The EU FSR Decision and Its Implications for Middle Eastern Investors

Client briefing
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The EU Foreign Subsidies Regulation (**FSR**, Regulation (EU) 2022/2560) is a tool adopted to address distortions in the EU internal market caused by subsidies from non-EU governments. It entered into force on 12 January 2023 and applies from 12 July 2023. As of 12 October 2023, companies must notify large mergers and public procurement bids that meet FSR thresholds. The European Commission (**Commission**) is the sole enforcer, the Directorate-General for Competition handles mergers and non-procurement cases, while the Directorate-General for Internal Market, Industry, Entrepreneurship, and SMEs covers public tenders. The FSR parallels EU state aid law but targets foreign subsidies – broadly defined as any "financial contribution" by a non-EU government that confers a benefit on a company active in the EU and that is limited, in law or in fact, to one or more undertakings or industries. Such contributions include direct transfers (grants, loans, equity), tax breaks or exemptions, government guarantees, or the provision of goods/services under special terms. Private entities can trigger the FSR if their actions are attributable to a foreign state. In short, the FSR covers any selective advantage from a non-EU state that could give its beneficiary an unfair edge in the EU market.

Mechanisms: M&A, Public Procurement, and Ex Officio Reviews

The FSR operates through three complementary enforcement pillars: M&A (Concentrations) Review, Public Procurement Review, and Own-Initiative (Ex-Officio) Investigations.

Mergers & Acquisitions (M&A): The FSR creates a mandatory notification regime for certain large transactions.

A deal must be notified if (1) at least one party to the transaction (or its target/JV) generates EUR 500 million or more in in revenues in the EU, and (2) the acquiring side has received EUR 50 million or more in aggregate foreign financial contributions from non-EU states in the last three years. If both thresholds are met, parties must file with the Commission before closing, triggering a standstill obligation. During review, the Commission examines whether any foreign subsidies "distort the internal market" by improving the merged entity's position to the detriment of competition.

Public Procurement: The FSR also applies to large public contracts. Any bidder in a procurement that exceeds EUR 250 million and that has received EUR 4 million or more in foreign financial contributions in the past three years must notify the Commission. If the Commission finds a bid is unduly advantaged by foreign subsidies, it can prevent award of the contract to that bidder and order remedies.

Ex Officio Investigations: Beyond notifications, the Commission can open its own investigations if it "has information from any source" suggesting distortive foreign subsidies. Such probes can cover non-notified M&A deals, procurement, or even other market activities of a firm. The Commission has already used this power: for example, it launched ex officio inquiries into Chinese firms (e.g. Nuctech, CRRC) in railway and security tenders on suspicion of PRC subsidies. More may follow in "sensitive or critical" sectors like security, energy, or transportation. In ex officio cases, the Commission can compel information (via information requests or dawn raids) and ultimately impose fines or remedies under the FSR, similar to state aid controls.

Enforcement Practices and Early Cases

The Commission has vowed vigorous enforcement of the FSR to protect EU competitiveness. Initial enforcement focused on public procurement, with two in-depth probes opened in late 2024 on suspicion of Chinese state subsidies.

For enforcement, the Commission has broad investigatory powers. It can demand information from companies and related third parties, conduct on-site inspections and even inspection in third countries. Importantly, FSR allows the Commission to presume a benefit when parties withhold information, effectively reversing the burden of proof. In the first FSR case, the Commission inferred a benefit from e&'s deviation from normal UAE bankruptcy rules when the parties could not fully quantify it. If an undertaking fails to provide required data or misleads the Commission, it can also face fines—up to 1% of global turnover—under FSR.

Perceived China Focus and the First FSR Case Against a Middle Eastern Acquirer

From a broader policy and political economy perspective, it is widely acknowledged that the FSR was, at least in part, conceived against the backdrop of growing concerns in the EU regarding the scale and strategic nature of Chinese state support to its national champions, and the resulting impact on competition and industrial sovereignty in Europe. For years, EU institutions and Member States had expressed unease that extensive public funding, preferential financing, and state-backed expansion strategies of Chinese groups were enabling them to acquire strategic assets and win large public contracts across the Union, gradually creating what some policymakers and commentators described as a form of "financial dependency" or even a "financial colony" within the European market.

Against this background, the FSR was commonly perceived as a tool primarily designed to address distortions caused by Chinese state capitalism. However, due to the sequencing of notifiable transactions, the very first in-depth investigation under the FSR's merger control mechanism concerned not a Chinese acquirer, but a Middle Eastern state-linked group, namely e& (Etisalat). This demonstrates that the Commission intends to apply the FSR in a technology-neutral and geography-neutral manner, and that any undertaking benefiting from significant non-EU public financial support—including those backed by sovereign wealth funds or other state entities from the Middle East—will be subject to the same level of scrutiny as Chinese companies when seeking to acquire or expand strategic assets in the EU.

First In-Depth FSR Case: e& (Etisalat) / PPF Telecom

In June 2024, The Commission's first Phase II investigation under the FSR concerned the acquisition by e& (formerly Etisalat), a UAE state-linked telecommunications group, of PPF Telecom's operations in several Central and Eastern European Member States. Although the transaction did not meet the jurisdictional thresholds of the EU Merger Regulation, it triggered the FSR because of the target's significant EU turnover and the substantial financial contributions received by e& from UAE public entities. During review, the Commission identified two key foreign subsidies of concern: an unlimited UAE government guarantee on e&'s obligations, and a large loan from UAE-controlled banks that "directly facilitated" the transaction.

These fall into the FSR's red-flag categories as unlimited guarantees are deemed "most likely to distort the internal market. The Commission examined two possible distortions: (1) did the subsidies skew the bidding process? (2) would the merged entity have an unfair advantage going forward? On (1), it found no distortion: e& was the sole bidder and had sufficient own funds, so subsidies did not affect the EUR 2.2 billion price which matched market value. On (2), it was more concerned. After the deal, the enhanced financial backing from state support could let the merged firm invest or bid more aggressively than rivals without such backing.

On 24 September 2024 the Commission cleared the transaction conditionally. The Commission confirmed that it found e&/EIA had indeed received UAE subsidies (the unlimited guarantee and other funding). To eliminate the risk of distortion, e& offered behavioral remedies mirroring the Commission's concerns: it amended its articles of association to remove the unlimited guarantee (aligning with normal UAE bankruptcy rules) and it committed that neither e& nor EIA will finance PPF's EU businesses, save for strictly limited emergencies or non-EU activities under Commission oversight. e& also agreed to an enhanced transparency obligation – notifying the Commission of any future M&A deals that technically fall below the FSR threshold. With these remedies, the Commission concluded the acquisition would no longer create an unfair advantage.

This first FSR case is highly instructive. It demonstrates that the Commission will scrutinize state-backed Middle Eastern buyers just as it would Chinese firms.

The focus was on post-merger distortions, not the bidding, emphasizing strategic sectors (telecoms and 5G rollout). The decision shows the Commission employing the inference of benefit to compensate for gaps in information. It also illustrates the remedy model under the FSR: far-reaching behavioural commitments tailored to neutralize the subsidy, here, neutralizing the guarantee and funding channel. Commission officials have noted that the e&/PPF commitments set a precedent for dealing with SOEs and sovereign funds. In sum, the e&/PPF case highlights how the FSR is being enforced aggressively to preserve a level playing field, even if deals ultimately get conditional approvals.

Impact on Middle Eastern Investors: Risks and Strategy

When investing in Europe, Middle Eastern companies—especially those backed by sovereign wealth funds or government entities—must now account for the FSR in any sizable EU investment. If a target's EU turnover reaches EUR 500 million and the acquirer received EUR 50 million or more in support, notification is mandatory. Many large deals (e.g. oil & gas, infrastructure, tech) will cross these thresholds. The regulatory risk is that the Commission may open a full FSR review, potentially imposing remedies, delaying or even blocking the transaction. Even if thresholds are not formally met, any hint of foreign-state financing could attract an ex officio investigation. Middle Eastern investors therefore face legal uncertainty and delay: as one law firm observes, FSR clearance adds significant "regulatory buffer time" to transactions. The e&/PPF deal, for example, accumulated at least 90 days of FSR review on top of normal merger filings.

To mitigate risk, acquirers should minimize reliance on overt state support. For instance, unlimited guarantees or nominally state-backed loans could be replaced with commercial financing or contract on market terms. Transparency is equally important; firms should gather detailed evidence on funding sources and be prepared to demonstrate that financing was on arm's-length terms. Advance engagement with the Commission (e.g. confidential meetings or guidance requests) can help identify and resolve issues before closing. As the e& case shows, failure to disclose or clarify subsidies may force the Commission to assume the worst and impose strict conditions or fines. In practice, Middle Eastern acquirers may need to negotiate remedies up front (as e& did) or accept structural constraints, such as revising governance or pledging not to inject additional state funds.

For large government contracts (e.g. transport infrastructure, utilities, defense) in public procurement, the FSR introduces new screening. A Middle Eastern company bidding for an EU contract worth more than EUR 250 million must notify if its group received EUR 4 million or more in foreign support. In fast-moving tenders, this 30-day review can be a hurdle: for an ongoing bid, submission of a notification under FSR temporarily suspends award until clearance. The consequence of not notifying is severe: if the Commission later finds an "unduly advantageous" subsidy was involved, it can order the contract to be cancelled or re-awarded. Thus, Gulf firms should carefully screen their bids for reportable subsidies and involve compliance teams early. In practice, they may avoid reliance on national public contracts that expose state funding, or partner with EU firms to dilute the subsidy link.

Although the FSR does not directly regulate routine business, Middle Eastern firms active in Europe through subsidiaries, JV's or infrastructure projects face indirect scrutiny. For example, state-funded expansions or preferential deals might draw the Commission's interest if they distort competition. Moreover, the commitments demanded in cases (e.g. not to funnel funds from foreign parent to EU activities) can limit a state-owned investor's operational flexibility post-deal. There is also reputational risk: being associated with "distortive subsidies" can affect relationships with EU regulators and partners, so transparency about funding sources is prudent.

In summary, the EU FSR imposes a new foreign investment screening hurdle for Middle Eastern government-linked investors. While it does not target them specifically, their typical funding profiles mean many transactions will be caught. Understanding the FSR's definitions and thresholds, conducting detailed funding audits, and engaging regulators early will be key to navigating these risks.

SEIFELDIN SAMEH

Associate
seifeldin.sameh@bremerlf.com

Seif is an associate of the region law firm BREMER and part of the firm's Antitrust & Merger Control team. He represents parties in antitrust investigations and advises international corporations and PE firms on M&A transactions including merger control review in Egypt, Saudi Arabia, the UAE, and the broader MENA-region. He works in Arabic, English, and French.

DR. NICOLAS BREMER, LL.B.

Partner
nicolas.bremer@bremerlf.com

Nicolas is partner of BREMER and head of the firm's merger control & antitrust team. He advises on mergers and acquisitions transactions including merger control filings throughout the Middle East and North Africa including Saudi Arabia, Kuwaiti and Egypt. Aside from his role at BREMER he lectures at the German University Cairo (GUC) and continuously publishes on matters pertaining to mergers and acquisitions and antitrust in the MENA region.