

Additional M&A Screening Regime

The EU Foreign Subsidies Regulation (FSR), which entered into force in January 2023 and will become applicable in July 2023, will for the first time empower the European Commission to investigate ‘financial contributions’ received by businesses operating in the EU from non-EU governments, including the UK and Switzerland.

Among other screening tools, the FSR **introduces a new mandatory notification regime for M&A deals** that meet certain financial thresholds, **which will sit alongside existing EU merger control and national foreign direct investment screening**. Transactions where the target has revenues of at least €500 million in the EU and the buyer and target groups (combined) have received at least €50 million in “financial contributions” from non-EU countries in the preceding three calendar years will need to be notified from 12 October 2023 **against a standstill obligation** pending approval by the European Commission.

Although the new rules are targeted at foreign investors in the EU, the new filing requirements will apply equally to **both EU and non-EU investors** in M&A transactions if the relevant thresholds are met, while the European Commission will be able **to intervene in transactions below these thresholds on its own initiative**.

M&A Implications for Private Equity Firms

In addition to the usual M&A considerations (such as completion timetable, closing conditions and risk allocation in deal documents), the FSR is bound to introduce additional – and potentially significant – disclosure requirements on private equity firms.

The concept of “financial contribution” is extremely broad and includes not only subsidies, but also tax breaks, transfer of funds or liabilities, such as capital injections, grants, loans, loan guarantees, debt forgiveness and public contracts, meaning that **virtually any dealings with non-EU public authorities and state-affiliated companies will be reportable**. Identifying and quantifying such contributions for **all portfolio companies** – which are typically run as separate and standalone investments – as well as **capital injections at the fund level** to determine whether the notification thresholds are met will be a particularly onerous exercise.



European Commission officials have acknowledged that private equity firms will face a disproportionately higher administrative burden under the new rules compared to other types of companies, and stated that the European Commission is actively considering to **provide special rules for private equity firms** in the [Implementing Regulation](#) that is currently being finalised (NB: the draft Implementing Regulation contained no such rules).

Once the Implementing Regulation is finalised private equity firms will have to **take heed of what information will be required** both in connection with the calculation of the notification thresholds and during the notification process, and consider:

- introducing centralised reporting/record keeping systems for financial contributions received from their investors and by their portfolio companies;
- integrating the FSR into their usual preclosing due diligence;
- assessing the impact of the FSR on deal timelines and SPA provisions early on;
- assessing the possibility of ex officio investigations by the European Commission where thresholds are not met.

For more information on the European Commission’s powers, process and potential sanctions for non-compliance with the new FSR rules please see our detailed [client brief](#).

Contacts

If you have any questions or concerns regarding the application of the FSR to your business, please contact your usual lawyer at the firm, or any of the contacts listed below.

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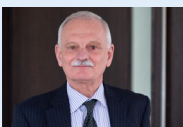
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