



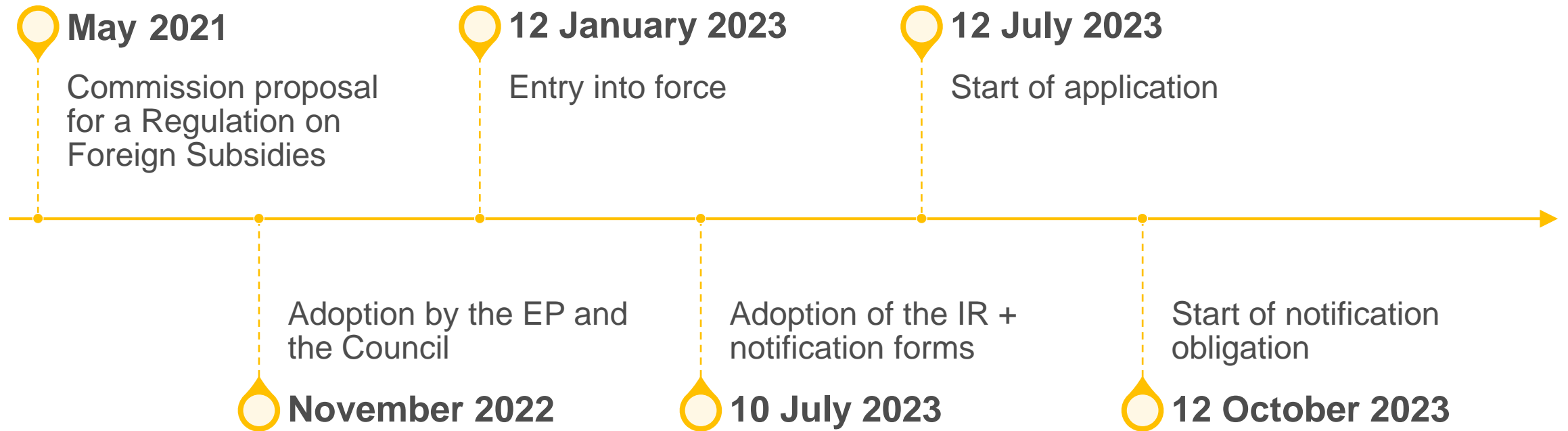
Foreign Subsidies Regulation

Confederation of Danish Industry – 16 May 2024

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Milestones



Applicable procedures under the FSR

Enforcement by the Commission

Notifications of concentrations

- Target established in EU and EU turnover of at least €500 million
- Foreign financial contribution more than €50 million / 3 years

Notifications in public procurement

- Value of PP contract at least €250 million
- Lots of €125 million
- Foreign financial contribution at least €4 million / 3 years

Ex-officio

- Any other economic activity

Ad hoc notifications for concentrations or public procurements below thresholds

Key elements for assessing foreign subsidies

- **Foreign subsidy**
 - Financial contribution provided by third country, which is limited and confers a benefit
- **Distortion of the internal market**
 - Foreign subsidy liable to improve competitive position of an undertaking on the internal market
 - Foreign subsidy actually or potentially negatively affects competition
 - Categories of most likely distortive foreign subsidies: subsidy to an ailing undertaking, unlimited guarantee, export financing, subsidies directly facilitating a concentration
- **Balancing test**
 - Positive effects vs. negative effects => take into account for outcome
- **Commitments**
 - Structural (e.g. divestment), non-structural (e.g. access), repayment of subsidy
- **Prohibition of concentration**

The Implementing Regulation

- **The IR lays down procedural rules for the three procedures set out in FSR**
- **9 chapters – including rules on:**
 - Notification and transmission of documents
 - Procedural details on notifications, such as language, waivers, effective date of notification
 - Commission investigations
 - Submission of comments, interviews, oral statements, commitments, transparency, calculation of time limits and suspension of time limits
 - Rights of defense
 - Submission of observations, confidential information, access to file

Notification form for concentrations

1. **'Administrative sections' similar to Form CO used in EU merger control** (Sections 1-3)
 - Description of concentration, info about parties to the concentration, ownership, control
2. **Double notification threshold** (Section 4)
 - EU turnover of target (merging party, acquired business, JV itself) at least €500 million, AND
 - Foreign financial contributions more than €50 million / 3 years
3. **Reporting obligations for foreign financial contributions** (Section 5)
 - Detailed information on financial contributions most likely to be distortive (Art. 5 FSR)
 - Other financial contributions: overview for those exceeding certain reporting thresholds, with additional exceptions from reporting
4. **Impact** (section 6)
5. **Possible positive effects** (section 7)
6. **Supporting documents** (section 8)

Concentrations

Notifiable and reportable foreign financial contributions

Jurisdictional thresholds

Which concentrations are notifiable under the FSR?

- EU turnover \geq € 500 million
- Foreign financial contributions $>$ € 50 million/3 years.

Reporting thresholds

Which reporting obligations for foreign financial contributions (FFCs)?

- FFCs under Article 5 FSR (“most likely to be distortive”): detailed information for each FFC \geq €1 million
- Other FFCs: Overview if FFCs \geq € 45 million/3years for a given third country, and for each FFC \geq €1 million

Concentrations

Reporting of other foreign financial contributions

Other foreign financial contributions

Information to be provided in table:

- Descriptions by type of FFCs
- Ranges of amounts of FFCs per country
- Exceptions:
 - (i) Goods and services at market conditions
 - (ii) FFCs to target company
 - (iii) Deferrals of taxes / double taxation tax reliefs
 - (iv) Private equities: limitation to acquiring Fund

Technical documents, Q&A

- Communication on technical specifications, adopted on 12 July
- Templates (such as power of attorney, case team allocation request)
- Q&A
 - Procedural, jurisdictional, implementation and practical issues

https://competition-policy.ec.europa.eu/foreign-subsidies-regulation/questions-and-answers_en

Key take-aways

- FSR fully applicable, for *ex officio* and both notification systems.
- Relevant threshold for notification/what needs to be reported: foreign financial contributions, not foreign subsidies.
- Timely preparation is key for a short, constructive and surprise-free process.
- As much guidance as we can on our website (Q&A); encourage to discuss in pre-notification as early as possible.
- Separate legal instrument from EUMR and SA: different purpose, standard for distortion, possibly outcome
- But inspired from these in some ways:
 - Concepts: control, concentration, full-functionality for mergers; foreign subsidies for State aid
 - Process (mergers): overall timelines, possibility to stop-the-clock or extend

Thank you

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