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## ELP Update: EU's Foreign Subsidies Regulation

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### Introduction: FSR now in force

The European Union's (EU) [Foreign Subsidies Regulation \(FSR\)](#), whose main objective is to address distortions caused in the EU's domestic market due to foreign subsidies granted by non-EU countries, entered into force on January 12, 2023.

### To whom does the FSR apply?

The FSR is applicable to entities including foreign entities engaging in economic activities in the EU and receiving foreign subsidies from non-EU countries. Such entities are susceptible to redressive measures if the foreign subsidies received by them are found to cause distortions in the EU market.

### Who would investigate foreign subsidies?

The European Commission (EC) has been conferred with the jurisdiction under the FSR to undertake an investigation of distorting foreign subsidies. More specifically, the EC is empowered to investigate the following key issues in relation to foreign subsidies:

- Has the concerned entity operating in the EU been granted foreign subsidies by a non-EU country?
- Have such foreign subsidies distorted the competition in the EU internal market?
- Can the distortion resulting from these foreign subsidies be counterbalanced by any positive effects?

Additionally, entities engaging in concentrations (mergers & acquisitions) and public procurement<sup>1</sup> are required to mandatorily notify foreign subsidies received from non-EU countries in the last three years if they meet certain prescribed thresholds (in terms of turnover and foreign financial contribution). Even if such thresholds are not met in a given case, the EC has been conferred with powers to require the notification of foreign subsidies received on a case-to-case basis. Upon receiving such notifications, the EC has been conferred with the jurisdiction to *ex ante* investigate said foreign subsidies for the existence of distorting foreign subsidies.

### What redressive measures are available to the EC to counter distorting foreign subsidies?

Upon finding that distorting foreign subsidies indeed exist, certain redressive measures can be imposed by the EC, unless any commitments offered by the entity in question are accepted by the EC. Such measures/commitments, *inter alia*, include:

- Reducing market presence, including by means of a temporary restriction on commercial activity;
- Refraining from certain investments;
- Publication of results of research and development;
- Divestment of certain assets;
- Dissolution of M&A concerned;
- Repayment of the foreign subsidy, including an appropriate interest rate; and
- Blocking M&A deals/awards.

Additionally, fines or periodic penalty payments may be imposed if the entity intentionally or negligently provides incomplete, incorrect, or misleading information, etc, or doesn't comply with the decisions of the EC.

### When will the FSR be applicable?

The EC is expected to publish an implementing regulation that will set forth the form, content, and procedural details of mandatory notifications, and other procedures relevant to conducting the investigations by the EC. However, the FSR has provided time until July 12, 2023, to adopt the said regulation. The *ex ante* mandatory notification requirements are set to apply from October 12, 2023. Additionally, the FSR is also required to publish guidelines (as early as January 12, 2026) on the application of the criteria for determining distortion and balancing tests among others.

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<sup>1</sup> "This Regulation does not address access by third-country economic operators to the Union procurement market" – see point 45 of the FSR

## WHAT CAN INDIAN COMPANIES DO?



Until the implementing regulation is issued and greater clarity on the application of the FSR is provided, Indian entities engaging in economic activities in the EU (especially with a legal presence within the EU) may consider assessing whether their operations are in any manner susceptible to the FSR and the redressive measures thereto. A starting point for such an assessment would entail answering (*inter alia*) the following questions:

- Has the company received or is expected to receive financial assistance from the government or entity owned or controlled by the government?
- Has the company received or is expected to receive any assistance/benefit under any of the programs maintained by the government?
- Does the company have a subsidiary or a parent company or a related party in the EU? Does the company anticipate financing or providing any goods or services to its parent company or subsidiary or its related party in the EU?
- Has the company merged with, or acquired a company within the EU?
- Does the company anticipate merging with or acquiring a company within the EU?
- Does the company export to a manufacturer in the EU?
- Does the company anticipate providing goods or services to a company within the EU?
- Does the company anticipate investing in a company in the EU?

ELP will be closely following the developments in order to assess the FSR from a legal, and compliance perspective. Subsequent updates will cover the above questions and other nuances of the FSR more elaborately.

*We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at [insights@elp-in.com](mailto:insights@elp-in.com) or write to our authors:*

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