

Public consultation on the Foreign Subsidies Regulation (FSR)

The Confederation of Swedish Enterprise welcomes the Commission's review of the Foreign Subsidies Regulation (FSR).

We are generally positive towards the Regulation and continue to believe that it serves an important function in promoting more equal conditions for competition.

However, it has become clear that the Commission has significantly underestimated both the number of companies affected by the Regulation's mandatory notification requirements and the extent of the administrative burden imposed by the reporting obligations.

We therefore believe that a thorough reassessment of the Regulation's design is needed, with the aim of substantially reducing the administrative burden and creating a provision that is more proportionate and better targeted.

We therefore propose the following amendments to the Regulation. To begin with, we present two proposals for how the Regulation could be fundamentally revised in order to create a more proportionate model. These are followed by alternative options that would not require such extensive changes but could still lead to significant improvements compared to the current situation:

1. **Remove entirely the requirements for prior notification of concentrations and public procurement.** The provision would instead be fully focused on the Commission's ex officio investigations.
2. **Amend the requirements for mandatory notifications so that it is foreign subsidies, rather than foreign financial contributions, that must be reported.** This would massively reduce the reporting burden and ensure that the scrutiny is focused on the potentially more problematic situations.
3. **The current turnover thresholds should be increased.** Articles 49–50 empower the

Commission to adopt delegated acts to raise the thresholds by up to 20 per cent. This should be done without delay, while a further increase in the thresholds should be considered in the longer term, unless other far-reaching changes are made to reduce the scope of the Regulation. Also, the thresholds for when suppliers and subcontractors must be included in the reporting should be raised.

4. **Remove the requirement to list all received foreign financial contributions when submitting a declaration in accordance with Article 29,** to achieve a genuine reduction in the administrative burden in cases falling below the relevant threshold values.
5. **Use annual accounts in the reporting.** Allow companies to be exempt from the requirement to trace and report foreign financial contributions up to the exact moment of notification but instead rely on their latest annual accounts. This would streamline compliance and align with existing practices under merger control.

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6. Exclude from the scope of the regulation foreign financial contributions that are currently exempted from reporting in the implementing regulation, Table 1B:

- a. Deferrals of payment of taxes or of social security contributions, tax amnesties and tax holidays as well as normal depreciation and loss-carry forward rules that are of general application.
- b. Application of tax reliefs for avoidance of double taxation.
- c. Provision/purchase of goods/services (except financial services) at market terms in the ordinary course of business, for example the provision/purchase of goods or services carried out following a competitive, transparent and non-discriminatory tender procedure.
- d. Foreign financial contributions below the individual amount of EUR 1 million.

7. Exclude the EEA countries from the scope of application, as they have a state aid regime equivalent to that of the EU Member States.

About the consultation

The FSR enables the Commission to address distortions in the internal market caused by foreign subsidies. It became applicable on 13 July 2023. Under Article 52(2) FSR, by 14 July 2026 and every three years thereafter, the Commission is required to review its practice of implementing and enforcing the FSR.

The Commission will therefore draft a review report on the implementation and enforcement of the FSR, in particular with regard to: (i) the determination of distortions in the internal market under Article 4 FSR; (ii) the categorisation of foreign subsidies most likely to distort the internal market under Article 5 FSR; (iii) the application of the balancing test under Article 6 FSR; (iv) the enforcement of the ex officio review of foreign subsidies under Article 9 FSR; (v) the notification thresholds for concentrations and for public procurement procedures, under Article 20 FSR and Article 28(1) and (2) FSR, respectively.

Depending on the findings of the report, legislative proposals may accompany the report, with the

possibility of including, among other things, amendments to notification thresholds (Articles 20 and 28 FSR) or amendments to timelines for review and in-depth investigations phases (Articles 25 and 30 FSR).

Our general view of the FSR

We are broadly supportive of having a regulatory framework that creates more equal conditions for companies operating in the internal market with regard to the rules governing the receipt of subsidies. The EU's state aid rules limit support from Member States, and it is therefore reasonable that subsidies from third countries to companies operating in the internal market are also subject to regulation. However, the rules must be proportionate, non-discriminatory and legally secure, should not unduly hinder foreign investment within the EU, and should not lead to increased administrative costs beyond what is necessary.

The scope of the FSR is too broad

In the Commission's impact assessment for the FSR, it was estimated that the number of annual notifications would amount to between 60 and 70; 30 for concentrations and 36 for public procurement cases. This has proven to be a significant misjudgement, as notifications particularly in procurement cases have been many times higher.

The obligation to notify concentrations and public procurement procedures falling under the FSR has applied since 12 October 2023. This means the notification requirement has been in force for just over two years.

The Confederation of Swedish Enterprise does not have access to up-to-date statistics, but on 15 September, a member of the Commission's Legal Service stated the following during a meeting we attended:

- that the number of notifications in concentration cases is 180,
- in procurement cases 473, and in addition,
- 2794 declarations have been submitted in procurement cases.

This means that the average annual number of notifications in

- **concentration cases is just over 90 – three times higher than initially predicted – and**
- **237 in public procurement cases, which is more than six times the original estimate.**

- **If declarations are also included**, in which financial contributions must likewise be listed, the number of cases in public procurement is **45 times higher than anticipated**.¹

It should also be noted that the number of notifications has increased over time, which means that the current figures are an understatement and that the volume of cases can be expected to continue rising in the coming years.

The large number of cases has resulted in a significantly greater administrative burden for companies than initially expected. It also means that the **Commission has had to allocate considerably more resources** than anticipated to handle all the mandatory notifications. These resources have been insufficient and appear to remain limited. Therefore, **the ability to conduct ex officio investigations** — based on, for example, complaints or information gathered independently — is being compromised, despite this being arguably the most targeted and effective method for identifying foreign subsidies that genuinely distort competition in the internal market.

It is, of course, reasonable that the number of cases notified is significantly higher than the number of cases deemed sufficiently problematic for the Commission to open an in-depth investigation. This is also the case under the **traditional merger control regime**, which serves as a useful comparison. Between 2022 and 2024, the Commission received an average of 370 merger notifications per year. These led to just over 11 in-depth investigations annually on average, which corresponds to slightly more than 3 percent of all notifications.

This can be compared with the Foreign Subsidies Regulation (FSR), under which the Commission has so far, as far as is known, opened in-depth investigations in connection with five notifications—two related to mergers and three to public procurement.

Looking solely at mergers, the proportion of cases that have led to an in-depth investigation is therefore just over one percent, which is significantly lower than under the traditional merger control regime.

As for public procurement, only 0.6 percent of full notifications have led to an in-depth investigation. If one also considers the large number of declarations submitted, only 0.09 percent of those have resulted in an in-depth investigation.

It is therefore evident, even when compared with the standard merger control rules, that the scope of

application of the Foreign Subsidies Regulation is too broad.

Main Proposed Measures for a More Proportionate Regulation

The Confederation of Swedish Enterprise proposes that the Commission examine a revision of the regulation, based on the experiences gained over the past years, with the aim of significantly reducing the administrative burden. We see two main ways in which a substantial improvement in this regard could be achieved.

1. Remove entirely the requirements for prior notification of concentrations and public procurement. The provision would instead be fully focused on the Commission's ex officio investigations. The resources that would be freed up could enable the Commission to become significantly more active in its ex officio oversight, allowing sufficient capacity to effectively address even large companies and corporate groups, as well as other more complex cases where the potential impact on competition is greatest.

One option could be to retain the notification requirement for major concentrations by incorporating it into the general competition law assessment of a concentration. This would allow for a more streamlined procedure, with the same team within DG COMP handling the case in a coordinated manner.

It is evident that the notification requirement in public procurement is what has caused the greatest administrative burden, and it also brings the most disadvantages in terms of prolonged procedures and uncertainty for contracting authorities and entities. Therefore, it is particularly urgent to abolish this requirement.

2. Amend the requirements for mandatory notifications so that it is foreign subsidies, rather than foreign financial contributions, that must be reported.

Under the EU state aid rules, there is also a notification requirement, but it applies only to measures that qualify

¹ It is not unreasonable to also include declarations in the compilation, as such companies also have been hit by administrative burden, as they have been required to familiarise themselves with the regulation and gather information on foreign financial contributions before determining whether a

declaration or a notification is necessary, and subsequently list the financial contributions in accordance with the instructions set out in the implementing regulation.

as state aid — that is, those that confer a selective advantage to the recipient. Equivalent rules could be applied under the FSR, meaning that only foreign subsidies should be collected and reported, rather than, as is currently the case in practice, all economic interactions with public entities in third countries. Companies would then need to assess whether the economic interaction they have with public entities in third countries confers such a selective advantage that it constitutes a subsidy. However, this type of self-assessment is not new; companies regularly carry it out in relation to both competition and state aid rules.

This would massively reduce the reporting burden and ensure that the scrutiny is focused on the potentially more problematic situations.

Additional Measures for a More Proportionate Regulation

In addition to this, or as an alternative, there are several measures that could make the regulation less burdensome and more streamlined.

3. The current turnover thresholds should be increased. Articles 49–50 empower the Commission to adopt delegated acts to raise the thresholds by up to 20 per cent. This should be done without delay, while a further increase in the thresholds should be considered in the longer term, unless other far-reaching changes are made to reduce the scope of the Regulation. Also raise the thresholds for when suppliers and subcontractors must be included in the reporting.

4. Remove the requirement to list all received foreign financial contributions when submitting a declaration in accordance with article 29.

The very purpose of using threshold values — in this case, in relation to the number of financial contributions received from a single third country — is to limit the scope of the regulation and focus on cases where there is a greater risk of substantial subsidies. It is therefore unfortunate that even operators who do not exceed this threshold in public procurement are still required to apply the rules, albeit in the form of a declaration rather than a full notification.

However, a declaration must also be preceded by extensive work, including interpretation of the

regulation and the collection of data across the company or group regarding the financial contributions received.

It would therefore be appropriate for this threshold to be applied in such a way that declarations do not need to include a list of received financial contributions.

5. Use annual accounts in the reporting. In merger control, companies are generally required to submit financial data from their most recent audited annual accounts to determine whether a transaction meets the notification thresholds. This approach is both practical and predictable, as it relies on standardised, readily available information. It avoids the need to compile turnover figures up to the specific date of the transaction, which would require additional internal coordination, accounting adjustments, and potentially unaudited interim data.

From a business perspective, applying the same principle under the FSR would significantly reduce the administrative burden. Companies would not need to trace and report foreign financial contributions up to the exact moment of notification but could instead rely on their latest annual accounts. This would streamline compliance and align with existing practices under merger control.

Importantly, if the Commission deems it necessary, it retains the ability to request supplementary information covering the period from the last annual accounts up to the specific moment of the transaction, through a formal request for information. This ensures that the Commission can still obtain a complete picture when needed, without imposing a blanket requirement that all companies must prepare and submit such data upfront.

6. Exclude from the scope of the regulation foreign financial contributions that are currently exempted from reporting in the implementing regulation, Table 1B:

- a) Deferrals of payment of taxes or of social security contributions, tax amnesties and tax holidays as well as normal depreciation and loss-carry forward rules that are of general application.
- b) Application of tax reliefs for avoidance of double taxation.
- c) Provision/purchase of goods/services (except financial services) at market terms in the ordinary course of business, for example

the provision/purchase of goods or services carried out following a competitive, transparent and non-discriminatory tender procedure.

- d) Foreign financial contributions below the individual amount of EUR 1 million.

7. Exclude the EEA countries from the scope of application, as they have a state aid regime equivalent to that of the EU Member States. There are therefore objective grounds for treating EEA countries differently, and this should not constitute discrimination in breach of WTO rules. This would reduce the administrative burden for many companies, as it is very common for EU-based businesses to also operate in EEA countries. This is particularly true for Swedish companies. Norway is for instance Sweden’s second largest export market after Germany.

Final comments

It is clear that the new rules on foreign subsidies serve an important purpose and, in principle, represent a reasonable addition to the EU’s regulatory framework aimed at ensuring a level playing field for companies operating in the internal market.

However, it is equally clear — based on the experience so far — that the regulation has not been designed in an optimal way. The significant regulatory burden imposed on companies is disproportionate to the actual enforcement actions taken against suspected or confirmed foreign subsidies.

Moreover, given the Commission’s considerable efforts in several areas to reduce administrative burdens, such as through various omnibus initiatives, it would be

highly inconsistent not to apply the same ambition to this regulation.

The Confederation of Swedish Enterprise looks forward to reviewing the Commission’s proposals for legislative amendments, so that the regulation can become as targeted and proportionate as it ought to have been from the outset.

For more information, please contact:		CONFEDERATION OF SWEDISH ENTERPRISE brings together 60,000 companies and 49 industry and employer organisations. We produce concrete proposals for measures and reforms that improve the business climate. We provide knowledge and inform opinion. We are true to our name: we are the voice of Swedish enterprise.
Stefan Sagebro Director Industrial Policy, Competition and State Aid Law stefan.sagebro@svensktnaringsliv.se +46 8 553 43 101	Charlotte Andersdotter International Director, Head of EU-Office charlotte.andersdotter@swedishenterprise.se + 32 472 50 46 75	
Göran Grén Director, Head of Business Policy and Law Division goran.gren@svensktnaringsliv.se +46 8 553 43 131	Tuomas Nousiainen Director, Senior Policy Advisor on EU Affairs tuomas.nousiainen@swedishenterprise.se +32 487 11 72 71	