

24 March 2023

Ms. Ilze Juhansone, Secretary-General, European Commission

Mr. Olivier Guersent, Director General, Directorate-General for Competition

Ms. Kerstin Jorna, Director General, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

Ms. Sabine Weyand, Director General, Directorate-General for Trade

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Mr. Anthony Whelan, Digital Adviser, Cabinet President von der Leyen

Mr. Michele Piergiovanni, Cabinet Executive Vice-President Vestager

Ms. Cristina Rueda-Catry, Cabinet Executive Vice-President Dombrovskis

Mr. Fabrice Comptour, Cabinet Commissioner Breton

Re: Implementation of the Foreign Subsidies Regulation

Dear Ms. Juhansone, Dear Mr. Guersent, Dear Ms. Jorna, Dear Ms. Weyand,

We are reaching out to you in relation to the Foreign Subsidies Regulation (FSR) as a group of companies that significantly contribute to the European economy. As the date of full applicability is rapidly approaching, we urge the European Commission to engage in a constructive dialogue with industry players to ensure an implementation of the FSR that is both effective *and* manageable.

We support the overall goal that the FSR aims to achieve. However, we fear that the practical implementation of the FSR will result in an extremely complex administrative ordeal. We respectfully believe that the Commission severely underestimates the task that arises from the proposed implementation plan, which goes far beyond what is proportionate and needed by the Commission to meet its goal.

The potential impact of *not getting it right* is significant. Important M&A transactions may be disrupted, and public tender procedures may come to a stand-still or suffer a significant reduction in the number of competitive bids that are submitted. This would significantly harm European industries but also those public institutions that are running tenders, ultimately to the detriment of European taxpayers, businesses and consumers.

It is practically impossible to implement the FSR as currently proposed by the Commission.

First, the information potentially in scope of the FSR is enormous and disproportionate.

- The information potentially in scope goes far beyond the information required for any other regulatory review. Social security benefits paid for employees, postal services, public utility bills for gas, water and electricity, purchased over the last three years, across all business units, in potentially more than 160 countries around the globe: all these could qualify as

'financial contributions' that need to be tracked, recorded and, as we have been told by Commission staff, listed *line-item by line-item* in a notification and/or declaration form together with a series of data points for each line item, even absent any likely risk that they may have the potential to distort competition.

- Companies currently do not have systems in place to monitor these interactions with foreign States. Information needs to be collected, analyzed and classified, and new systems set up to track and update the information on a continuous basis.
- Companies don't have the information or expertise to determine whether they are dealing with a foreign State or a state-owned entity when they are interacting with seemingly independently managed, commercial entities.
- Companies cannot procure information which is categorised as "classified information" under agreements entered into with governments.
- A large proportion of reportable financial contributions may include commercial contracts with public authorities following an objective and transparent public procurement procedure or concluded at arms' length (e.g. public hospitals, schools, universities, publicly-owned network operators or utilities providers). There is no reason for the Commission to assume that these are likely to distort competition, and it would be disproportionate to require companies to systematically submit information on contracts entered in their ordinary course of business.

Second, the draft Implementing Regulation recently released by the Commission has not created the clarity necessary to start building compliant systems. The apparent expectation that clarification of open questions can be left to pre-notification discussions in individual cases is unworkable and could lead to significant delays to transactions and public procurements.

Third, there is little alignment between the requirements for the concentration and public procurement procedures. This further complicates the information collection process.

The significant administrative burdens imposed on companies are not necessary for the FSR to reach its objective. We believe the Commission's current approach is not proportionate to the goals the FSR is seeking to achieve. We recall that one of the five principles included in "*The Working Methods of the von der Leyen Commission*" is "*cutting red tape*" for people and businesses in the EU.¹ The Commission's current implementation plan unfortunately goes in the opposite direction.

We urge the Commission to take action as soon as possible.

We propose to arrange direct conversations with businesses and industry associations to carefully determine what is truly necessary under the FSR, as well as what is achievable and by when for businesses in terms of monitoring and reporting obligations.

In the short term, the Commission should issue comprehensive practical guidance to help companies meet the monitoring and reporting requirements, i.e. in the days and months following the 12 October 2023 marker. This guidance should be based on a reasonable judgment and make explicit what information typically can be waived, especially during the first three years of implementation.

In the long term, for notification and declaration obligations, we propose a manageable approach in terms of information to be collected. This will require at a minimum excluding financial contributions that clearly do not have any impact on the Commission's assessment and, as a preferred approach,

¹ https://ec.europa.eu/commission/presscorner/detail/es/ip_19_6657.

notifying only those categories of financial contributions that the FSR itself considers most likely to be distortive (without prejudice to the Commission requesting information about other contributions if necessary). It will also require introducing *meaningful* de minimis thresholds, and allowing companies to work with descriptions of certain type of contributions rather than having to provide a line-item listings where that level of detail is not necessary to achieve the proposed goals.

Many of us have provided further input to the public consultation on the draft Implementing Regulation, either directly or through trade associations. We thank the Commission for considering our concerns and remain ready to engage in order to make the implementation of the FSR a success.

Sincerely,

AstraZeneca PLC	BASF SE
Bayer AG	Cisco
Clariant	Deutsche Telekom
E.ON SE	Evonik Industries AG
Intel	Panasonic
Raytheon Technologies	Robert Bosch GmbH
RWE Aktiengesellschaft	ServiceNow
Siemens AG	Siemens Energy AG
Siemens Healthineers	Skanska AB
Solvay	Telefónica
thyssenkrupp AG	