

The EU Foreign Subsidies Regulation: Implications for Companies in Switzerland - Webinar

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As of **July 12, 2023**, the European Foreign Subsidies Regulation (FSR) will apply. The European Commission can now examine **concentrations** that meet the filing thresholds for subsidies from non-EU Member States distorting the internal market. This review is in addition to the merger control procedures and foreign investment screenings. The FSR also introduces a comprehensive subsidy control for **public procurement procedures**.

The FSR also affects **companies and groups of companies operating in Switzerland and the EU**.

The key points of the FSR can be summarized as follows:

- The FSR provides the European Commission with three new powers to effectively counter subsidies from non-EU Member States distorting the internal market: **(1)** the possibility to open investigations on its own initiative (ex officio), **(2)** a notification obligation for concentrations, and **(3)** a notification obligation for the participation in public procurement procedures.
- The possibility of **opening ex-officio investigations** will apply already from July 12, 2023 on.
- On October 12, 2023, the **notification obligation** for concentrations will come into force. It will take effect if **(i)** at least one of the undertakings concerned (one of the merging undertakings, the target or the joint venture) is based in the EU and has achieved turnover in the EU of more than EUR 500 million and cumulatively **(ii)** the undertakings concerned (the merging undertakings, the target and the acquirer or the joint venture and its parent companies) have

received **subsidies** from non-EU Member States amounting in total to more than **EUR 50 million** in the preceding three financial years.

- The term subsidy is defined very broadly in the FSR and includes any form of direct or indirect contribution from non-EU governments or public or private entities attributable to a non-EU Member State (e.g. grants, fiscal incentives, loans, and contracts with public entities).
- As a transitional provision, transactions for which the contractual obligation is entered into on or after July 12, 2023 (*signing*), but which are completed before October 12, 2023 (*closing*), are exempt from the notification obligation.
- There is an obligation to suspend the implementation of a notified concentration. "Gun jumping" fines are provided for, based on worldwide turnover.
- Finally, for **public procurement procedures**, the FSR introduces an additional approval procedure for participation. This approval procedure takes effect if (i) the value of a public procurement contract exceeds **EUR 250 million** and cumulatively (ii) the undertaking has received subsidies from non-EU Member States in excess of **EUR 4 million** in the preceding three financial years.

Our webinar on the FSR will take place on September 14, 2023. Please save the date.

Please do not hesitate to contact us in case of any questions.

Legal Note: The information contained in this Smart Insight newsletter is of general nature and does not constitute legal advice.

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