

Mandatory Notification Obligations Under the EU's Foreign Subsidies Regulation Kick In: Are You Ready?

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If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the next page or call your regular Skadden contact.

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One Manhattan West
New York, NY 10001
212.735.3000

Avenue Louise 480
1050 Brussels, Belgium
32.2.639.0300

Starting today, October 12, 2023, the mandatory notification requirements under the EU's Foreign Subsidies Regulation (FSR) apply. M&A deals involving businesses that (i) have been granted certain levels of financial support from non-EU governments and (ii) meet prescribed financial thresholds must now be notified, assessed and cleared before the transactions can close. (Note that similar requirements for certain public procurement tenders also apply starting October 12, 2023.) The new mandatory notification regime applies to transactions signed on or after July 12, 2023, that have not yet closed.

Companies that fail to notify their deal to the European Commission (EC) and/or that close a transaction without the required EC clearance may be fined up to 10% of their worldwide turnover.

The notification thresholds are partly based on the amount of financial contributions that the parties to a transaction have been granted by *any* non-EU government. Companies receiving support from a wide variety of non-EU governments including, *e.g.*, the U.S., the United Kingdom, Switzerland or Norway, or from any of the EU's other large trading partners such as China, India, Japan, Korea, Turkey or the Middle East, may be affected across various types of M&A activity. For example, the following may be subject to the FSR notification requirements:

- The acquisition of control in a business with a significant EU presence by a public pension fund, state-owned enterprise, sovereign wealth fund, or private equity fund with state-owned or state-backed LP investors.
- The acquisition of joint control (a joint venture) in a preexisting business with a significant business presence in one or more EU member states, where one of the acquiring parties (i) benefits from bespoke tax arrangements in a non-EU country, (ii) has received a loan or aid from a non-EU state-owned bank (or one with significant state links) or (iii) has been granted an export financing measure that does not comply with the OECD Arrangement on officially supported export credits.
- A merger between two businesses, one of which has a significant presence in the EU as well as non-EU state-owned entities or sovereign wealth funds as controlling or noncontrolling shareholders.
- The change from sole to joint control over a preexisting EU business involving a sensitive sector that is likely to attract scrutiny (*e.g.*, quantum technologies, biotechnologies, renewable energies, strategic industrial infrastructures, among others) where the target business has received non-EU government support, even if the transaction falls below the FSR notification thresholds.

For further background on the FSR:

- See our July 17, 2023, client alert "[EU Foreign Subsidies Regulation Goes Live: Key Implications for M&A Transactions](#)."
- Listen to our August 24, 2023, podcast "[Will the EU's Focus on Foreign Subsidies Make It More Difficult To Acquire European Businesses?](#)"
- Connect with your usual Skadden contact, or with Skadden's Brussels team dedicated to helping companies efficiently gather the relevant information, assess risk and navigate the FSR notification process.

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Contacts

Giorgio Motta

Partner / Brussels
32.2.639.0314
giorgio.motta@skadden.com

Frederic Depoortere

Partner / Brussels
32.2.639.0334
frederic.depoortere@skadden.com

Ingrid Vandenborre

Partner / Brussels
32.2.639.0336
ingrid.vandenborre@skadden.com

Bill Batchelor

Partner / Brussels
32.2.639.0312
bill.batchelor@skadden.com

Aurora Luoma

Partner / London
44.20.7519.7255
aurora.luoma@skadden.com

Niels Baeten

Counsel / Brussels
32.2.639.0321
niels.baeten@skadden.com

Professional Support Lawyer **Elizabeth Malik** contributed to this article.