Kluwer Competition Law Blog

FSR & Public Tenders in the EU: Key Insights at the Two-Year Mark

James Killick, Irina Trichkovska, Kasia Czapracka, Enrique Fayos de Arizón, Jia Liu (White & Case) · Wednesday, June 18th, 2025

Two years into the implementation of the EU Foreign Subsidies Regulation (FSR), the number of FSR filings under its public procurement tool exceeds 2,000, with scrutiny now by a recently established specialised unit within DG GROW of the European Commission. The new filing obligation impacts significantly the timeline and preparations for large public tenders in the EU, and poses challenges for the bidding entities. Below, we take stock and provide key insights into the FSR process for companies involved in FSR filings as part of their preparations for public tenders in the EU.

When does the FSR filing kick-in in public tenders in the EU?

Since the entry in force of the FSR, the bidders for public contracts across EU Member States and, most recently, the EU institutions themselves,[1] are subject to mandatory FSR filing to the European Commission ("**EC**") (DG GROW), in case:

- **Contract value** of the public contract is equal or above €250 million; and in cases where the tender is divided into lots, the aggregate value of the lots applied for by the bidder is equal or above €125 million;[2] and
- **Financial exchanges with at least one non-EU government** of the bidding entity (including its subsidiaries and parent companies), together with its main suppliers or subcontractors, exceed €4 million three years prior to the FSR filing (so-called foreign financial contributions or "**FFCs**").[3]

The EC also has vast "call-in" powers under the FSR for public tenders below the thresholds, but, so far, it has not exercised such powers.

To date, the EC has received an unexpectedly high volume of FSR filings in EU public tenders: over 2112 in total, comprising 1734 FSR declarations and 322 FSR notifications. The FSR filings concern more than 400 public tenders in the EU, mainly from France, Germany, and Italy. To tackle the huge number of filings, DG GROW has recently formed a new "Foreign Subsidies" Unit within its Directorate G, in charge of reviewing these filings.

Who is the notifying party in the FSR filing in public tenders in the EU?

The notifying party in FSR filings is the bidding entity, including its direct subsidiaries and direct or indirect parent companies, but excluding its sister companies, unless they act as main suppliers (or subcontractors) to the bidding entity. This is known as the *linear ownership structure*, which applies only to bidders in FSR filings for public tenders, but not to FSR filings under the FSR M&A tool (where the notifying party is the entire group to which the buyer belongs).

The notifying party also includes the main suppliers or subcontractors of the bidding entity (even if these entities are unrelated to the bidding entity), which are also bound to submit an FSR filing and disclose information, in particular their FFCs.

How to make an FSR filing in public tenders in the EU?

To make an FSR filing, the bidding entity needs to fill in the Form FS-PP. The online form of the Form FS-PP is available here. The bidding entity should indicate whether the FSR filing takes the form of a notification or a declaration in the form, as it determines which sections of the Form FS-PP need to be completed. Certain sections of the Form FS-PP – such as FFCs and supporting documents – may be provided as annexes.

The FSR filing is made to the contracting authority, which calls for the tender bids. However, the only authority which can review the FSR filing is DG GROW within the EC. The contracting authority is thus solely a postbox for the FSR filing, although an important one, as FSR filings **cannot** be formally submitted directly to the DG GROW.

In the FSR filing, the bidding entity provides information on the public tender itself, its linear ownership structure, including whether it is participating in the public tender together with the others and whether it relies on the capacities of other entities to meet the selection criteria (*i.e.*, main suppliers or contractors). Most importantly, the bidding entity provides information on the relevant FFCs as well as the financial statements of the past three years. While the narrower scope of the linear ownership structure facilitates the identification of the FFCs, it remains the case that the FFC data collection takes time and internal coordination within the companies, as well as external counsel consultation.

The main suppliers and contractors of the bidding entity are also bound to disclose their FFCs. In case the FSR filing includes multiple unrelated parties, this raises a number of challenges concerning the way in which this confidential information is gathered and shared to the authority. To address confidentiality concerns and prevent sensitive information from being disclosed to the contracting authority, consortium partners, and/or main suppliers (or subcontractors), companies may opt for password-protected submissions.

FSR review under the public tender tool

The FSR review by DG GROW starts once the contracting authority transfers the FSR filing to DG GROW. Although expected to do so "without delay", in practice, the transfer is often left at the contracting authority's discretion.

The EC's review of the FSR filings could be done in two phases:

- **Preliminary FSR review phase** (akin to Phase I in merger proceedings). In single stage tender procedures, the Phase I FSR review lasts for 20 working days (WD), extendable only once by 10 WD. In multi-stage procedures, the FSR may need to be filed twice for the same tender.
- **In-depth FSR review** (akin to Phase II investigations in merger proceedings). If the EC finds "*sufficient indications of subsidies*" that could distort the EU internal market, it will adopt a decision to open an in-depth investigation. In open procedures, the Phase II review lasts for up to 110 WD from complete notification, extendable only once by 20 WD in exceptional cases. In multi-stage procedures, the Phase II review lasts for 90 WD from the updated notification, extendable only once by 20 WD in exceptional cases.

To date, the EC has opened three in-depth investigations,[4] which were not pursued until the end, as the bidders withdrew their offers, as a response to the investigation. The EC has, most recently, also declared two FSR filings incomplete, which dismissed the bidders from the tender process.

Key Insights

- The FSR filings for public tenders differ significantly from those under the FSR M&A tool. The FSR filings in EU public procurement are reviewed by DG GROW; the disclosures apply to the linear ownership structure of the bidding entity; include disclosures from the main supplies or contractors of the bidding entity; and the FFCs thresholds are lower in FSR filings under the public tender tool.
- The contracting authorities often provide detailed instructions on how the FSR filing should be done as part of the tender offer (and these may also differ between contracting authorities). You should check carefully the tender documentation concerning any FSR filing requirements. Note that the FSR filing obligation applies even if it is not mentioned in the tender documents. If the relevant FSR thresholds are met, you should carry out a self- assessment to rule out whether a FSR filing is not needed.
- The preparations for FSR filings are burdensome and time-consuming. Make sure you have all the information needed for the FSR filing, and that your chosen consortium members, main suppliers (and subcontractors), do too, as they will be also subject to FSR filing disclosures. Do not count on waivers to achieve completeness, as so far, DG GROW has been reluctant to grant any waivers. DG GROW is carefully scrutinising FSR filings and the parties should consider consulting specialised FSR counsel to avoid any delays or complications in the FSR review, which risks derailing the bid review and selection process.
- Make sure to ensure confidentiality of your FSR information vis-à-vis your partners in the tender, but also towards the contracting authority.

Anastasios Tsochatzidis (White & Case, Trainee, Brussels) contributed to the development of this publication.

[1] Pursuant to EU Financial Regulation No. 2024/2509, which applies as of 30 September 2024.

[2] There is a narrow group of public contracts, which are exempt from FSR filings. These categories mirror the exemptions under which Member States are allowed not to pursue EU public procurement rules.

[3] Companies below the FFC threshold of €4 million are still under an obligation to attest it by submitting an FSR declaration to the EC. The notion of FFC is very broad and includes a variety of transfers of funds or liabilities, such as capital & equity contributions, grants, State loans & guarantees as well as tax exemptions / incentives. The FSR also allows for exempted categories of FFCs, as a result of which, the disclosures made in FSR filings should be examined, if possible, with external FSR counsel.

[4] Cases FSP.100147, FSP. 100151 and FSP. 100154.

To make sure you do not miss out on regular updates from the Kluwer Competition Law Blog, please subscribe here.

This entry was posted on Wednesday, June 18th, 2025 at 10:00 am and is filed under European Union, Foreign Subsidy Regulation, Public procurement
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.