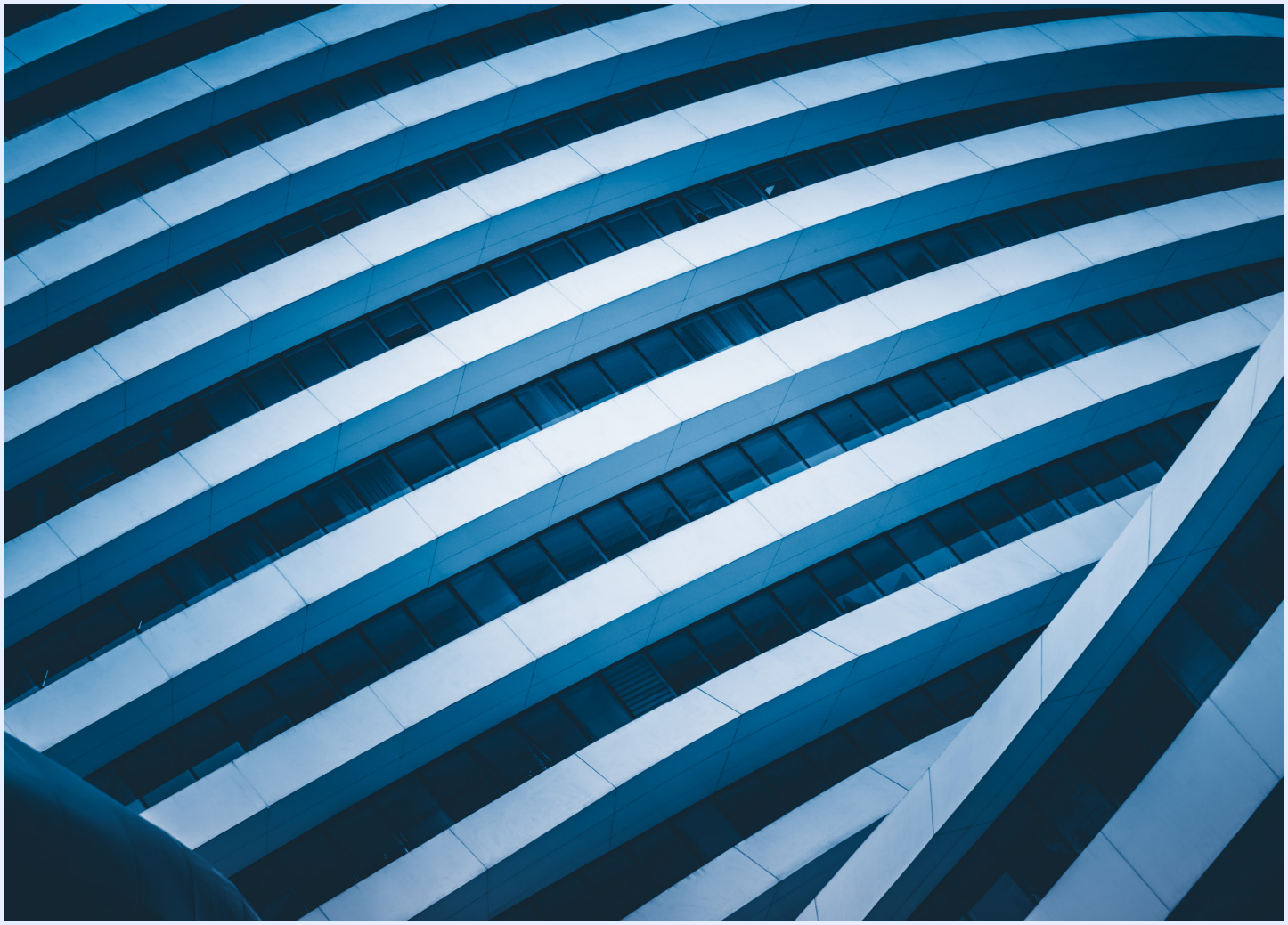
Clifford Chance

Thought leadership

The EU Foreign Subsidies Regulation – taking stock and looking ahead

November 2026



The EU Foreign Subsidies Regulation – taking stock and looking ahead

Key takeaways

1. The European Commission has made strong and consistent use of the tools available to it under the FSR, while also clearly demonstrating flexibility around information disclosure.
2. Best practice when it comes to FSR data gathering varies between companies, but a 'dry run' and mock filing are advisable for establishing timelines and the relevant stakeholders.
3. Several adjustments to ease the administrative burden of the FSR are expected to come into force in early 2027, including allowing frequent filers of FSR public procurement notifications to make a single annual or biannual submission.
4. Businesses operating across both China and EU should expect increasing conflict between the two jurisdictions following the issuing of new regulations in China in April 2026.

Over the three years that the EU Foreign Subsidies Regulation (FSR) has been in force, the European Commission has shown that it is serious about addressing potential market distortions caused by foreign subsidies. The FSR is now a key consideration for M&A, public procurement and investment in the EU. In this briefing, we examine the trends that have emerged from three years of FSR enforcement, share practical advice on data gathering and notification preparation, and explore what businesses can expect from the next phase of the regime. We also take a closer look at the experience of Chinese companies engaging with the FSR process.

What stance has the European Commission taken?

"Our experience shows that the European Commission has been enforcing the Foreign Subsidies Regulation consistently and strongly," says Anastasios Tomtsis, Clifford Chance Partner and Head of Brussels Antitrust. "It has opened a good number of phase-two, in-depth investigations. In addition, it has accepted remedies to deal with complex cases. The European Commission has launched investigations of its own initiative, and dawn raids against companies. Following a recent dawn raid it opened a procedural infringement case for obstruction. It has also been litigating on FSR-related topics before the EU court in Luxembourg."

These actions are part of a broader context that includes the EU's rules on state aid. For several decades the European Commission has taken measures against distortive subsidies and there is a rich body of precedent for businesses to draw upon. In addition to the FSR, state aid rules and trade rules, upcoming legislation – such as the Industrial Accelerator Act – will add to the regulatory toolbox.

While it is true that the European Commission operates within a delicate geopolitical context, it has shown that it does not shy away from complex or geopolitically sensitive cases. However, with careful preparation and engagement, even these more difficult cases can be navigated successfully.

"Suppose your case involves Article 5 'likely distortive' foreign financial contributions (FFCs), for example, a distortive subsidy such as a state guarantee, or other types of FFCs (for example, tax credits or loans), and an acquirer with either a track record of acquisitions in the same sector, or a history of serving a specific governmental agenda in that sector, that then produces complaints from market participants. And it's in a sector that the European Commission has listed as important or sensitive. Then, yes, your case may be a good candidate for a phase two investigation," says Tomtsis. "But our experience shows that even in those cases, our basic practical tips apply."

"Our experience shows that the European Commission has been enforcing the Foreign Subsidies Regulation consistently and strongly"



Anastasios Tomtsis
Partner and Head of Brussels Antitrust

Tomtsis advises businesses facing an FSR filing to keep three things front of mind:

- prompt gathering of information;
- prompt and serious engagement with the European Commission; and
- prompt consideration of onboarding expert economists.

"The vast majority of cases have been cleared swiftly in phase one without conditions, and in our experience several potential candidate cases for phase two have been cleared in phase one without conditions," he continues. These cases have so far included sensitive transactions involving buyers from China and/or the Middle East.

Enforcement trends

1. **The European Commission is willing to use all the tools at its disposal**

   Since October 2023, three M&A transactions have prompted in-depth investigations under the FSR, all of which were cleared with remedies. There have also been two *ex officio* investigations. Other tools that the European Commission have used include 'dawn raid' inspections, and in July 2026 it launched its first obstruction investigation, relating to a December 2025 inspection.

   The relatively low number of in-depth investigations compared with an overall tally of more than 300 notifications has led some to criticise the notification requirements as too burdensome. "It's important to bear in mind that the headline figure of just three in-depth investigations does not take into account several transactions that didn't go ahead, or several bidders that were not chosen by sellers, often due to perceived FSR risk," says Georgios Yannouchos, a Clifford Chance Counsel based in Brussels.

   "The only power that has not been used so far is the power to ask for a transaction that does not meet FSR thresholds to be notified. But we have worked with companies which have replied to questionnaires where the European Commission has assessed whether it's worth calling in a specific transaction for review."

2. **The European Commission has developed an RFI template**

   "We're noticing similar requests in many of the cases we've been working on," says Yannouchos. From our experience, the European Commission is focused on:

   - how the transaction is financed – which means are being used, and the extent to which those are in line with market terms;
   - any M&A auction process, including any valuation exercise that has been undertaken and any competing bids;
   - whether there are any foreign financial contributions (FFCs) that fall into the categories identified as 'most likely distortive' by the FSR, including unlimited guarantees;
   - whether there are any other reportable FFCs, such as grants, loans, guarantees or tax measures; and
   - internal documents, including those relating to any valuation exercise, transaction rationale and post-closing integration plans.

"All these points are quite helpful for the preparation of an FSR filing and have led to a reduction of pre-notification discussions with the European Commission, which now last on average one-and-a-half to two months. I think the European Commission is trying to make sure that the pre-notification period is generally aligned with what is often the case under the EU Merger Regulation," Yannouchos adds.

3. **The European Commission's theories of harm are clear**

   The three in-depth investigations to date, as well as guidelines published earlier this year, have clearly set out which foreign subsidies could lead to a transaction being blocked. "What the European Commission is really assessing is whether foreign subsidies received either: (i) distort the acquisition process by leading, for example, the buyer to overpay for the target, or (ii) whether it may distort the target's competitive position in the market post-completion," says Yannouchos. "The receipt of subsidies on its own is not sufficient to block a transaction, or even to open an in-depth investigation; the subsidies have to be liable to distort the EU market. We have advised on several transactions which were cleared in phase one without any remedies, despite the fact that the notifying parties had received subsidies."

4. **The European Commission has generally been pragmatic and flexible**

   The European Commission has managed to engage constructively with the parties to limit the scope of disclosure and, generally, has been open to consider and even grant waivers if it can be credibly demonstrated that specific information will not be required for the FSR assessment.

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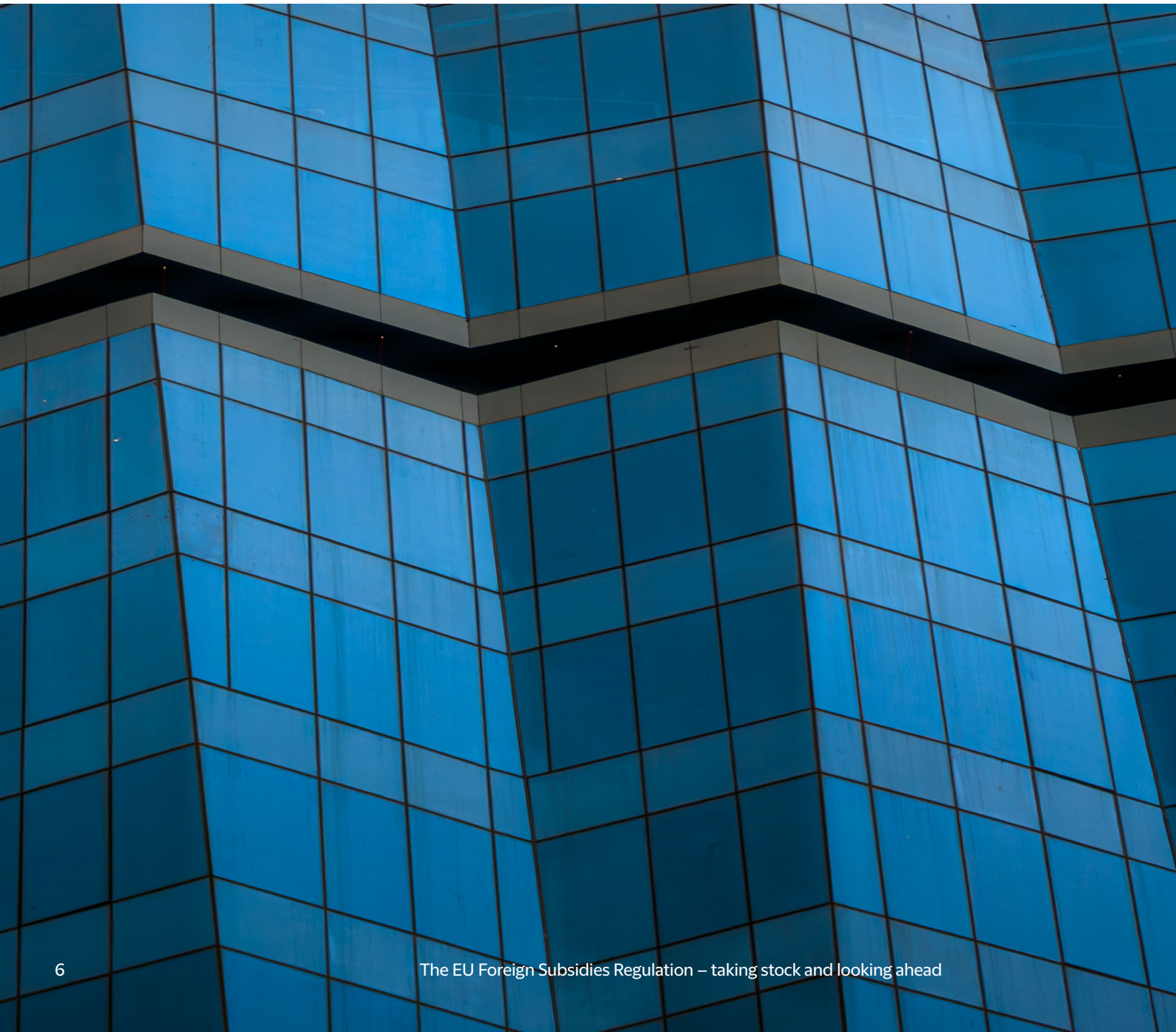
Georgios Yannouchos
Counsel

Data gathering and notification preparation

Companies have taken various approaches to gathering the information that is required for an FSR filing, with best practice depending on the business in question and how frequently they expect to be making notifications.

"Companies are generally much better prepared for FSR filings than they were shortly after the FSR's entry into force three years ago. This particularly applies to those which have gone through one or more FSR filings," says Caroline Scholke, a Clifford Chance Partner based in Düsseldorf. "However, how they deal with it differs a lot from company to company. Some have implemented an annual, biannual or even quarterly mechanism to gather the information on reportable FFCs; others are doing it only if and when it becomes necessary prior to an FSR filing, either because they're not making frequent FSR filings, or because they've found the information gathering exercise is much quicker than expected."

For those making less frequent filings, it may make more sense to wait until the prospect of an FSR filing actually materialises – a yearly exercise may prove to have been wasted effort if you find yourself having to file months after the information was gathered, resulting in the need to repeat the exercise to update the information.



"Irrespective of which approach a company is taking, they should familiarise themselves with the concept of FFCs and identify the respective internal stakeholders who would need to be involved in this exercise," Scholke adds. "What we have also done with clients is a dry run, irrespective of an actual FSR filing, to see how long it takes and who the stakeholders are." This preparation will also be helpful in identifying whether expert economists will need to be involved in the event of a filing.

In addition, it may also be useful to prepare a mock FSR filing – particularly in the public procurement context, where the need to supply information under tight bidding deadlines can create difficulties. In September 2026, three bidders were excluded from tenders in the Greek energy sector after the European Commission said they had failed to provide sufficient information on foreign subsidies.

Once a notification has been made, companies should expect the European Commission's case teams to be thorough, to ask further questions and request more information. "Case teams are assessing the FSR filings very diligently and asking a lot of questions," says Scholke. "But these questions can be anticipated and usually do not come as a surprise. We can prepare clients accordingly and discuss whether it's worthwhile providing information upfront."

Case teams are often open to reducing the scope of information provided in response to their requests for information. "In one case, we received an information request for very detailed information on all reportable loan agreements, as well as on loan agreements with private counterparties, to assess whether these were on market terms," Scholke says. "This information gathering exercise would have comprised hundreds of – if not more – loan agreements from multiple subsidiaries. We managed to reduce the scope to the top 10 agreements and received an unconditional clearance decision without involving economists in the case. To successfully reduce the scope of information provided, it's essential to explain to the case team why the reduced scope is sufficient for their assessment. The argument that it's a burdensome exercise and might take time, on its own, is not sufficient."

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Caroline Scholke
Partner

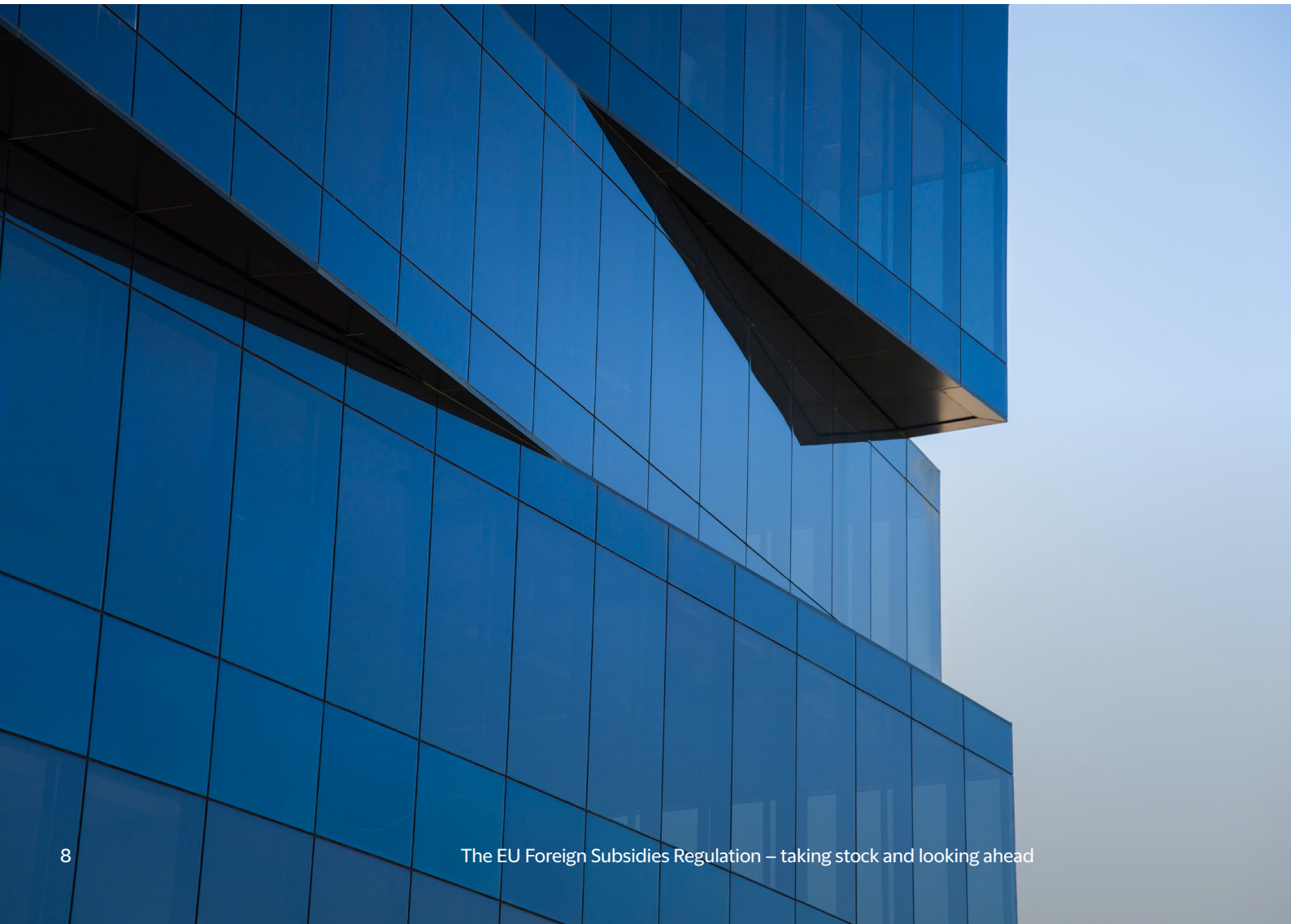
How are private equity firms engaging with the European Commission?

Private equity firms account for a significant proportion of FSR filings, and many have put in place regular information gathering processes that enable them to understand requests, submit filings and obtain clearance quickly – mostly within a time frame similar to, or even quicker than, that of merger control or foreign direct investment clearance.

They have also been aided by developments in the European Commission's application of the FSR. A good example of flexibility shown by the European Commission is the treatment of limited partner (LP) commitments to private equity firms. The European Commission's initial position in 2023 was that such commitments by non-EU state-linked LPs would be treated as directly facilitating the transaction under review. This meant these commitments would attract additional scrutiny and require significant disclosure, including internal documents, as they would be categorised as 'most likely distortive' FFCs.

The European Commission has since changed its position, as Georgios Yannouchos explains: "LP commitments are only disclosed on a by-country, aggregated and anonymised basis in Table 1 of the FSR filing, and without the more burdensome disclosures that are required for 'most likely distortive' contributions."

Another way private equity firms can smooth the road ahead of a transaction is by proving that FFCs received elsewhere in a group cannot benefit the transaction. "What we've done in the past is conduct a cash flow analysis and a thorough review of the relevant policy applicable to such intragroup transactions," says Yannouchos. "This has been key to indicate to the European Commission that there is no risk of so-called 'cross-subsidisation', and to obtain a waiver significantly limiting the disclosure of information. This has led to larger funds and corporate clients limiting disclosure of FFCs to only specific entities."



What might the European Commission change going forward?

The German government called for the replacement of mandatory M&A filings with a call-in system in December 2025, saying that the current system has created a "significant, unnecessary administrative burden." However, in its first review report of the FSR in July 2026, the European Commission said the regulation "does not merit structural changes" and that "the assumptions underlying the FSR remain valid". Instead of sweeping changes, the European Commission set out various procedural adjustments which could reduce the administrative burden of data collection. These include:

- increasing the M&A notification threshold from €500 million target turnover in the EU to €600 million (estimated to reduce the number of filings by approximately 16%);
- introducing a simplified, shorter filing form for certain types of transactions or FFCs, including higher reporting thresholds and an expanded list of exempted contributions (such as limited partner investments in funds);
- simplifying filing forms and revising the information disclosure waiver framework for public procurement filings; and
- allowing frequent FSR filers to submit a single annual or biannual submission, instead of filing on a per procedure basis (estimated to reduce the number of submissions by frequent filers by around 76%).

Further details of these adjustments are expected to be published in November 2026 and adopted in the first quarter of 2027.

"What we are not expecting are any changes to Article 5 of the FSR, which defines the categories of foreign subsidies most likely to distort the internal market," says Caroline Scholke. "We also understand that the European Commission is not planning to make any fundamental changes to its existing call-in powers under the FSR, simply given the limited use of such powers over the past three years."

Georgios Yannouchos adds: "While investors might have hoped for more sweeping changes, the anticipated amendments are expected to have some positive impact. Based on what we're hearing, they will further streamline the preparation of the FSR filings, which may lead to further reduction of pre-notification discussion required with the European Commission, leading to even swifter clearances. This will be the case particularly for private equity firms, given the anticipated expanded list of exempt contributions, especially if LP commitments were to be exempted completely from disclosure. In any event, despite the changes, good preparation and early financial contributions assessments remain key for successful FSR clearance."

How is the FSR affecting Chinese companies?

The Foreign Subsidies Regulation is adding to an unprecedentedly complicated regulatory environment for Chinese companies looking to invest in the EU. "Three years of FSR enforcement has shown that Chinese companies make up a significant portion of cases," says Yong Bai, a Clifford Chance Partner based in Beijing. "The large majority of in-depth investigations involve Chinese companies, including all in-depth investigations under the public procurement tool and the *ex officio* tool, and one of the three investigations under the M&A tool."

The FSR has come into conflict with China's Regulations on Countering Foreign States' Unlawful Extraterritorial Jurisdiction, which came into force in April 2026 and established a formal mechanism for identifying a foreign law or measure as improper or unlawful. If a foreign law or measure is identified as such, Chinese organisations and individuals are prohibited from complying with or assisting such measures without the approval of the Chinese government.

"Although not specifically designed for the FSR, it is not surprising at all that the regulations first applied in the FSR context, first in the Nuctech case and later in the JD.com/Ceconomy case," says Bai. The European Commission opened an in-depth investigation into the activities of Nuctech, a partially state-owned Chinese security equipment manufacturer, in December 2025. In May 2026, it opened another in-depth investigation, into Chinese e-commerce company JD.com's proposed acquisition of German retailer Ceconomy. "In both cases, Chinese organisations and individuals are not allowed to comply with or assist such measures without government approval. For example, Chinese state-owned banks are not allowed to provide information requested by the European Commission," Bai continues.



Businesses operating across both China and Europe should expect to increasingly encounter direct conflict between competing jurisdictions – complying with EU information requests could breach the Chinese regulations, but refusing to comply could cause a transaction to fail or expose the business to EU fines.

“There are also voices in China calling for further countermeasures, including issuing China’s own foreign subsidy regulations,” Bai adds. “In September 2026, China’s Ministry of Commerce sought information from several French companies operating in China about subsidies received from EU member states. A ministry spokesperson said that such subsidies may have benefited the recipients’ Chinese subsidiaries. It may be inferred that this is a reaction by the Chinese government to the European Commission’s ongoing FSR investigations into Chinese companies. Given that the EU is unlikely to stop enforcing the FSR against Chinese companies, this could be the first Chinese investigation of many. EU businesses with significant operations in China that have received state aid should monitor these developments closely.”

While the FSR is unlikely to have a chilling effect on Chinese investment in Europe, it is important for Chinese companies to build mutual trust with the European Commission and prepare diligently ahead of notifications. Despite heavy scrutiny, successful transactions are still possible, although these cases may more routinely require the involvement of expert economists; Clifford Chance has advised on two transactions involving Chinese companies that received unconditional clearance.

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