Navigating the EU Foreign Subsidies Regulation: Ten practical points for Chinese companies investing in the EU

Chinese companies, whether private or State-owned, investing in the European Union (EU) face increasing scrutiny under the Foreign Subsidies Regulation (FSR), reflecting growing European Commission (EC) attention to State-linked financing amidst wider geopolitical tensions. The EC's ongoing in-depth (Phase 2) review of JD.com's proposed acquisition of CECONOMY brings these risks into sharp focus: the EC is examining whether preferential financing, tax incentives and grants may have affected the acquisition process and could negatively impact competition in the EU after closing. Against this backdrop, we set out ten practical points for Chinese companies planning investments in the EU (see also our Top 10 Tips for M&A Transactions).

Background

The FSR allows the EC to investigate financial contributions granted directly or indirectly by non-EU countries where those contributions may distort the EU internal market (see also our analysis here). The concept of a **foreign financial contribution (FFC)** is central to the FSR analysis and is deliberately broad: it includes not only grants and tax incentives, but also loans, guarantees, capital injections and ordinary-course transactions for goods or services with public bodies or State-linked entities. An FFC is not necessarily a **foreign subsidy**. It becomes one only where the FFC confers a selective benefit that would not have been available under normal market conditions. If such a foreign subsidy is found to be **distortive**, the EC may (after an in-depth review) impose remedies to redress the distortive effects.

The FSR applies alongside merger control and foreign investment screening. A mandatory M&A FSR filing is required where the EU turnover and FFC thresholds are met, but the EC may also call in other transactions and investigate suspected distortive subsidies on its own initiative. Its January 2026 Guidelines explain how it will assess distortion, apply the balancing test and exercise those call-in powers (see our briefing here for more details, including our analysis of the two previous in-depth FSR reviews and commitments accepted by the EC). For deal teams, the FSR is therefore not simply another filing form. It is a substantive workstream that can affect financing, timing, remedies and execution risk.

Ten practical points for Chinese companies

1. Manage the conflict-of-laws risk on information requests

An FSR information request from the EC can be onerous, but it is important to respond as fully as possible. Failure to do so risks placing a Chinese company in a genuine bind between two legal systems. This was illustrated in the EC's FSR investigation in Nuctech,[1] where Nuctech's inability to respond to the EC's information requests produced conflicting legal outcomes. On the one hand, the European General Court held that a company which chooses to operate in the EU is subject to EU rules (including the FSR) and cannot rely on the rules of a third State (in this case, China) to avoid complying with EU law. On the other hand, the Chinese Ministry of Justice issued an order deeming the EC's measures in the Nuctech investigation to be "improper extraterritorial jurisdiction" and prohibiting compliance or assistance.

Chinese companies should seek to manage any conflict of laws proactively by demonstrating to the EC that they have taken all possible steps to cooperate and comply. It is important to engage experienced legal advisers who understand not only the EU legal landscape but also the EC's thinking and practices. In particular, any potential conflict should be identified early and managed as a separate workstream, allowing the company to map which data fall within PRC restrictions and where a Chinese exemption might be required. Middle-ground solutions — such as scoping to EU-held data, phased or redacted production, or agreed timelines pending a Chinese exemption – may help to avoid or narrow any potential conflict. Finally,

[1] This was not an M&A transaction but a public procurement case that fell within the scope of the FSR.

maintaining good-faith dialogue and transparency with both the EC and Chinese regulators is essential to build credibility and maximise the chances of a successful outcome.

2. Start and maintain a group-wide FFC register

Data collection is often the most burdensome part of an FSR filing. The notification form requires detailed information on relevant FFCs received in the three years before the proposed transaction, and the analysis extends across the relevant corporate group rather than stopping at the acquisition vehicle.

Any central FFC register should record the granting entity, recipient, type, amount, date and relevant country for each contribution. Maintaining that information on a rolling basis can shorten pre-notification, reduce repeated requests to business teams and lower the risk of incomplete disclosure. Companies expecting to pursue EU transactions should establish the process before a live deal creates time pressure.

3. Dealings with Chinese State-linked entities may count, even where they are on commercial market terms

For a Chinese group, FFCs may arise from arrangements that the business would regard as ordinary-course commercial dealings. They can include loans or underwriting from State-owned or State-controlled banks, tax incentives or grants from central or local authorities, capital injections by government investment vehicles (including sovereign wealth funds), land or utilities supplied by public bodies, and contracts for goods or services with State-linked customers or suppliers. Contributions may also be provided indirectly through a public or private entity whose conduct is attributable to the State.

Given that the largest banks in China are predominantly State-owned/controlled, this means that even privately owned Chinese companies may be more likely to have FFCs through their financing arrangements with these banks, notwithstanding that they are on commercial market terms.

The trap for Chinese companies is to search only for items labelled as government support or subsidy. The data exercise should instead capture transfers of value involving Chinese public authorities and State-linked bodies across the group, then determine which items require detailed reporting and whether any may amount to a foreign subsidy.

4. Deal-specific State financing attracts the greatest risk

Subsidies that directly facilitate a concentration fall within a category considered most likely to distort the internal market. The second in-depth FSR merger review concerned ADNOC's acquisition of German chemicals producer Covestro. The EC found that ADNOC's committed EUR 1.17 billion capital increase in Covestro directly facilitated the acquisition: it was instrumental in unlocking the negotiations and enabled ADNOC to acquire a company that it would not otherwise have acquired.

State-linked financing raised specifically for an acquisition and not on market terms should therefore be treated as a priority risk item. This includes debt, underwriting and equity support. The issue is the economic connection with the deal, not the label attached to the instrument.

5. Debt and equity receive the same substantive scrutiny

Changing the legal form of financing does not remove FSR exposure. The completed in-depth M&A cases have involved both debt and equity: a term loan in *e&/PPF Telecom* and a capital increase in *ADNOC/Covestro*. In each case, the EC examined whether the support conferred a benefit and whether it distorted the internal market.

The structuring question is therefore not whether debt is safer than equity. It is whether the terms are commercial, whether State involvement can be properly explained and whether the financing made the transaction possible on terms that would not otherwise have been available.

6. Commercial terms can prevent an FFC from becoming a foreign subsidy

Not every FFC is problematic. Having identified the contributions that count, the next question is whether any of them actually confers a benefit — because only an FFC obtained on better-than-market terms becomes a foreign subsidy the EC can act against. The first in-depth FSR merger review concerned the acquisition by UAE telecommunications group e& of parts of European operator PPF Telecom. The EC accepted that a term loan from a bank consortium that included UAE-controlled banks did not confer a benefit, after detailed economic evidence showed that the financing was provided on market terms. Passive investments made on genuinely pari passu terms may be treated in the same way.

The evidence needs to be built at the time of the proposed transaction. Comparable financing offers, pricing benchmarks, credit analysis, valuation materials and participation by independent commercial lenders can all help. Finding sufficient evidence at a later point in time could prove to be more difficult, making it generally more challenging to present a convincing case to the EC.

7. PRC benchmarks may not be enough to establish market terms

By analogy with the EC's approach in anti-subsidy investigations, the EC is not required to accept a domestic benchmark where it considers that the comparator does not reflect normal market conditions. It may adjust an existing benchmark or construct an alternative one, including where State ownership, complex instruments or non-market conditions make direct comparators unreliable.

Chinese parties should therefore not rely solely on PRC lending rates, land values or other domestic reference points. Where possible, the evidential package should include credible international comparators and explain any differences in currency, tenor, security, risk and market conditions. The analysis should answer the EC's likely benchmark, not only the benchmark used internally to approve the financing.

8. Plan for the real timetable, not only the statutory clock

The formal M&A review comprises a 25-working day initial phase and, if an in-depth (Phase 2) investigation is opened, a further 90-working day period. Those periods begin only after the pre-notification period, which can take up to six months or even longer. The EC can also stop the clock where parties fail to provide requested information, and commitments can extend the in-depth review. The published timetable is therefore not a reliable guide to the time needed for a complex case, particularly once remedies are in play.

The two completed in-depth (Phase 2) reviews show how far the real timetable can extend. From signing to conditional clearance, *e&/PPF Telecom* took nearly 14 months, including around five months after formal notification. *ADNOC/Covestro* took more than 13 months from announcement to conditional clearance and six months after notification, including two stop-the-clock periods. FSR clearance should therefore be reflected from the outset in the conditions precedent, cooperation provisions and long-stop date.

9. Where distortive foreign subsidies are a risk, develop the remedies strategy early

To date, there have been two conditional FSR merger clearances, both involving foreign subsidies from the UAE. The remedies included removing unlimited State guarantees and, in *e&/PPF Telecom*, restrictions on non-market financing of the acquired EU business, requirements for intra-group dealings to remain on market terms and reporting obligations for certain future acquisitions.

On the substance of remedies, points to test with the business include which guarantees could be removed, whether EU operations could be ring-fenced, how future intra-group funding would work and which controls could be operated in practice. The analysis should focus on lasting operational consequences, not merely whether a proposal may secure clearance.

On timing, the EC can only accept remedies after an in-depth (Phase 2) review, which has significant implications on transaction timetables. Parties may therefore wish to consider possible workarounds, such as a "fix-it-first" remedy that pre-wires certain commitments at the outset to seek to secure clearance within Phase 1.

10. Stay on guard even when your deal falls below the FSR thresholds

A deal that does not meet the mandatory filing thresholds is not necessarily outside the FSR. Before closing, the EC may require notification of a below-threshold concentration where it suspects that foreign subsidies may distort the internal market. The 2026 Guidelines indicate that strategic activities or assets, critical infrastructure, a pattern of acquisitions and previous FSR interventions may all increase call-in risk.

Chinese companies should therefore be mindful of the existence of these call-in risk factors in their particular transaction, rather than simply treating the FSR threshold analysis as the end of the enquiry. The same FFC records, market-terms evidence and commercial rationale prepared for a notified transaction may be needed at short notice. Transaction documents may need to factor in some flexibility (e.g. including a sweeper clause for regulatory conditions) to anticipate the exercise of this call-in power.

What comes next

The outcome of *JD.com/CECONOMY*, due by 2 October 2026, should provide the clearest indication yet of how the EC will assess a Chinese-backed acquisition and the remedies it may require. It will be an important decision, but Chinese companies need not wait for it before adjusting their approach to EU deals. Concurrently, the EC's first review of the FSR found that it is fit for purpose but acknowledged concerns from stakeholders about the administrative burden, procedural complexity and uncertainty around its call-in powers. The EC announced possible targeted simplifications which are expected to be open for public consultation in Autumn 2026 and adopted in 2027 (see the EC's press release and Q&A).

No concentration has yet been prohibited under the FSR. The completed in-depth reviews instead show that a route to clearance with commitments remains the most common outcome. For Chinese companies, the best chance of keeping that route open is to start early: understand the group's FFCs, preserve evidence of market terms and commercial rationale, allow for the real review timetable and identify any remedies the business could accept. The FSR is manageable, but only if it is treated as part of the deal strategy from the outset.

Please get in touch with one of the contacts below or your usual Slaughter and May contact for further information on the FSR regime.

Contacts

Natalie Yeung
Partner, Hong Kong
T: +852 2901 7275
E: natalie.yeung@slaughterandmay.com

Jonathan Slade
Partner, Brussels
T: +32 (0) 2 737 94 36
E: jonathan.slade@slaughterandmay.com

Alexander Lee
Counsel, Hong Kong
T: +852 2901 7202
E: alexander-pc.lee@slaughterandmay.com

London
T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels
T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong
T +852 2521 0551
F +852 2845 2125

Beijing
T +86 10 5965 0600
F +86 10 5965 0650