

CELIS Institute

CFIS 24 Background Paper on Panel

Foreign Subsidies Regulation

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The purpose of this Paper is to set the scene and provide the state of play and background information to the participants in Panel 8.

The FSR was adopted to address the perceived regulatory shortfall – what were the reasons to introduce the FSR and was it necessary?

The FSR is perceived as the most powerful tool in the EC's arsenal, while at the same time called "administrative nightmare" – what are the challenges in implementation of the FSR and what are the solutions?

The costs, both economic and political, of the FSR's adoption – what is the impact on the EU market and what are the broader implications for business operations?

The FSR's focus on China – is it actually a regulatory weapon, and if so, is it a broad, scattergun approach, or a finely targeted instrument?

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Table of Contents

- A. Introduction 2**
- B. Reasons for adopting the FSR 3**
- C. Mechanisms introduced by the FSR and its scope 5**
- D. Key issues related to the FSR 7**
 - I. Implementation Challenges7
 - II. Impact on the EU market and implications for business11
 - III. The FSR’s focus on China.....13
- E. Conclusion..... 17**
- F. References 19**

A. Introduction

The European Union’s Foreign Subsidies Regulation (the “**FSR**”)² entered into force on January 12, 2023, creating a new legal instrument aimed at combating distortions of competition in the EU internal market caused by foreign subsidies. The FSR has been fully applicable since October 12, 2023, meaning that during CFIS 24 the FSR will be discussed almost exactly on the first anniversary of its full operation. This could serve as a good starting point for opening the discussion and consider how far the FSR itself can be assessed after this one year, how well it meets its objectives, where challenges in its implementation arise, and finally where controversies around the FSR arise.

² Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, OJ L 330, 23.12.2022.



B. Reasons for adopting the FSR

For many years, the control system of any state aid or other subsidies relied on interventions by EU Member States³. This has proved to be inadequate in a world of increasing globalization and a changing European economy and left the European Commission (the “EC”) without effective tools to address subsidies provided by non-EU governments. In particular, the subsidies granted by Chinese government, who “increasingly globalized their use of subsidies”⁴, have become a growing source of concern in the EU. Clearly, not in every case a foreign subsidy creates a situation that requires control or restrictions, but for example such aid could enable recipients to offer higher bids in mergers and acquisitions or lower bids in public tenders⁵. Consequently, in the opinion of the EC, this created unfair advantages for certain companies, disrupting the single market, which is a fundamental principle of the European Union. To address this perceived regulatory shortfall⁶ and maintain a dynamic and competitive market, the FSR has been introduced. As underlined by Margrethe Vestager “*the role of the Foreign Subsidies Regulation is therefore to ensure fairness across the board: fairness vis-à-vis foreign subsidies, in a legal system consistent with the rule that we impose on ourselves under the State*

³ Hornkohl, L. (2023). The EU Foreign Subsidy Regulation: Why, What and How? In: Hillebrand Pohl, J., Papadopoulos, T., Wiesenthal, J., Warchol, J. (eds) *Weaponising Investments*. Springer Studies in Law & Geoeconomics, vol 2. Springer, Cham. https://doi.org/10.1007/17280_2023_15.

⁴ Crochet V., Hegde V., China’s ‘Going Global’ Policy: Transnational Production Subsidies under the WTO SCM Agreement, 23 *Journal of International Economic Law*, Oxford University Press, vol. 23(4), pages 841-863 (2020).

⁵ Krenek, F., De Smijter, E. (2021). From a White Paper to a Proposal for a Regulation on Foreign Subsidies: Filling a Regulatory Gap in Protecting the EU Internal Market. In: Chi, M., Bungenberg, M., Bjorklund, A.K. (eds) *Asian Yearbook of International Economic Law 2022*. Asian Yearbook of International Economic Law, vol 2022. Springer, Cham. https://doi.org/10.1007/16517_2021_3.

⁶ Ritzek-Seidl S., *The Regulation on Foreign Subsidies Distorting the Internal Market – Outline of the Provisional Agreement*, available at: https://web.archive.org/web/20221103095408id_/https://www.nomos-elibrary.de/10.5771/1435-439X-2022-3-423.pdf, access on June 6, 2024. See also, Olthoff M., van den Berg P., Erne S., Goyder J., Symann M., Sickinger C., *The EU Commission seeks feedback on its draft Implementing Regulation for the FSR*, 6 February 2023, e-Competitions February 2023, Art. N° 110973, available at: <https://www.concurrences.com/en/bulletin/news-issues/february-2023/the-eu-commission-puts-out-for-consultation-a-draft-implementing-regulation-on>, access on June 6, 2024.



aid rules. Fairness is also imbedded in the new rules, in the form of a constructive balancing test that will secure duly justified subsidies”⁷.

Interestingly, but not at all surprisingly, not only EU legislators were concerned about foreign subsidies. While the US government historically overlooked foreign (mainly Chinese) subsidies, recent initiatives aim to address this issue through WTO actions and policy revisions⁸. The EU’s adoption of the FSR, parallels the US Inflation Reduction Act (the “**IRA**”), signed by President Biden in 2022. Also, at the end of 2022, President Biden signed legislation including amendments to the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (the “**HSR Act**” and the “**HSR Amendments**”, respectively), mandating the US Federal Trade Commission (the “**FTC**”) to formulate a rule necessitating disclosures under the HSR Act to include information on subsidies received from certain foreign governments or entities identified as “foreign entities of concern” in the US Infrastructure and Jobs Act⁹. Upon signing the law, the White House clarified that these subsidy disclosures would aid the Department of Justice (DOJ) and the FTC in averting anticompetitive transactions that could grant adversaries influence over vital sectors of the economy¹⁰. The FTC proposed the rule on June 27, 2023, and focused on disclosure of “foreign subsidies” from jurisdictions identified as “foreign entities of concern”, such as

⁷ Keynote delivered by EVP Vestager for the Concurrences Conference on the Foreign Subsidies Regulation, Brussels, 6 March 2023, available at: <https://ec.europa.eu/newsroom/comp/items/780065>, access June 6, 2024.

⁸ Brenneman David R., Di Lauro Maria Luisa, Robins Harry, The US President Biden signs into law the 2023 spending bill which includes dramatically increasing funding for antitrust enforcers, and modernizing merger filing fees, 29 December 2022, e-Competitions December 2022, Art. N° 110556, available at: <https://www.concurrences.com/en/bulletin/news-issues/december-2022-4460/the-us-president-biden-signs-into-law-the-2023-spending-bill-which-includes>, access on June 6, 2024.

⁹ Fishkin James A., Ang Beverly J., The US Congress enacts significant changes to Hart-Scott-Rodino Act in terms of filing fees and disclosure requirements, 23 December 2022, e-Competitions December 2022, Art. N° 110498, available at: <https://www.concurrences.com/en/bulletin/news-issues/december-2022-4460/the-us-president-biden-signs-into-law-the-2023-spending-bill-which-includes>, access on June 6, 2024.

¹⁰ Blockx J., Mattiolo P., 'The Foreign Subsidies Regulation: Calling Foul While Upping the Ante?', (2023), 28, European Foreign Affairs Review, Issue SI, pp. 53-74, available at: <https://kluwerlawonline.com/JournalArticle/European+Foreign+Affairs+Review/28.Special/EERR2023014>, access on June 6, 2024.



China, Russia, North Korea, and Iran¹¹. However, these changes in the US law, despite some similarities to the changes introduced by the FSR at the EU level, do not justify the conclusion that US and EU policies are converging. The EU enacts legal changes and notification obligations under the FSR, while the US still mostly addresses state aid and foreign subsidies more politically and economically. The contrasting approaches between the EU and the US reflect differing philosophies and distinct legal, economic, and political cultures shaping regulatory strategies¹². Such discussions on the differences in the US and its approach towards foreign investors and foreign subsidies hold broader political relevance, especially with the US presidential elections occurring shortly after CFIS24.

C. Mechanisms introduced by the FSR and its scope

It is relatively easy to come across claims that the FSR introduced “far reaching tools”¹³. Probably the interpretation of such a statement and the debate on it will be an interesting part of the panel at CFIS 24, but it is worth to include in this Paper a succinct summary on what the FSR defines, along with an outline of potential challenges it may pose.

In a nutshell, the FSR imposes mandatory notification and approval requirements for acquisitions of significant EU businesses and large EU public tenders, while also granting the EC

¹¹ Norton Rose Fulbright, Foreign subsidy scrutiny in merger review: The EU and US on parallel tracks?, July 2023, available at: <https://www.nortonrosefulbright.com/en/knowledge/publications/62d79c50/foreign-subsidies-in-merger-review-the-eu-and-us-on-parallel-tracks>, access on June 6, 2024.

¹² Backer J., Euractiv’s Advocacy Lab, Streamlining Foreign Subsidies Regulation needed to accelerate EU investment, published on March 15, 2024, available at: <https://www.euractiv.com/section/economy-jobs/news/streamlining-foreign-subsidies-regulation-needed-to-accelerate-eu-investment/>, access on June 6, 2024.

¹³ Stibbe, The Foreign Subsidies Regulation – beware and get your data ready!, July 5, 2023, available at: <https://www.stibbe.com/publications-and-insights/the-foreign-subsidies-regulation-beware-and-get-your-data-ready>, access on June 6, 2024.



extensive powers to launch *ex officio* investigations. Basically, the FSR establishes three procedures:

1. A notification-based procedure to investigate concentrations involving financial contributions from non-EU governments, applicable when the acquired company, one of the merging parties, or the joint venture has an EU turnover of at least €500 million and the parties have received foreign financial contributions exceeding €50 million in the past three years.
2. A notification-based procedure to investigate bids in public procurement processes involving financial contributions from non-EU governments, applicable when 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 in the past three years.
3. An *ex officio* procedure to investigate other market situations, allowing the EC to initiate a review on its own initiative.¹⁴

If the EC, after a thorough investigation, determines that a foreign subsidy exists and is causing market distortion, it will weigh the negative impacts of the subsidy against its positive effects. This evaluation will guide the EC in deciding on appropriate corrective measures or in accepting commitments. Regarding these corrective measures and commitments, the FSR provides a non-exhaustive list of potential remedies, both structural and non-structural. These may include actions like divesting certain assets or granting access to infrastructure. For notified transactions, if the parties involved do not propose an effective remedy to eliminate the

¹⁴ European Commission, The Foreign Subsidies Regulation in a nutshell, available at: https://competition-policy.ec.europa.eu/foreign-subsidies-regulation/about_en, access on June 6, 2024.



distortion, the EC has the authority to prohibit the merger or prevent the awarding of a public procurement contract to the subsidized bidder.

D. Key issues related to the FSR

The FSR has been fully applicable for almost a year now, and it has become a significant topic of discussion among industry professionals and policymakers. Three key areas have emerged as focal points: (a) challenges in implementation of the FSR, (b) impact on the EU market and implications for business, and (c) the FSR’s focus on China. These areas will be thoroughly discussed during CFIS 24, along with other relevant topics that are crucial to understanding and navigating the implications of the FSR in today’s global economic landscape.

I. Implementation Challenges

The implementation of the FSR has presented several challenges, stirring up significant emotions and debates, particularly regarding the *ex officio* procedure, i.e. the fact that the EC can start “own initiative” investigations into companies trading in the EU market, demanding detailed information from businesses and potentially ordering divestment. It’s this tool that has attracted the most attention due to its wide-reaching implications and versatility in achieving various regulatory goals. There is also an ongoing discussion about whether the FSR is the most powerful tool in the EC’s arsenal. According to the EC, the *ex officio* tool has not been designed to cast a wide net, but to focus on the most important and large activities involving foreign subsidies¹⁵.

¹⁵ Stibbe, The Foreign Subsidies Regulation – beware and get your data ready!, July 5, 2023, available at: <https://www.stibbe.com/publications-and-insights/the-foreign-subsidies-regulation-beware-and-get-your-data-ready>, access on June 6, 2024.



The FSR's quite far-reaching scope includes internal restructuring exercises, wide-ranging incentives from non-EU governments, and a look-back period for funding across corporate groups. In addition, the FSR covers various forms of financial assistance, making the identification and quantification of these contributions complex, especially for companies operating across multiple jurisdictions and sectors.

From a business perspective, compliance challenges are significant¹⁶. For example, in M&A deals, companies must now address foreign subsidies received during the legal due diligence process to set appropriate steps and timelines. Public procurement is another area of concern, with potential delays in contract awards that could harm public interest and lead to discriminatory practices against bidders known to have received foreign subsidies¹⁷. Companies may need to carefully manage the amounts of foreign subsidies received and possibly reconsider certain subsidies deemed distortive.

Key challenges in implementing the FSR for governments and businesses include maintaining consistent enforcement across the EU, balancing regulatory objectives with attracting foreign investments, and ensuring timely decision-making processes. Solutions and best practices are emerging, with some member states like the Netherlands publishing specific guidance on FSR applications and notifications, though this guidance is not universally available¹⁸. The EC has

¹⁶ CT Corporation Staff, How the EU Foreign Subsidies Regulation affects companies operating in the single market, published on February 22, 2023, available at: <https://www.wolterskluwer.com/en/expert-insights/how-the-eu-foreign-subsidies-regulation-affects-companies-operating-in-the-single-market>, access on June 6, 2024.

¹⁷ A&O Sherman, The EU Foreign Subsidies Regulation, Impact on public procurement procedures, published on April 12, 2023, available at: <https://www.aoshearman.com/en/insights/the-eu-foreign-subsidies-regulation>, access on June 6, 2024.

¹⁸ Ministerie van Economische Zaken en Klimaat, Handreiking Toepassing Instrument voor Internationale Overheidsopdrachten en Verordening buitenlandse subsidies, available at: https://www.pianoo.nl/sites/default/files/media/documents/2024-01/handreiking_iio_instrument_en_verordening_buitenlandse_subsidies_jan2024.pdf, please see also Stibbe, The honeymoon phase of the Foreign Subsidies Regulation is over!, March



also adopted an Implementing Regulation (IR) that clarifies procedural steps and provides standard forms for companies to use in the context of concentrations and public procurement¹⁹. There is nothing unusual in the fact that both the EC and the national authorities from the Member States publish guidance separately, but to a certain extent it illustrates that the issue of implementation and enforcement of the FSR, among other things, is more of a question for a political discussion concerning the weighing of interests and their prioritization by the Member States and the EC.

The enforcement of the FSR is exclusively the responsibility of the European Commission, with the Directorate-General for Competition (DG COMP) handling concentrations and initiating *ex officio* procedures, and the Directorate-General for Internal Market, Industry, Entrepreneurship, and SMEs (DG GROW) managing public procurement procedures. Coordination between these directorates is essential, particularly given the unexpected volume of cases and the tight timeframes for gathering the necessary data. As businesses and regulatory bodies navigate these challenges, the ongoing dialogue and the sharing of best practices will be crucial to effectively implement and comply with the FSR.

Also, practical questions related to the fact that both DG's chief and competition's chief are saying that there are more cases than expected. Only 100 days into the FSR notification period which started on 12 October, the European Commission had participated in 53 pre-notification discussions with 14 progressing to a full reporting notification obligation, and one full

6, 2024, available at: <https://www.stibbe.com/publications-and-insights/the-honeymoon-phase-of-the-foreign-subsidies-regulation-is-over>, access on June 6, 2024.

¹⁹ Commission Implementing Regulation (EU) 2023/1441 of 10 July 2023 on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market, C/2023/4622, OJ L 177, 12.7.2023.



investigation²⁰. As this is the first time that organizations are undertaking this new filing, which goes far beyond EU Merger Regulation requirements, they are facing the difficulties of gathering the needed data and the tight timeframes.²¹

Procedural issues and the administrative burden of the FSR, termed an “administrative nightmare”²², pose additional challenges. Questions about the costs involved – both economically and politically – add another layer of complexity. Further, understanding the interrelations of the FSR with other mechanisms introduced or to be introduced as part of the European Economic Strategy is crucial, such as the EU FDI Screening Regulation. This broader legal context highlights the necessity for a coordinated approach.

As underlined by BusinessEurope in their recently published position paper, it is crucial to maintain equilibrium in shaping the European Economic Security Strategy, and this requires comprehensive risk evaluations, strengthened collaboration between public and private entities, and careful evaluation of outward investments to ensure consistent and efficient implementation of the strategy across the EU²³.

²⁰ Moscoso Luis, Stoyanova Iveta, The Foreign Subsidies Regulation – 100 days since the start of the notification obligation for concentrations, Competition FSR Brief No 1/2024, ISBN 978-92-68-12950-0, ISSN: 2812-0485, available at: https://competition-policy.ec.europa.eu/document/download/22197012-2036-4b1e-8b02-0eb8b2d6e666_en?filename=kdar24001enn_competition_FSR_brief_1_2024_100-days-of-FSR-notification-obligation.pdf, access on June 6, 2024.

²¹ Folkman V., EU team combating Chinese subsidies struggles with flood of deals, Politico, published on February 7, 2024, available at: <https://www.politico.eu/article/european-union-foreign-subsidies-regulation/>, access on June 6, 2024.

²² Thomson Linda A., 'An Administrative Nightmare': EU's New Foreign Subsidies Regulation Turns Into Bittersweet Victory for EU Companies, published on October 31, 2023, available at: <https://www.law.com/international-edition/2023/10/31/an-administrative-nightmare-eus-new-foreign-subsidies-regulation-turns-into-bittersweet-victory-for-eu-companies/>, access on June 6, 2024.

²³ BusinessEurope, Position Paper, Business views on a European economic security strategy - a BusinessEurope position paper, published on May 30, 2024, available at: <https://www.businesseurope.eu/publications/business-views-european-economic-security-strategy-businesseurope-position-paper>, access on June 6, 2024.



II. Impact on the EU market and implications for business

As already mentioned above, there is a question of the costs, both economic and political, of introduction of the FSR on the EU market. The adoption of the FSR has already begun to demonstrate its significant impact on the EU market and the broader implications for business operations.

A noteworthy example that illustrates the implications of the FSR is the “La Liga case”, where the regulation was used in the context of international football. The Spanish football league, La Liga, has lodged a complaint with the EC against Paris St-Germain, a French club owned by Qatar. La Liga alleged that PSG’s funding mechanism violates the EU competition laws. Citing the provisions of the FSR, La Liga contends that Qatar’s investment in PSG has given the club an unfair advantage. Since 2011, PSG has been owned by Qatar Sports Investments, a subsidiary of the Qatari government sovereign fund. La Liga claims that PSG utilizes Qatar’s subsidies to secure top players and coaches, surpassing what would be feasible in a normal market scenario. This, according to La Liga, enhances PSG’s sporting performance while hampering the ability of rival clubs to recruit. La Liga expressed confidence in the EC’s ability to address these alleged distortions, which it believes are detrimental to the sporting ecosystem²⁴. This case not only serves as a curiosity but also highlights how the FSR can be employed as a strategic tool by EU companies to address competitive imbalances created by foreign subsidies.

The FSR’s impact on business operations and competitiveness is profound, particularly for companies engaged in international trade and investment. Businesses must now navigate a

²⁴ Volpicelli G., Spain’s La Liga files EU complaint over Qatar funding of French club Paris St-Germain, Politico, published on August 13, 2023, available at <https://www.politico.eu/article/spain-football-laliga-file-eu-complaint-paris-st-germain-qatar-funding/>, access on June 6, 2024.



more stringent regulatory environment where any form of financial assistance from non-EU governments could come under scrutiny. This new layer of regulation affects companies' strategic decisions, from mergers and acquisitions to public procurement bids, necessitating comprehensive due diligence and transparency in reporting foreign subsidies.

From a global perspective, the FSR underscores the importance of international cooperation in addressing cross-border subsidy issues. The regulation's reach means that it could put the EC into conflict with member states, particularly when those states favor low-cost suppliers to achieve economic or environmental goals. For instance, Hungary's close cooperation with China highlights the potential for political and economic tensions, as the FSR could hinder member states' efforts to procure affordable technology essential for the green transition. An early example of the FSR's implications occurred in March 2024, when a Spanish company capitalized on the regulation to influence a tender by causing a Chinese-controlled company to withdraw²⁵, demonstrating the FSR's potential to reshape market dynamics.

Balancing regulation with market dynamics is a critical challenge. Governments must develop strategies that mitigate the unfair competitive advantages provided by foreign subsidies without stifling business growth and innovation. This involves analyzing the potential effects of foreign subsidies on competition within the EU single market and their broader implications for trade relations with third countries. Transparency is key; member states must ensure that proposed subsidies are duly notified to the European Commission, and stakeholders must be actively involved in the notification process.

²⁵ Jowett P., Longi, Shanghai Electric withdraw from controversial EU tender, PV Magazine, published on May 13, 2024, available at: <https://www.pv-magazine.com/2024/05/13/longi-shanghai-electric-withdraw-from-controversial-eu-tender/>, access on June 6, 2024.



In conclusion, the FSR represents a significant regulatory shift aimed at maintaining fair competition within the EU market. Its impact on business operations, competitive dynamics, and international trade relations is substantial, necessitating a careful balance between regulatory oversight and market flexibility. As the regulation continues to evolve, businesses and governments alike must stay agile, leveraging best practices and fostering international cooperation to navigate this complex landscape effectively.

III. The FSR's focus on China

The FSR has notably focused on China, becoming one of the most discussed aspects of the regulation.

Since its enforcement, several high-profile cases have highlighted the FSR's application and the resultant geopolitical tensions. The first investigation under the FSR commenced in October 2023²⁶. By the end of March 2024, a Chinese state-owned train manufacturer had withdrawn from a Bulgarian train contract tender following scrutiny by the EC. Shortly thereafter, on April 3, 2024, the EC launched in-depth investigations into bids by Chinese firms for a solar photovoltaic park in Romania. These investigations were based on suspicions that the bidders had received foreign subsidies, such as governmental grants, tax refunds, and fiscal incentives, allowing them to submit unduly advantageous bids that distorted fair competition in the internal market.

The EC's actions prompted immediate and strong reactions from China. The Chinese government expressed serious dissatisfaction, highlighting the potential for significant policy spill-

²⁶ European Commission, Press Release, Commission launches investigation on subsidised electric cars from China, published on October 4, 2023, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4752, access on June 6, 2024.



over effects²⁷. For instance, the Chinese Chamber of Commerce in the EU (CCCEU) voiced concerns over what it termed as “unjustified dawn raids”²⁸ on Chinese companies operating in the EU. Additionally, Chinese government officials urged the EU to adhere to market openness and fair competition principles, accusing the EU of veering towards protectionism²⁹. This backlash illustrates the broader geopolitical implications of the FSR and raises questions about how such policy conflicts can be defused.

Further investigations have continued to focus on Chinese enterprises. On April 9, 2024, the EC initiated an ex officio investigation into subsidies for Chinese wind power equipment manufacturers. The most recent case, on April 23, 2024, involved dawn raids on Nuctech, a Chinese company manufacturing scanning equipment for airports and border crossings, with premises in Poland and the Netherlands being targeted³⁰. On May 29, 2024, Nuctech has lodged a challenge before the EU lower court against the EC raids targeting the company premises under the FSR³¹. A spokesperson for the Brussels-based agency stated that the EC respects companies' right to appeal and will stand by its decisions in court³².

²⁷ Jingyi Chi, Xuanmin Li, EU's Foreign Subsidies Regulation 'new tool of economic coercion:' chamber, Global Times, published on April 4, 2024, available at: <https://www.globaltimes.cn/page/202404/1310015.shtml>, access on June 6, 2024.

²⁸ Soler Paula, EU Policy. Chinese Nuctech raided in ex officio foreign subsidies investigation, EuroNews, published on April 24, 2024, available at: <https://www.euronews.com/my-europe/2024/04/24/commission-foreign-subsidies-raids-involving-chinese-company-in-ex-officio-probe>, access on June 6, 2024.

²⁹ Yeping Yin, EU raids on Chinese company's offices 'shocking,' to undermine European business environment: chamber. China slams EU's sudden raids on Chinese company, Global Times, published on April 24, 2024, available at: <https://www.globaltimes.cn/page/202404/1311163.shtml>, access on June 6, 2024.

³⁰ Beattie Alan, Europe's new anti-subsidy weapon is powerful but hard to control; The EU foreign subsidies regulation is looking to score some notable hits, Financial Times, published on May 9, 2024, available at: <https://www.ft.com/content/db880189-6556-427d-9c80-b4af3c8917d2>, access on June 6, 2024.

³¹ The case is T-284/24 Nuctech Warsaw Company Limited and Nuctech Netherlands v Commission before the General Court.

³² Mergermarket, FDI Europe Navigator – Kretinsky's bid for Royal Mail parent company may trigger NSIA probe; Chinese firm Nuctech challenges EC raids over FSR; Austrian committee discusses safeguards for critical infrastructure, published on June 5, 2024, available at:



These targeted actions have fueled speculation that the FSR is part of a broader EU strategy aimed at China³³. Critics argue that the FSR might be seen as a tool in a coordinated “get-tough-on-China” approach, leading to potential retaliations from Beijing. The journalists describe the FSR as a blunderbuss rather than a precision-guided missile, capable of targeting specific companies without broader consideration for EU-China relations.³⁴ Moreover, this is also how the introduction and use of the FSR by the EC is perceived by the Chinese government. On July 10, 2024, China’s Ministry of Commerce has begun a probe into the European Union’s practices in its investigations of Chinese companies based on the FSR³⁵. According to the Chinese Ministry of Commerce, the investigation is set to conclude by January 10, 2025, but it could be extended to April 10, 2025, under special circumstances³⁶.

But the case of the proposed acquisition by Emirates Telecommunications Group Company PJSC (“e&”) of sole control over PPF Telecom Group B.V. is evidence that the EC is using the powers granted to it in the FSR not only against transactions involving Chinese-origin entities or funds. On June 10, 2024, the EC launched its first anti-subsidy probe into foreign buyer from the United Arab Emirates³⁷. According to the EC, the preliminary investigation shows that e&

https://mergermarket.ionanalytics.com/content/1003818321?utm_source=Notifications&utm_medium=Email&utm_campaign=Alert&utm_term=5f6492a51e7603002fa1cdd5&userAlertProfileSysId=2364341&ssoid=AFEADC79-84C1-4282-A4D3-C3A4E906AAB3&intelId=intelcms-ifvfrj, access on June 6, 2024.

³³ Beattie Alan, Europe’s new anti-subsidy weapon is powerful but hard to control; The EU foreign subsidies regulation is looking to score some notable hits, Financial Times, published on May 9, 2024, available at: <https://www.ft.com/content/db880189-6556-427d-9c80-b4af3c8917d2>, access on June 6, 2024.

³⁴ Vela Hanke Jakob, Vestager gets tough on China, Politico, published on April 9, 2024, available at: <https://www.politico.eu/newsletter/brussels-playbook/vestager-gets-tough-on-china/>, access on June 6, 2024.

³⁵ Global Times, China launches probe into EU's actions on Chinese firms under FSR, published on July 10, 2024, available at: <https://www.globaltimes.cn/page/202407/1315812.shtml>, access on July 18, 2024.

³⁶ Global Times, China launches probe into EU's actions on Chinese firms under FSR, published on July 10, 2024, available at: <https://www.globaltimes.cn/page/202407/1315812.shtml>, access on July 18, 2024.

³⁷ European Commission, Press Release, Commission opens in-depth foreign subsidies investigation into e&'s acquisition of parts of PPF Telecom, published on June 10, 2024, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3166, access on July 18, 2024.



likely received foreign subsidies distorting the EU market³⁸. These subsidies include an unlimited UAE guarantee and a loan from UAE-controlled banks, directly facilitating the transaction. As underlined by Margrethe Vestager, “the FSR allows us to tackle distortive support from third countries for the acquisition of businesses in the EU”³⁹. The EC is concerned these subsidies may have enhanced e&’s ability to finance the acquisition and improve its competitive position in the EU. The EC has until October 15, 2024 to make the decision in e&’s case.

The EC’s proactive stance, as indicated by statements from Margrethe Vestager, suggests that more *ex officio* investigations are likely. This is not surprising given that the legislative push for the FSR was partly driven by concerns over competitive distortions due to Chinese subsidies. Nonetheless, the FSR’s scope is not limited to China; the EC is expected to use its powers to address distortive subsidies from other third countries as well.

Looking forward, a defining case on the horizon involves the electric vehicle (EV) market. Chinese companies like BYD and Chery are planning substantial investments in the EU, with BYD already investing in Hungary and Chery planning to build EVs in Spain⁴⁰. If the EC were to order these companies to divest or repay subsidies received from the Chinese state, the implications for production, EV prices, and jobs in Europe could be severe and potentially inflammatory.

³⁸ European Commission, Press Release, Commission opens in-depth foreign subsidies investigation into e&’s acquisition of parts of PPF Telecom, published on June 10, 2024, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3166, access on July 18, 2024.

³⁹ European Commission, Press Release, Commission opens in-depth foreign subsidies investigation into e&’s acquisition of parts of PPF Telecom, published on June 10, 2024, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3166, access on July 18, 2024.

⁴⁰ France24, China auto sector steps up Europe push with Spain plant, published on April 19, 2024, available at: <https://www.france24.com/en/live-news/20240419-china-auto-sector-steps-up-europe-push-with-spain-plant>, access on June 6, 2024. See also, Lau Stuart, EU gives warning signal to Chinese trains, Politico, published on February 20, 2024, available at: <https://www.politico.eu/newsletter/china-watcher/eu-gives-warning-signal-to-chinese-trains/>, access on June 6, 2024.



An open question remains whether the FSR rules also cover greenfield investments, which are likely to be the approach adopted by companies like BYD and Chery⁴¹. Additionally, considering the US's recent moves in the EV sector and ongoing anti-dumping investigations in the EU, the FSR's impact is poised to have far-reaching consequences. These developments underscore the importance of balancing regulatory enforcement with maintaining healthy international trade relations and market dynamics.

E. Conclusion

The European Foreign Subsidies Regulation (FSR) marks a significant step towards addressing the challenges posed by foreign subsidies and activity of foreign entities in the EU market. As highlighted throughout this Paper, the FSR represents a proactive response to evolving global economic dynamics, aiming to safeguard fair competition and protect vital sectors from undue influence. By introducing a robust legislative framework and imposing notification obligations, the EU seeks to ensure transparency and accountability in M&A transactions involving foreign subsidies. While the FSR may pose some challenges, its implementation underscores the EU's commitment to upholding the integrity of its internal market. As policymakers and stakeholders navigate the complexities of this regulatory landscape, ongoing dialogue and collaboration will be essential to achieve the FSR's objectives effectively.

⁴¹ Leahy Joe, Chinese competition a 'defining challenge' for EU companies, Financial Times, published on May 10, 2024, available at: https://www.ft.com/content/4a1d04a2-4279-4d39-ac6a-bd34570346c7?accessToken=zwAGGBTxB5sgkc9KHQSiQnINOdOsar00VwNGxw.MEQCIAecO1xBIFvdWB75lb20aYL5jnose-wxQPByKL3CPY1S9AiByx40Uc7AXhS-YDjGnJ8BI2nCe-qDLnGxKbbt_CFTugw&sharetype=gift&token=ea80e3c9-9b9a-43a9-b20b-0516016aa2fb, access on June 6, 2024. See also, Verhelst Koen, Folkman Varg, Does the EU have what it takes to fight China on green tech? If you aren't sure what the difference is between an anti-subsidy probe and an investigation into foreign subsidies, we've got you covered., Politico, published on April 15, 2024, available at: <https://www.politico.eu/article/foreign-subsidy-instrument-china-export-threat/>, access on June 6, 2024.



Therefore, CELIS encourages participation in the panel discussion, particularly welcoming experts from academia, business, as well as representatives of governments and national regulatory authorities. We also invite individuals from NGOs or think tanks, in particular those focused on EU-China relations and US foreign policy. Our aim is to gather participants from diverse sectors to ensure a rich array of perspectives and foster engaging discussions. This is especially relevant as CFIS 24 will take place almost on the first anniversary of the FSR being fully applicable and just two weeks before the US presidential elections, and these circumstances seem to be a good start for a discussion at the same time to take stock and look to the future.

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