

The Baker McKenzie logo is displayed in white, bold, sans-serif font. The word "Baker" is on the top line and "McKenzie." is on the bottom line. The background features abstract, overlapping organic shapes in shades of blue and purple.

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# **Antitrust compliance**

3 - 5 October 2023

**ANNUAL COMPLIANCE CONFERENCE**

**Baker  
McKenzie.**

**EU Foreign Subsidy Control:  
Practical implications for global  
businesses**

**Are you ready for 12 October 2023?**

Thursday 5 October, 2.30 - 3.30 pm BST

**ANNUAL COMPLIANCE CONFERENCE**

# Speakers



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# FSR – “a piece in the geopolitical puzzle”

**As of 12 July 2023**  
**ex officio investigations possible**

(No formal complaints process,  
but first complaints received!)

**As of 12 October 2023**  
**mandatory and suspensory notification obligations**

for large transactions **and** public tenders  
meeting the applicable FSR thresholds

July 2023

~

October 2023

## **“In-between deals & procurements”**

Concentrations meeting the FSR thresholds entered into on or after 12 July but that have not closed before 12 October 2023 **and** tenders in public procurements that meet the FSR thresholds and started on or after 12 July but where the tender has not been submitted before 12 October, are also **subject to mandatory and suspensive FSR notification**.

# In brief, foreign subsidy control under the FSR:



Large public  
tenders\*



Qualifying  
concentrations



*ex officio*  
investigations

\*The threshold for large public tenders is a **contract value  $\geq$ EUR 250 million** and, where divided into lots, the **aggregate value** lots applied for is  **$\geq$ EUR 125 million**).

# The Commission's Assessment and Powers



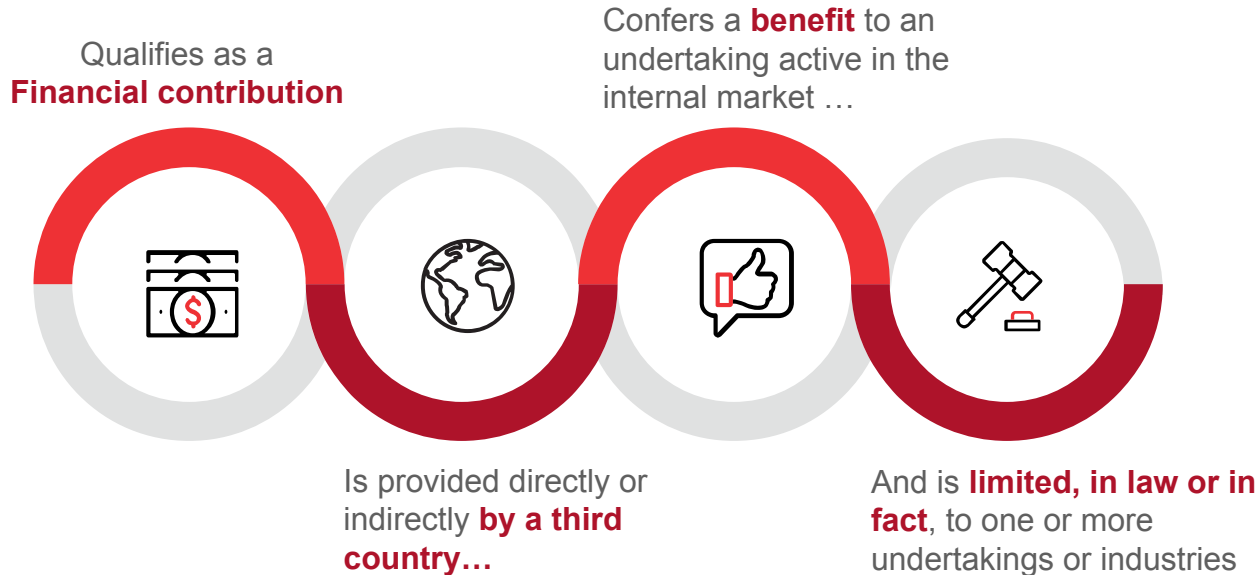
**Broad Investigative  
Powers**



**Penalties for  
non-compliance**

# What is a Foreign subsidy

A measure that meets four cumulative conditions:



# Focus: Mandatory notification thresholds for concentrations

1 The **target** company, the planned full-function JV, **or** at least one of the merging companies **is established in the EU, and** the target/JV or at least one of the merging undertakings has an **aggregate EU-wide turnover of at least EUR 500 million in the previous financial year.**

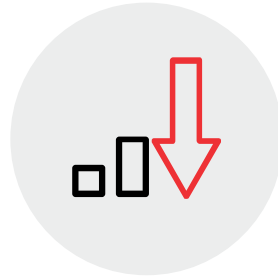
2 The **aggregate of all third country financial contributions** received by the companies/groups involved **in the 3 years prior** to conclusion of the agreement, the announcement of the public bid or the acquisition of a controlling interest **exceeds EUR 50 million.**



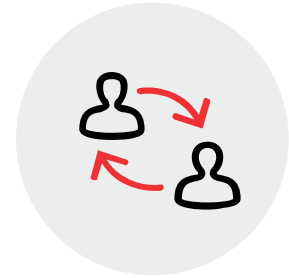
# So, what are foreign financial contributions for purposes of meeting the notification thresholds?



Funds or liabilities



Foregone revenue



Goods or services

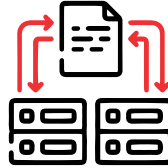
# What (not) to report once a notification is required:



# Practical Implications



Consider FSR exposure & potential difficulties collecting relevant information



Develop a database of relevant information



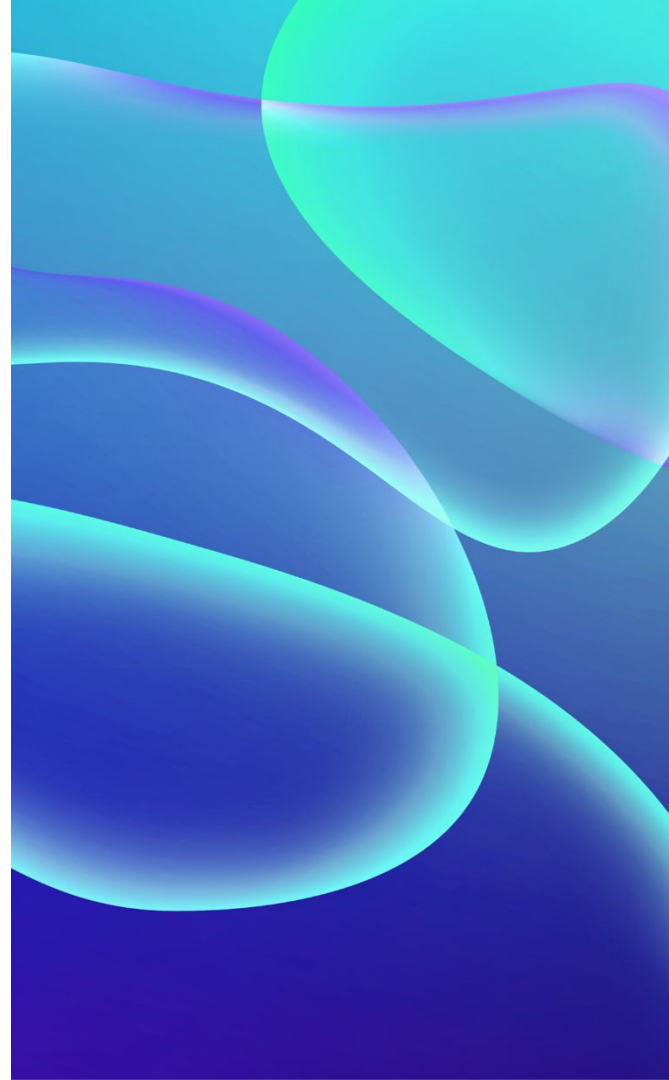
FSR will need to be considered alongside Merger Control and FIR on future deals

The background features a gradient from dark blue on the left to teal on the right. A large white shape, resembling a speech bubble or a stylized letter 'Q', is positioned on the left side. The word "Questions" is written in a bold, black, sans-serif font within this white shape.

**Questions**

# Catch up on demand

- 01** Collaboration with competitors: risks and opportunities
- 02** Dawn raids and information gathering powers
- 03** EU Foreign Subsidy Controls: practical implications for global businesses. Are you ready for 12 October 2023?



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