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FSR Christmas Edition

Two-Year Anniversary

The Foreign Subsidies Regulation ("**FSR**") is two years old—a baby by human standards. But for an EU Regulation, that is already a considerable age. An event organised in Brussels by the Global Competition Law Center (the College of Europe's research centre in competition law and economics) marked the occasion.

The panel (featuring DG COMP's Alexandre Bertuzzi and DG GROW's Bonifacio García Porras, alongside Francesco Maria Salerno) took stock of recent developments. Some participants called for greater symmetry with merger control, in particular the publication of Phase I decisions and the possibility of proposing remedies. There was also discussion of ex officio investigations and call-in powers. Notably, only a few days later, unannounced inspections took place at Temu, Nuctech, and a company linked to the Lisbon Metro.

In the Temu case, officials conducted inspections at the company's Irish headquarters to assess whether the Chinese e-commerce giant's rapid capture of European market share—driven by its ultra-low pricing model—was artificially facilitated by distortive foreign subsidies. This investigation directly targets the FSR's core concern: subsidy-driven distortions in the Single Market.

The inspection of a subsidiary of a Chinese state-owned train manufacturer bidding for the Lisbon Metro contract shifts the focus to public procurement. Here, the Commission is examining whether illegal foreign subsidies enabled the company to submit an unfairly advantageous bid, thereby undermining fair competition for a critical European infrastructure project.

Taken together, these parallel actions suggest that, after its first two years, the FSR has probably entered a new phase in which ex officio powers feature more prominently.

ADNOC – Covestro

In November 2025, the Commission granted conditional approval to the acquisition by Abu Dhabi National Oil Company PJSC ("**ADNOC**") of Covestro AG ("**Covestro**"). The transaction also received conditional clearance under EU merger control rules, highlighting the Commission's willingness to allow state-backed acquisitions to proceed while retaining the ability to impose safeguards.

In particular, the Commission accepted the following remedies:

- a change to ADNOC's articles of association to ensure that they do not deviate from ordinary UAE insolvency law, thereby removing the unlimited State guarantee; and
- an obligation to share Covestro's sustainability-related patents with certain market participants on transparent terms and conditions set in advance.

Some commentators have questioned the link between the distortions identified during the subsidy investigation and the remedies imposed. While a fuller assessment is not yet possible, as the decision has not been published, it can already be inferred that the FSR—unlike merger control—is a more pliable instrument. The harm may therefore lie not in the subsidies themselves, but more broadly in the effects of the transaction, which might have deprived EU businesses of patents valuable for the green transition. From this perspective, the licensing remedy is a win-win: Covestro benefits from having a strong shareholder, while key technologies remain available in Europe.

What Next for FSR?

Attention is now sharply focused on the forthcoming Implementing Guidelines on the FSR, which are intended to clarify how the Commission will operationalize the new regime. The draft text sheds light on key concepts that have so far remained largely theoretical, including the broad interpretation of "foreign financial contributions", the circumstances in which state-backed financing is likely to be considered distortive, and the practical application of the balancing test.

Finally, as the FSR enters 2026, calls for reform are growing. In a paper published in late December, the German government called for a fundamental overhaul, describing FSR as a bureaucratic burden that threatens the bloc's investment appeal. One proposed reform is a radical shift from the current mandatory notification system to a more targeted "call-in" model, under which the Commission would proactively review only suspicious transactions. The paper also advocates a significant increase in the financial thresholds triggering scrutiny and a strict limitation of the Commission's power to impose remedies. While change of such a scale is difficult to implement, it is possible that the application in practice may take new directions.

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