly controlled joint venture to each of the jointly controlling undertakings (cf. Q&A No 12 of DG COMP; https://competition-policy.ec.europa.eu/foreign-subsidies-regulation/questions-and-answers_en). The Commission justifies this by stating that it cannot be excluded a priori that one of the jointly controlling undertakings may have benefited from the entirety of the financial contributions granted to the joint venture.

➔ **We suggest that financial contributions granted to merely jointly controlled joint ventures should not be attributed to the jointly controlling undertakings at all.**

- To capture the financial contributions granted to them, undertakings have established complex group-wide reporting systems. However, these can only be readily extended to consolidated undertakings. Merely jointly controlled and thus non-consolidated undertakings, which are already not subject to turnover reporting under international accounting standards, can even less be subjected to contribution reporting.
- Financial contribution reporting by merely jointly controlled joint ventures is not only hindered by legal and economic reasons but also by considerations of confidentiality. As the jointly controlling undertakings do not have a reliable view on the financial contributions received by their merely jointly controlled subsidiaries, those financial contributions cannot be attributed to them.

[1] What is the Commission's reasoning for diverging methods of turnover calculation for FSR and EUMR (= EU merger control)? According to the Commission's Q&A document, when a business unit is transferred to a jointly controlled JV, only the turnover of the JV will be taken into account for FSR. In the EUMR (para. 139 Jurisdictional Notice), on the other hand, each of the jointly controlling undertakings is considered an undertaking concerned whereas any company or business contributed to the joint venture is not an undertaking concerned, and its turnover is part of the turnover of the initial parent company.

Timeline of procedures under chapter 3 FSR: As opposed to the procedure under the Merger Regulation (Council Regulation (EC) 139/2004) where the Commission clears non-problematic mergers within a short period of time after formal notification, the procedure under chapter 3 of the FSR foresees a strict standstill obligation of 25 working days. If the pre-notification phase takes similarly long in both procedures, merger clearance is obtained earlier and FSR clearance lags behind, delaying the progress of the merger.

➔ **We suggest aligning the timelines under the Merger Regulation and the FSR**. Ideally, the Commission should be able to regularly issue decisions under the FSR stating the FFC are not distortive, without strictly observing the 25 working days standstill obligation.

Transparency: In public tenders, filings are done by contracting authorities (not by the bidders themselves). Bidders are not aware when the contracting authority notifies the subsidies to the European Commission and hence do not know when the 20-day clock starts to run. Consequently, we would ask for the Commission to inform the bidders when a form is received (or require this from Member States / contracting authorities).

Concentration operations: When the Commission finds no evidence of foreign subsidisation, or that the subsidies identified do not create a distortion in the internal market, it issues a notice informing, as a general rule, that it does not intend to initiate an in-depth investigation ('Phase II') after the 25-working day deadline for Phase I. Even when companies have a reasonable indication that the Commission will not initiate Phase II, the literal wording of the FSR precludes closing the transaction before the 25-working day deadline has expired, even if the Commission sends the communication before the expiry of this deadline.

➔ Through clear guidance, the Commission should allow companies to close the transaction even before the 25 working days deadline expires.

Furthermore, compared to the Commission's practice in other areas, the FSR implementation regime is less transparent: **it does not allow the involvement of potentially interested or affected third parties and does not provide for the possibility of formally submitting comments during Phase I of the procedure**. We are aware that the Commission is open to assessing comments to be submitted in Phase II from the pre-notification stage onwards in order to speed up the timeframe as much as possible, which is a positive aspect. Even though the Commission informs on its website about references to ongoing cases and even if a notification of a transaction has been made public, the Commission's decisions after the end of the preliminary examination (or 'Phase I') are not public. There is also no possibility for interested third parties to submit observations during Phase I. **This hinders the knowledge and legal certainty of economic operators**, and indirectly the control and challenge of the Commission's decisions by third parties.

➔ We invite the Commission to consider whether it would be beneficial to publish a summary of Phase I decisions, with due confidential treatment of sensitive information, to allow access to information by interested third parties throughout the procedure.

The EEA Agreement: Under the FSR the Commission interprets third countries as including EEA/EFTA States (see DG COMP's Q&A, Question 21, and DG GROW's Q&A, Question 8). However, under the EEA Agreement, the EEA/EFTA States – i.e. Norway, Iceland and Liechtenstein – are governed by the equivalent State aid regime to that of the EU Member States. Therefore, there are objective grounds for considering the EEA/EFTA countries accordingly and not be governed by the requirements of non-EEA/EFTA countries outside of the EU. This comprehension of the EEA Agreement results in economic operators, when preparing notifications under the FSR, having to spend a lot of unnecessary time and money on investigating and describing financial contributions they may have received in the EFTA/EEA States. The waiver, indicated in DG COMP's Q&A, question 21, and in DG GROW's Q&A, question 8, does not help if notifying parties first have to collect the information in order to include it in the draft form submitted for the pre-notification. This would be remedied by excluding the EEA/EFTA countries from the scope of application and thus reducing the administrative burden for many companies, as many EU-based businesses to also operate in the EEA/EFTA countries.

➔ We recommend **excluding EFTA EEA countries** from the scope of the Regulation.

Inconsistencies between the FSR and national legislation remain in some EU member states with an impact on deadlines in procedures. This might discourage enforcement in a timely manner. Similarly in several countries contracting authorities have not always demonstrated a clear understanding of the provisions of the Regulation. As a result, they have applied the documentation requirements or other rules inconsistently, thus creating legal uncertainty for tenderers and the Commission. Examples reported include contracting authorities modifying the forms annexed to the Regulation, requiring tenderers to submit documents that are not required by the Regulation, or requiring tenderers to submit notifications at stages of multi-phase tender procedures that do not comply with the timeframe set out in the Regulation.

➔ Clear guidance and outreach to member states and contracting authorities remains a priority.

3. Definitions and other areas where additional guidance/clarification from the European Commission is needed

One of the main problems reported is that the Regulation presents overly broad concepts and lacks precise **definitions** that would limit the scope of the fact-finding work. Future guidance should focus on helping businesses identify if and when they are covered and what concrete data must be prepared or excluded. The definition and scope of "foreign financial contribution" is especially in need of clarification, as is the meaning of a public entity in a third country. Guidance should be simple and practical and provide case-based examples on common borderline categories (like market-based loans, ordinary taxes, etc.).

- **Foreign Financial Contribution**: In principle, amending the FSR to focus exclusively on foreign subsidies rather than financial contributions would improve

compliance quality, and allow both undertakings and the Commission to concentrate resources on potentially problematic subsidies that genuinely warrant scrutiny. If the concept of foreign financial contribution reporting needs to be kept, the Commission should provide more guidance on the definition of financial contributions, with a view of linking these to the categories of Art. 5(1). In this context we would like to highlight that the companies rely heavily on internal reporting worldwide by their Finance/Accounting department who are not familiar with interpreting EU law. It should be further clarified what types of financial flows are potentially distortive, e.g. financial flows that clearly confer a financial advantage on specific economic operators, facilitating their economic activities in the European Union.

- **Notifying parties:** Article 2(3) of the FSR provides that the term "Notifying parties" means "all economic operators, groups of economic operators, main subcontractors and main suppliers covered by the notification obligation in accordance with Article 29(5) of Regulation (EU) 2022/2560." Annex II (2.3) of the Implementing Regulation however specifies that "*unless otherwise specified, the term 'notifying party(ies)' includes all its subsidiary companies without commercial autonomy and all its holding companies within the meaning of Article 28(1)(b) of Regulation (EU) 2022/2560*" Article 28(1)(b). FSR only refers to subsidiary and holding companies in relation to the economic operator. It would be beneficial if the FSR clearly states that subsidiaries or holding companies of the main subcontractor are not considered.
- **Concerned undertakings** for public procurement procedures (Article 28(1)(b) of the FSR). For concentrations, and specifically Article 20(5) on the notion of control, the Commission has indicated in its Q&A (Question 6) that the notion of control should have the same meaning as under the EU Merger Regulation (Regulation 139/2004). This is welcomed, as the already well-established concept can contribute to predictability and legal certainty for the notifier when it comes to determining the concerned undertakings relevant for notifications connected to concentrations. **However, there have been no similar clarifications offered for public procurement procedures**. Article 28(1)(b) sets out the concerned undertakings as "the economic operator, including its subsidiary companies without commercial autonomy, its holding companies, and, where applicable, its main subcontractors and suppliers involved in the same tender". Additional guidance/clarification by the Commission on this matter would hence be helpful, especially on the meaning of "subsidiary companies without commercial autonomy".
- **Taxes**: The Commission should align the treatment of tax measures to those of State aid rules. It could provide examples of the most common tax exemptions and provide guidance on whether such exemptions are subsidies or not. To the extent a tax measure is considered to be a subsidy, the Commission should provide guidance as to what it expects parties to do to redress this "supposed

advantage." In many cases, tax measures are simply facets of the tax regime applicable to companies operating in a relevant country. While it is possible to determine the financial benefit of such provisions, they typically apply automatically when compiling the tax return and to "disclaim" them could be akin to mismanagement of the company's tax affairs.

- **Timelines**: It would be helpful to receive more guidance on **expected overall timing** at the early stages and on likely timeline to receive RFIs / clarification questions. It is not always clear how the case teams review the transactions and questions are at time difficult to understand from a business perspective.
- There are doubts about how to assess **the equivalence to the Alternative Investment Fund Managers** ("AIMF") legislation. It would be good to have additional information on equivalence between legislation and recognised jurisdictions.
- **Translated online form**: According to Article 5(4) of the Implementing Regulation (2023/1441), both notifications and declarations can already be submitted in all EU languages, but for the time being the online form does not exist in all EU languages. Since procurement procedures are often conducted in the languages of the Member States, we believe that it would be appropriate for the Commission to produce the online form for notifications or declarations of FFCs in the context of public procurement procedures, in all EU languages as soon as possible. Translated online forms would facilitate the understanding of both contracting authorities and tenderers and would contribute to the use of common terminology between the parties.
- **Little to no information is available on the notifications received by the Commission**: We therefore urge the Commission to publish an in-depth and anonymous aggregate analysis of received notifications and corresponding outcomes. We believe this could provide valuable insight and help with clarification of the regulation´s concepts.

4. Additional remarks

- We encourage the European Commission to deliver additional training to contracting authorities across the EU, to bring greater clarity to the concepts of the Regulation. Contracting authorities don't have certainty on when filings are legally required and sometimes require filings to avoid the risk of litigation. The European Commission should also be able to address questions from contracting authorities through a dedicated hotline.

- The Commission's draft guidelines under Article 46 have raised concerns that the Commission might extensively apply its call-in powers under Article 21(5) and Article 29(8) in the future. These call-in rights for sub-threshold cases serve a legitimate purpose. However, they create significant business uncertainty. The

guidelines should emphasize that the Commission will thoroughly examine complainant information and exercise its call-in powers only under exceptional circumstances and with utmost restraint. Sub-threshold notifications should be requested only when there is a suspicion of serious competitive distortion, not merely because foreign subsidies may have been granted

- It is not uncommon for economic operators participating in a public tender as part of a consortium to be in actual or potential competition with one another, or with one or more of their main subcontractors. In some cases, they may even be in competition with the contracting authority itself. Under the current framework, the requirement for one main bidder to collect all FFC information from the bidding group and submit the FSR notification on behalf of the group raises significant concerns. Specifically, this process may infringe upon antitrust rules and compromise the confidentiality of sensitive business information. To mitigate these risks, Article 29(6) should be amended to allow each member of a consortium and the main subcontractors to submit their FSR filings directly and independently to the Commission. In such cases, the parties could provide the contracting authority with the relevant case number as a reference and control mechanism. This amendment would address the antitrust and confidentiality concerns associated with the current centralized submission process, while maintaining transparency and regulatory oversight.