State of Tax, Legal & People

EU Foreign Subsidies Regulation

First year of application

6 June 2024

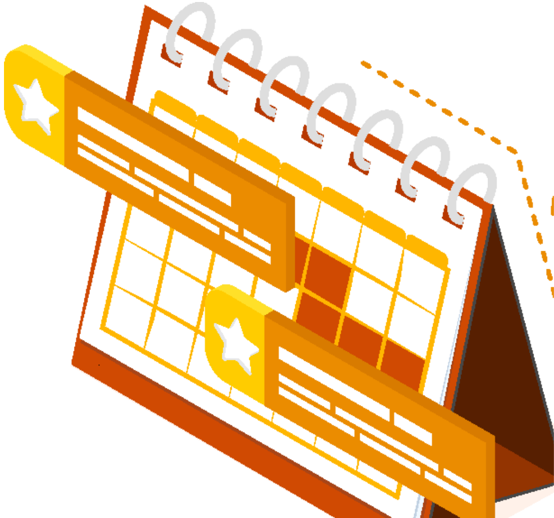
pwc

Welcome

- If this webinar is watched live, you will be eligible for 1 PE point
- With the button '[Ask a question]' you can ask your questions directly
- For other questions, please contact your PwC consultant or fill in the form on pwc.nl
- Webcast and presentation will be made available afterwards
- Evaluation form afterwards

Agenda

1. Setting the scene: the EU-FSR from a wider EU policy context
2. What are the fundamentals of the EU-FSR?
3. When does EU-FSR compliance become relevant and what challenges does it bring?
4. Unveiling the impact of EU-FSR compliance in practice
5. Q&A



01 Setting the scene: the EU-FSR from a wider EU policy context

Dawn Raids

DAILY NEWS | 23 Aprili 2024 | Brussels | 14 app.pressroom.readTime

Daily News 23 / 04 / 2024

Page contents

Commission carries out unannounced foreign subsidies inspections in the security equipment sector

The European Commission is carrying out unannounced inspections at the premises of a company active in the production and sale of security equipment in the European Union.

"The FSR is the right tool to protect the internal market from unfair competition due to distortive foreign subsidies. Fair competition, not less competition, is key for the rolling stock sector in the EU."

Margrethe Vestager, Executive Vice-President for a Europe Fit for the Digital Age

Setting the scene

- EU Foreign Subsidies Regulation (FSR):
  New competition policy to tackle foreign subsidies with distortive effects on the EU internal market.

- Outward protection for the EU internal market.

- When does the EU-FSR apply & how does the EU-FSR relate to other EU policies?

Key dates

12 January 2023	12 July 2023	12 October 2023
EU-FSR entered into force	EU-FSR starts to apply	EU-FSR notification requirements in force

State aid & EU-FSR

- EU State aid law gives the European Commission far reaching powers to review and potentially block state aid, ensuring fair competition between EU Member States; cornerstone of the EU internal market.
- European Commission wants to limit influence of non-EU state aid.
- EU-FSR supports functioning of the internal market & EU sovereignty.
- Only aimed at operations within EU: anti subsidy investigations and measures (duties) for imports.

The General Block Exemption Regulation (GBER)

Guidelines on State aid for climate, environmental protection and energy (CEEAG)

Temporary Crisis and Transition Framework (TCTF)

EU-FSR in the wider EU policy context

- Net Zero transition is a key technological development next decades.
- Increased activity foreign governments to support national industries.
- EU sovereignty has become a topic of importance after Ukraine (energy).

Major EU legislation

2019: EU Green Deal

EU climate ambition

EU Climate law

Fit for 55 package

EU chemicals strategy

2021 Green Deal legislative package: Fit for 55

Revision ETS

CBAM

Renewable Energy Directive

Energy Efficiency Directive

2022: REPowerEU Plan

Accelerate renewables and energy savings

Advancing energy sovereignty

2023: Green Deal Industrial Plan

Net zero industry and material sovereignty

Increased access to funding for selected sectors

EC takes action

EU-FSR investigations initiated this year:

- 16 February 2024: first in-depth investigation into public procurement bid by **Chinese train maker**.
- 3 April 2024: two in-depth investigations into two public procurement bidders in the **solar panel sector**.
- 9 April 2024: first ex officio investigation into **wind turbine sector**.
- 23 April 2024: first EU-FSR dawn raids in **security equipment sector**.

Net Zero Industry Act ('NZIA')
Strategic technologies list

(a) Wind and offshore renewable energy
(b) Nuclear energy technologies
(c) Energy storage technologies
(d) Carbon Capture Utilization Storage
(e) Hydrogen (H2) transport infrastructure technologies
(f) Electrolyser and fuel cell technologies;
(g) Sustainable maritime fuels
(h) Electric charging technologies for transportation
(i) Sustainable Aviation Fuels
(j) Heat pump technologies
(k) Energy efficiency technologies
(l) Thermal energy distribution and electric grid technologies
(m) Energy management technologies
(n) High-efficiency industrial process and electrification technologies for energy and carbon intensive industries
(o) Biomaterials production technologies, including bio-based chemical production technologies
(p) Recycling technologies.

EU GREEN DEAL LAWS

Taxonomy Reg
creates dictionary what constitutes "renewable energy"

SUPD
Regulates and reduces use disposable plastics

CORSIA
implements carbon offsetting requirements scheme aviation

Env crime Dir
defines environmental crime offences.

Elec Reg & Dir
transform Electricity Markets

ETD
aligns taxation energy products with EU climate policies

Deforestation Reg
sets mandatory dd rules for de-forestation-free commodities

CSRD
introduces detailed reporting on sustainability

Forced Labor Reg
bans products linked to forced labor

MSR Decision
amends market stability reserve

ReFuelEU aviation Reg
decarbonizes aviation sector

GBER
allows state aid for sustainability goals without approval European Commission

EPBD
requires new buildings zero-emission 2030, existing buildings zero-emission by 2050.

RED
defines 'renewable sets binding targets

ETS Dir
amends and extends EU's ETS

Gas Reg & Dir
transform Gas Markets

CBAM
sets carbon tariffs carbon intensive products

EMD Dir
transforms electricity market design

ESPR
Improves environmental performance of energy-related products

LULUCF Reg
sets objective 310 Mt CO2 equivalent of net removal for land use, land use change and forestry

SCF Reg
establishes Social Climate Fund

MRV Reg
brings emissions shipping within ETS

FuelEU Mar Reg
decarbonises maritime sector

CSDDD
introduces corporate dd duty

ETS Aviation Dir
phases out emission allowances

REMIT
combats market manipulation

AFIR
creates more recharging and refueling stations in EU

NZIA
accelerates use of clean technologies

CRMA
strengthen EU's critical raw materials capacities

SFDR
creates reporting framework fin products and entities

CEEAG
allows state aid for sustainability goals after approval European Commission

TCTF
allows state aid to speed up transition to net-zero economy

LDV Reg
imposes 100% CO2 emission reduction for passenger cars and LCV

Methane Emiss. Reg
reduces methane emissions energy sector

NFRD
requires companies to publish a non-financial report on their ESG performance

Batteries Reg
Regulates sustainable practices lifecycle of batteries

PWDD
sets targets for sustainable packaging waste management and recycling

EED
reduces energy consumption by 11.7% in 2030

ESR
emission reduction target 40% 2030 for agri, transport, buildings waste

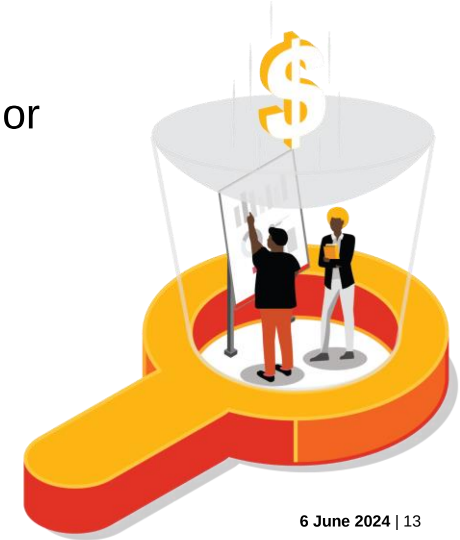
02 What are the fundamentals of the EU-FSR?

Overview

- New EU tool allowing the European Commission to scrutinize financial contributions granted by non-EU countries to companies active in the EU internal market through different types of procedures: notification procedures and ex officio.
- **Since 12 October 2023, companies must notify and seek approval from the European Commission** if a non-EU country provides broadly defined ‘financial contributions’ to a business that could provide an unfair advantage against EU companies.
- Gives the European Commission far-reaching powers to potentially block M&A transactions or public procurement bids notified to them. They can also initiate investigations if they believe a business or sector receives non-EU government support that distorts the EU market.
- Covers all industries, all geographies.

What is a foreign subsidy?

- Existence of a ‘foreign subsidy’: 4 cumulative criteria (Art. 3 EU-FSR)
- (1) financial contribution;
- (2) provided by a non-EU country;
- (3) which confers a benefit on an undertaking engaging in an economic activity in the internal market; and
- (4) which is limited, in law or in fact, to one or more undertakings or industries (selective in nature).



Foreign Financial Contributions

- Covers any form of **direct or indirect** financial contributions from non-EU governments or any public or private company attributable to a third country.
- A ‘financial contribution’ is an extremely **wide concept** and can include direct grants, interest-free or low interest loans, state guarantees, tax exemptions or incentives and grants of exclusive rights.
- All companies active on an EU market and which receive or have received governmental support from non-EU governments, in whatever form (grants, guarantees, fiscal advantages).

Since 12 July

Since 12 October

1. Investments in the EU

EC can examine on own-initiative several elements of investment projects, for instance when EU subsidiary sets up factories in EU which crowd out competitors.

- Contributions defined very broadly to includes grants, capital injections, loans, guarantees, debt forgiveness and preferential tax treatment.
- European Commission to look into any financial support given by other countries to companies up to 10 years before the investigation begins.

2. Deals

Companies must report to EC all financial contributions of more than €50 million in the last three years in case MA deal > €500 mln.

- All financial contributions received from outside the EU must be aggregated.
- Risks of fines or periodic penalty payments of up to 10% of the worldwide turnover in case of non compliance, e.g. if incorrect, incomplete, or misleading information is provided during the approval process.

3. Public Procurement

Bidders must report to contracting authoriy all financial contributions where the estimated contract value is at least €250 million and the bid involves a foreign financial contribution of at least €4 million per third country.

- Crucial for main companies often participating in public tenders to prepare themselves in advance to meet requirements of the EU-FSR.
- Same applies to contracting authorities, e.g. in their choice and design of procedure and timeframes.

! For companies too late when triggered: essential to start establishing foreign subsidy monitoring programs today !

High risk

A foreign financial contribution is most **likely to distort the internal market** where it falls under one of the following categories:

- a foreign financial contribution enabling companies to submit an unduly advantageous tender on the basis of which the companies could be awarded the relevant contract;
- a foreign financial contribution directly facilitating a concentration;
- a foreign financial contribution in the form of an unlimited guarantee for the debts or liabilities of the companies, namely without any limitation as to the amount or the duration of such guarantee;
- an export financing measure that is not in line with the OECD Arrangement on officially supported export credits;
- a foreign financial contribution granted to an ailing companies, namely companies which will likely go out of business in the short or medium term in the absence of any subsidy, unless there is a restructuring plan that is capable of leading to the long-term viability of that companies and that plan includes a significant own contribution by the companies.

EU-FSR & Tax

A financial contribution shall include, *inter alia*:

- the transfer of funds or liabilities, such as capital injections, grants, loans, loan guarantees, **fiscal incentives**, the setting off of operating losses, compensation for financial burdens imposed by public authorities, debt forgiveness, debt to equity swaps or rescheduling;
- **the foregoing of revenue that is otherwise due, such as tax exemptions** or the granting of special or exclusive rights without adequate remuneration; or
- the provision of goods or services or the purchase of goods or services.

EU-FSR & Tax

- Financial contribution definition is very broad
  - Advantages need to be reported already, selectivity is not relevant yet
  - Indirect tax contributions are also in-scope

EU-FSR & Tax

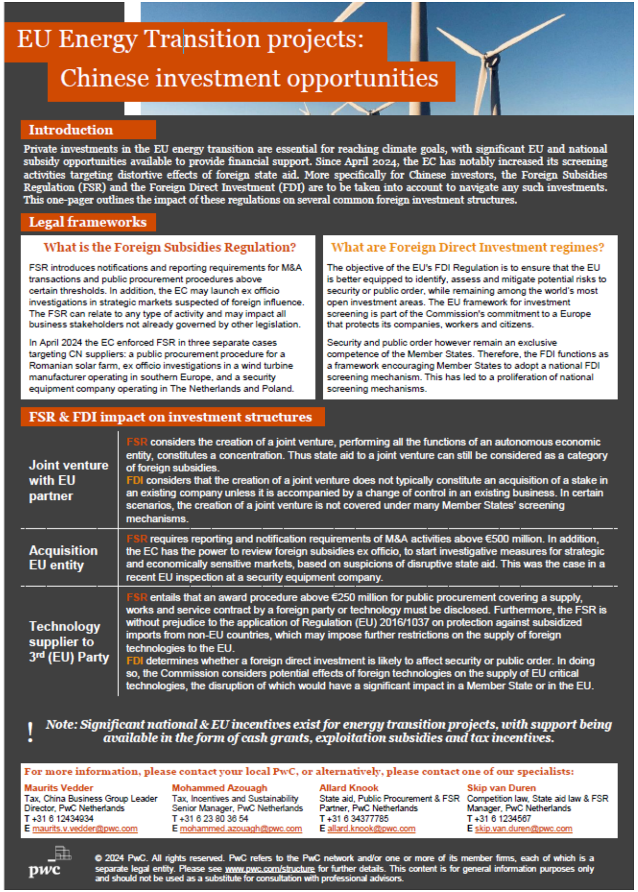
- US IRA provides primarily for tax credits and tax deductions
- EC was asked whether companies benefitting from the US IRA will be caught under the FSR. Answer?
- Objectives are not per se respected...

EU-FSR & Tax

- CN provides for a large number of sectoral and/or regional tax incentives
  - E.g., super deductions, reduced local taxes, special VAT treatment free trade zones
  - E.g., high-tech companies, BioMed companies, Aviation

- HK provides for similar incentives
  - E.g., Investment funds, Shipping companies, high-tech companies

- Again, objectives are not per se respected...



EU Energy Transition projects: Chinese investment opportunities

Introduction

Private investments in the EU energy transition are essential for reaching climate goals, with significant EU and national subsidy opportunities available to provide financial support. Since April 2024, the EC has notably increased its screening activities targeting distortive effects of foreign state aid. More specifically for Chinese investors, the Foreign Subsidies Regulation (FSR) and the Foreign Direct Investment (FDI) are to be taken into account to navigate any such investments. This one-pager outlines the impact of these regulations on several common foreign investment structures.

Legal frameworks

What is the Foreign Subsidies Regulation?

FSR introduces notifications and reporting requirements for M&A transactions and public procurement procedures above certain thresholds. In addition, the EC may launch ex officio investigations in strategic markets suspected of foreign influence. The FSR can relate to any type of activity and may impact all business stakeholders not already governed by other legislation.

In April 2024 the EC enforced FSR in three separate cases targeting CN suppliers: a public procurement procedure for a Romanian solar farm, ex officio investigations in a wind turbine manufacturer operating in southern Europe, and a security equipment company operating in The Netherlands and Poland.

What are Foreign Direct Investment regimes?

The objective of the EU's FDI Regulation is to ensure that the EU is better equipped to identify, assess and mitigate potential risks to security or public order, while remaining among the world's most open investment areas. The EU framework for investment screening is part of the Commission's commitment to a Europe that protects its companies, workers and citizens.

Security and public order however remain an exclusive competence of the Member States. Therefore, the FDI functions as a framework encouraging Member States to adopt a national FDI screening mechanism. This has led to a proliferation of national screening mechanisms.

FSR & FDI impact on investment structures

Joint venture with EU partner	FSR considers the creation of a joint venture, performing all the functions of an autonomous economic entity, constitutes a concentration. Thus state aid to a joint venture can still be considered as a category of foreign subsidies. FDI considers that the creation of a joint venture does not typically constitute an acquisition of a stake in an existing company unless it is accompanied by a change of control in an existing business. In certain scenarios, the creation of a joint venture is not covered under many Member States' screening mechanisms.
Acquisition EU entity	FSR requires reporting and notification requirements of M&A activities above €500 million. In addition, the EC has the power to review foreign subsidies ex officio, to start investigative measures for strategic and economically sensitive markets, based on suspicions of disruptive state aid. This was the case in a recent EU inspection at a security equipment company.
Technology supplier to 3rd (EU) Party	FSR entails that an award procedure above €250 million for public procurement covering a supply, works and service contract by a foreign party or technology must be disclosed. Furthermore, the FSR is without prejudice to the application of Regulation (EU) 2016/1037 on protection against subsidized imports from non-EU countries, which may impose further restrictions on the supply of foreign technologies to the EU. FDI determines whether a foreign direct investment is likely to affect security or public order. In doing so, the Commission considers potential effects of foreign technologies on the supply of EU critical technologies, the disruption of which would have a significant impact in a Member State or in the EU.

! *Note: Significant national & EU incentives exist for energy transition projects, with support being available in the form of cash grants, exploitation subsidies and tax incentives.*

For more information, please contact your local PwC, or alternatively, please contact one of our specialists:

Maurits Vedder
Tax, China Business Group Leader
Director, PwC Netherlands
T +31 6 12434934
E maurits.v.vedder@pwc.com

Mohammed Azouagh
Tax, Incentives and Sustainability
Senior Manager, PwC Netherlands
T +31 6 23 80 36 54
E mohammed.azouagh@pwc.com

Allard Knook
State aid, Public Procurement & FSR
Partner, PwC Netherlands
T +31 6 34377785
E allard.knook@pwc.com

Skip van Duren
Competition law, State aid law & FSR
Manager, PwC Netherlands
T +31 6 1234567
E skip.van.duren@pwc.com

pwc

© 2024 PwC. All rights reserved. PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details. This content is for general information purposes only and should not be used as a substitute for consultation with professional advisors.

EU-FSR & Tax

- Notification versus consequences

- State aid rules
  - Developments in case law: discretionary powers for (member) states?
  - Should we expect differences in application under the FSR?

Summary

1. Is there a foreign contribution?	2. Provided (in) directly by non EU country?	3. Selective and not on market terms	4. When triggered?	Remedy of distortion
• Interest-free loans • Unlimited guarantees • Capital injections • Preferential tax treatment • Tax credits • Grants • Foregone revenue	• Central or local government bodies, • Other foreign entities • Private entities whose actions can be attributed to a third country	• Is it selective - limited to specific companies, sectors or industries? • Certain forms of state aid high risk	• Ex officio, including below thresholds • M&A Deal above EUR 500 mln • Public Tender above EUR 250 mln • Too late when triggered. Start establishing foreign subsidy monitoring programs today	• Redressive measures or commitments • Prohibition of concentration or award of public procurement • In ex officio cases potentially, order to repay the subsidy! • Fines up to 10 procent of global turnover

03

When does EU-FSR compliance become relevant and what challenges does it bring?

Compliance

- Do not wait until a transaction, public procurement or investigation of the EU Commission triggers a notification.
- Are EU activities and non-EU governmental contributions in-scope?
- Evaluate the likelihood to engage in **notifiable transactions**, and if so prepare well in advance.
- Detailed information requirements are set out in the Implementing Regulation and the forms **FormCO** (for M&A transactions) and **FormPP** (for procurement procedures). Both forms have an **Annex I**, which provides further details for the preparation of the global grant status.
- Focus on **foreign financial contributions**. The term is broader than the term 'subsidy.'
- A **look-back period** across the corporate group, and potentially more widely, for at least three years and longer in some cases.

Challenges

Education

- How do I navigate the interaction and potential synergies between FSR reporting and Pillar Two, ESG and wider finance and tax reporting?

Evaluation and identification

- How can I evaluate potential types of ‘financial contributions’ and whether we exceed thresholds or exclusions apply?

Data readiness

- What data do I need for FSR reporting?

Analysis and negotiation

- How do I analyse whether financial contributions are distorting subsidies?
- What approach do I take with the European Commission Services?

Compliance and reporting

- How can I report detailed data looking back three years with a large number of ‘financial contributions’?
- How can I compile this amount of data and it may be difficult in a short time frame, e.g., in the middle of a time-sensitive bid?

EU-FSR and Tax

- Collecting the relevant data by businesses

- Disproportionate administrative burden?
  - No general exemption for generic tax measures: these also need to be reported
  - Annex I to the Commission Implementing Regulation provides for very specific exemptions (limitative list), but with powers to the EC to review

04 Unveiling the impact of EU-FSR compliance in practice

Case study

EU-FSR data gathering for major global corporation

Project and challenges

- A major global corporation had difficulty understanding and implementing the EU-FSR in its daily operations worldwide.
- PwC was asked to guide the process of determining which government support received by the corporation worldwide falls within the scope of the EU-FSR.
- In particular, the diverse and open-to-interpretation definition of a ‘foreign financial contribution’ under the EU-FSR posed a risk to properly tracking the received contributions worldwide and complying with the EU-FSR notification and reporting obligations.

Services provided

- High-level assessment of the risks faced in case of non-EU-FSR compliance.
- Preparation of a guide for identifying financial contributions that should be regarded as ‘foreign financial contributions’ under the EU-FSR, including examples and high-level key points tailored to the corporation’s business operations worldwide.
- Participation in weekly working sessions with the corporation to provide assistance on strategy discussions for implementing the EU-FSR.
- Providing multiple workshops to further elaborate on the explanatory and to ensure its practical applicability.

Benefits created

- Providing a practical framework on the basis of which the corporation can ensure its compliance worldwide with the EU-FSR notification and reporting obligations.
- Providing assistance and guidance when needed for a correct understanding of the EU-FSR.

How can you prepare?

Early EU-FSR impact assesment

Identify risks based on your existing structure and plans

Gather necessary historical data

Design governance & oversight

Design your compliance & reporting function (connected tax compliance)

Required competences FSR

EU-FSR & EU State Aid expertise

Tax expertise

Global incentives/financial data services

Project management and tech expertise

Key takeaways

Impact: EU legislation focused on outward protection of internal market with immense global effect.

Implementation: broad definition foreign financial contribution may result in significant complicance burden.

Start now to collect, report and maintain key data at all national and local levels.

Questions

- **Questions?** Please contact your PwC advisor or let us know in the evaluation of this webcast.
- View this webcast or presentation at a later stage
- Stay up to date: register for our PwC Tax Newsletter on pwc.nl
- ‘State of Tax’ webcast series continues on pwc.nl/evenementen
- Please fill in the evaluation form

Evaluation

- How would you rate this webinar on a scale from 1 to 10?
- The content was relevant. (Totally agree/Agree/Neutral/ Disagree/Totally agree)
- Do you have any suggestions and/or comments?
- Do you have specific questions and would you like us to contact you?

Contact

Edwin Visser
Dep. Global Tax Policy Leader

T +31 887923611
E edwin.visser@pwc.com

Recep Bagci
Specialist International Tax

T +31 6 57 45 65 81
E recep.bagci@pwc.com

Marc Hogenhuis
Specialist Grants and Incentives

T +31 6 81 36 28 48
E marc.hogenhuis@pwc.com

Pelin Gurler
Specialist FSR

T +31 6 42 44 86 03
E pelin.gurler@pwc.com
-

Thank you!

© 2023 PwC. All rights reserved. Not for further distribution without the permission of PwC. "PwC" refers to the network of member firms of PricewaterhouseCoopers International Limited (PwCIL), or, as the context requires, individual member firms of the PwC network. Each member firm is a separate legal entity and does not act as agent of PwCIL or any other member firm. PwCIL does not provide any services to clients. PwCIL is not responsible or liable for the acts or omissions of any of its member firms nor can it control the exercise of their professional judgment or bind them in any way. No member firm is responsible or liable for the acts or omissions of any other member firm nor can it control the exercise of another member firm's professional judgment or bind another member firm or PwCIL in any way.