European Commission

Clean, Just and Competitive Transition

Foreign Subsidies Regulation Guidelines

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The Foreign Subsidies Regulation Guidelines ('FSR Guidelines') clarify key concepts of the Foreign Subsidies Regulation ('FSR'), thereby fostering predictability and ensuring transparency in the FSR application by the Commission.

How do the FSR Guidelines clarify key concepts of the FSR?

Determination of a distortion (Article 4(1) FSR)

A two-step assessment is used to establish whether foreign subsidy distorts activities in the internal market:

1. Is the foreign subsidy liable to improve the competitive position of the company?
2. Does the foreign subsidy actually or potentially negatively affect competition?

Examples of distortion: impact on acquisition of other companies or on operating decisions of the company under investigation, the alteration of investment decisions of the company under investigation, or impact on activities at other levels of the value chain.

Distortion in a public procurement procedure (Article 27 FSR)

The following assessment is used to establish whether a foreign subsidy enables an economic operator to submit an unduly advantageous tender in relation to the procured works, supplies or services:

1. Is the foreign subsidy liable to improve the terms of the economic operator's tender?
2. Does the tender offer better terms in relation to the award criteria of the public procurement and is thus advantageous?
3. Does the advantage stem to an appreciable extent from the foreign subsidy?

The assessment is limited to the public procurement procedure in question.

Application of the balancing test (Article 6 FSR)

The Commission will balance positive effects against the negative effects brought by the distortion in the internal market both in concentration/ex officio reviews and in public procurement procedures when that distortion is unavoidable to achieve the positive effect.

Positive effects, such as the development of the subsidised economic activity on the internal market or positive effects on relevant policy objectives to the Union, are to be specific to the identified foreign subsidy.

'Call-in' of non-notifiable concentrations and foreign financial contributions in a public procurement procedure (Articles 21(5) and 29(8) FSR)

'Call-in' is the power of the Commission to request the prior notification of:

- concentrations that are not notifiable under the FSR and which have not yet been fully implemented,
- foreign financial contributions in a public procurement procedure that are not notifiable under the FSR and where the contract has not been awarded yet.

For executing the 'call-in', there must be a suspicion of foreign subsidies.

For determining the impact in the Union of the concentration or foreign financial contributions in a public procurement procedure, the Commission would take into account factors such as the actual and potential competitive impact or the possibility of a distortion.

Safe harbours are introduced for certain foreign subsidies and public procurement procedures with low values.