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## **WORKING DOCUMENT**

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| From:    | General Secretariat of the Council                                                                                                                                          |
| To:      | Working Party on Competition                                                                                                                                                |
| Subject: | Presentation by the European Commission, DG COMP : The application of Foreign Subsidies Regulation (agenda item 6.)<br>Working Party on Competition meeting on 16 June 2025 |

Delegations will find in annex a presentation (agenda item 6.) given by the European Commission, DG COMP during the Working Party on Competition meeting on 16 June 2025.



# Foreign Subsidies Regulation (FSR): State of play, Guidelines and Review

Council Working Party on Competition – 16 June 2025

[REDACTED], DG COMP - Foreign Subsidies

# Overview

## Foreign Subsidies Regulation (FSR): State of play

- Concentrations
- Ex-officio: Nuctech

## FSR Guidelines

- Scope and timeline
- Consultations: Call for evidence and targeted questionnaire

## FSR Review report

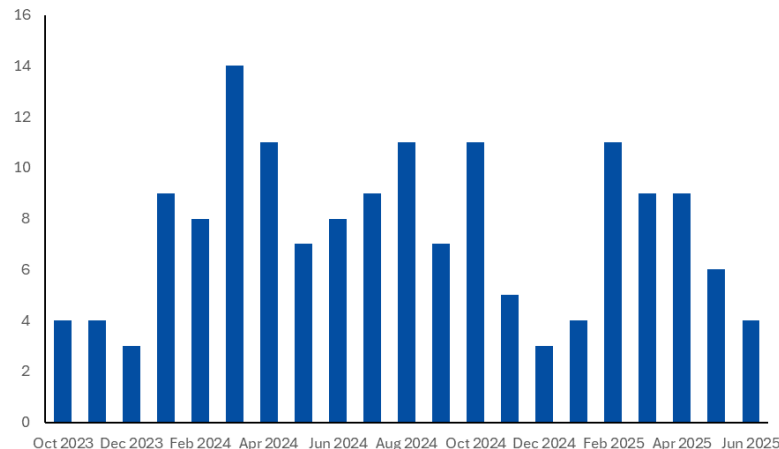
- Scope and timeline
- Consultation activities

# FSR: State of play – Concentrations

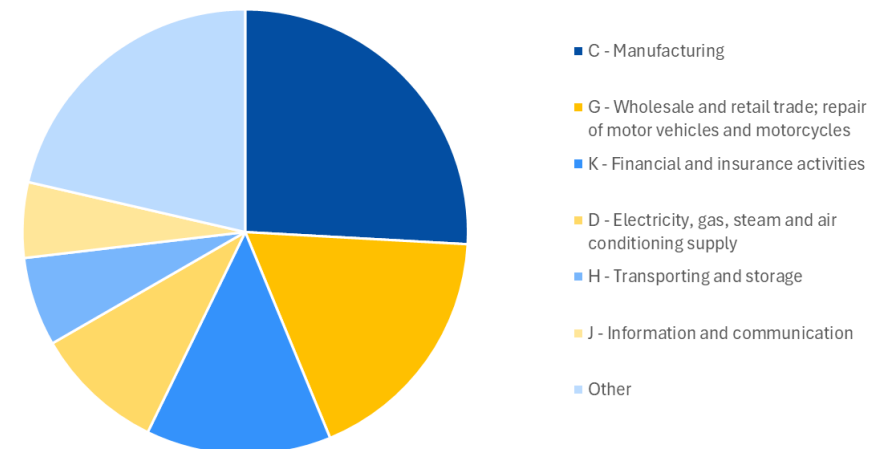
## State of play

- 157 notified cases since October 2023 (on average 8 notifications per month)
- Cases in a wide variety of sectors
- Numerous cases involving investment funds
- Large majority of cases also notifiable under the Merger Regulation, and a few under national merger review
- Around one third of the cases - subject to at least one national foreign direct investment screening

Number of notified cases per month



Notified cases by activity area



# FSR: State of play

## Key cases for the concentration module

- September 2024: commitment decision in e& case; public version available since April 2025

## Ex-officio review

- Wind sector:
  - preliminary review ongoing
  - assessing replies to the requests for information sent to Chinese and EU wind turbine manufacturers and to developers of wind parks in the EU
- Scanning equipment (Nuctech):
  - preliminary review ongoing
  - assessing information obtained during inspections

# FSR: State of play – Ex-officio: Nuctech

## Initiation

- Chinese company active in the development, production and sale of scanners - used on borders, at the airports, ports etc.
- Unannounced inspections were conducted in April 2024 in Poland and The Netherlands
- Certain information was stored on servers in China and Nuctech refused submission, claiming that it will breach Chinese legislation

## Court cases

- Nuctech appealed the Commission's inspection decision, proceedings are ongoing before the General Court
- Nuctech applied also for interim measures – to stop any review of documents obtained during the inspection and to prevent the Commission from demanding access to the Nuctech data stored in China - rejected by the General Court and the Court of Justice (final)

## State of play

- The team progresses with the assessment of the information collected to date

# FSR Guidelines: Scope and timeline

## Scope

Article 46 of the FSR mandates the Commission to develop guidelines by 13 January 2026 on:

- the determination of a distortion;
- the application of the balancing test;
- the power to request the prior notification of: (i) concentrations or (ii) FFC in public procurement, in cases that fall below the notification thresholds; and
- the assessment of a distortion in a public procurement procedure

## Timeline



- **Meeting with the Member States in September** to exchange views on the draft Guidelines



# FSR Guidelines: Consultations

Call for evidence (45 reactions on Have your say) and targeted consultation (31 submissions)

## Distortion

- Describe clearly the criteria and methodologies to be used by the Commission in its assessment
- To clarify how the Commission assesses the possibility of cross-subsidisation, in particular when the entity is not based in the EU
- To introduce safe harbours or exemptions for certain non-distortive subsidies

## Balancing test

- Non-exhaustive list of examples of relevant positive effects to be considered
- To clarify the consideration of positive effects on third country policy objectives and consumer welfare, how positive effects are assessed and quantified, the similarities with State aid rules and whether the balancing test may also result in annulling remedies

## Call-ins

- To define clear rules and circumstances for the use of call-ins, ensuring legal certainty and predictability
- Call-ins may be more useful for certain sectors that are vital for future competitiveness
- Call-ins in public procurement procedures could lead to excessive burden on participants

## Views of respondents

# FSR Review report: Scope and timeline

## Scope

Article 52(2) of the FSR mandates the Commission to publish a Review report with regard to the implementation and enforcement of the FSR by 14 July 2026:

- the determination of a distortion;
- the categorisation of foreign subsidies most likely to be distortive;
- the application of the balancing test;
- the enforcement of the ex-officio review of foreign subsidies; and
- the notification thresholds for concentrations and for public procurement procedures

The FSR Review report will also assess complexity, including administrative burdens on businesses

## Timeline



# FSR Review report: Consultation activities

## Consultation activities

The aim is to collect evidence and views from stakeholders on the implementation and enforcement of the FSR:

- feedback on the Call for evidence;
- 12-week online public consultation through a dedicated questionnaire;
- targeted consultation activities with Member States and selected stakeholders in the form of bilateral meetings and workshops; and
- a study commissioned to an external contractor

A factual summary of the 12-week public consultation will be published on the Commission Have your say site and a summary of all the consultation activities will be included in the FSR Review report

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# Thank you

