

# The Implementing Regulation of the FSR (FSRIR)

## Anticipation is key!

On 10 July, the European Commission published the Foreign Subsidies Implementing Regulation, just two days before the entry into force of the Foreign Subsidies Regulation (12 July).

In a nutshell, the Implementing regulation provides detailed provisions on how to notify concentrations involving foreign financial contributions and how to declare foreign financial contributions for companies participating in public procurement procedures in Europe. It also provides in the annexes indication on the conduct of proceedings before the European Commission.

Whilst the Implementing Regulation cannot deviate from the Council and European Parliament basic Act, it nevertheless provides important flexibility to limit the administrative burden for companies. From a practical point of view, companies may request the European Commission to waive their obligation to provide some information if it is not reasonably available or not necessary for the European Commission's assessment of the case.

While as a general rule companies benefiting from foreign financial contributions in the last three years **equal to or in excess of EUR 1 million** should not be required to provide detailed information, the European Commission retains the right to ask detailed information on a case-by-case analysis. In practice, a complainant could argue that a financial contribution worth less than EUR 1 million, even much less, could have a negative impact on the internal market. Since state aid rules are more stringent, with a De minimis limit of EUR 200,000 per three-year period, and the Court of Justice has affirmed that even limited amounts of aid can distort competition, the risk of the Commission looking into financial contribution is significant.

### 5 takeaways for companies:

- Set up compliance procedures before 12 October to comply with FSR
- Remember that you may face some scrutiny also for financial contributions worth less than EUR 1 million, so identify potential risks in advance
- Engage with the European Commission as soon as possible in pre-notification discussions
- Use pre-notification talks to define/limit the scope with the European Commission of the information that is really needed
- Remember as of 12 October, notifying financial contributions will be mandatory

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