



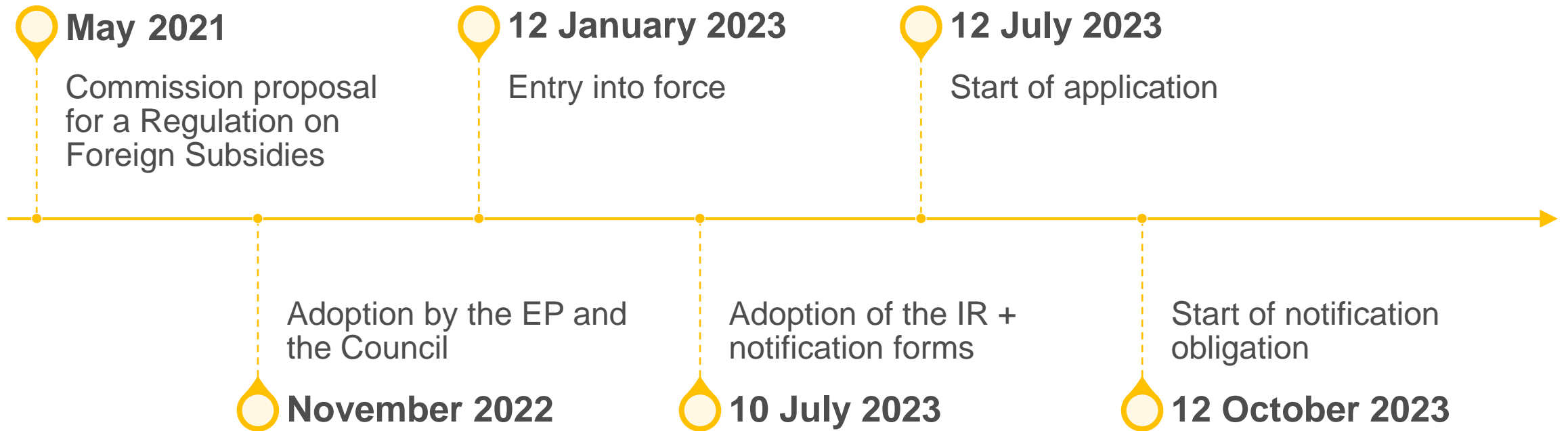
Foreign Subsidies Regulation

CIIAI webinar - 6 December 2023

Alexandre BERTUZZI
Case manager, COMP Task Force Foreign Subsidies

The content of this presentation does not reflect the official opinion of the European Commission. Responsibility for the information and views expressed in and during this presentation lies entirely with the author.

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 instruments 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

The content of this presentation does not reflect the official opinion of the European Commission. Responsibility for the information and views expressed in and during this presentation lies entirely with the author.



© European Union 2023

This presentation is for internal use only

