Invest Europe response to the Foreign Subsidies review Call for Evidence

Invest Europe welcomes the opportunity to contribute to the review of the Foreign Subsidies Regulation (FSR). As the association representing private equity (PE), venture capital (VC), and infrastructure fund managers and their investors, we want to highlight that the sector is disproportionately affected by the current FSR regime.

Approximately one third of all FSR notifications to date have been submitted by PE sponsors, reflecting the nature of PE fund structures rather than a reflection of distortive foreign influence. This high volume of notifications arises particularly from the structural realities of PE and VC funds, where the group-wide €50 million foreign financial contribution threshold captures capital pooled globally by the General Partner (GP) and attributed Limited Partner (LP) funding, regardless of actual risk of distortive foreign influence. Many notifications concern transactions that are unproblematic from an FSR perspective, as evidenced by the absence of any in-depth investigations relating to PE sponsored acquisitions. A recalibration of thresholds would significantly enhance proportionality and better focus the FSR's application on material cases without impairing the Commission's enforcement capabilities.

We appreciate the Commission's creation of the 'investment fund' exemption, which limits reporting obligations to the funds actually involved in the transaction. This exemption has delivered measurable benefits in terms of efficiency and transaction deliverability by narrowing the scope of required disclosures. However, the practical application of this exemption introduces significant operational burdens and often results in de facto cancelling the benefits it is supposed to bring.

Specifically, the first condition of the exemption, requiring the acquiring fund to have a majority of different investors compared to other funds managed by the same firm, often results in burdensome processes. Firms have been compelled to produce detailed lists of individual LP contributions across multiple funds, rather than relying on anonymised or aggregated data. This granularity imposes significant costs and resource demands, costs which members estimate to be six-figure, and diverts focus away from core investment activities.

A further practical challenge arises from the requirement to confirm that the acquiring fund has limited or no commercial transactions with other funds under common management. This involves assessing economic relationships not only between funds but also across hundreds of portfolio companies. The scope and scale of this exercise can be prohibitively complex and expensive, with some firms undertaking exhaustive, time-consuming reviews across all potential inter-company dealings. Given the number of potential combinations among large portfolios, many firms resort to a "to the best of our knowledge" approach, acknowledging that it is practically impossible to verify every

potential transaction exhaustively. This creates uncertainty and operational inefficiency, risks inconsistent application, and can delay timely use of the exemption. We suggest that the Commission clarify the exemption conditions by explicitly limiting the relevant economic relationships to those "out of the ordinary course of business." This would confine the inquiry to atypical, non-market transactions, such as special arrangements, non-arm's-length dealings, or unusual profit shifting, while excluding routine commercial transactions conducted on normal commercial terms.

FSR filings have also required firms to develop complex data tracking systems and dedicate cross-functional teams to collect and maintain information not previously compiled. These costs are not absorbed but influence investment decisions and deter positive participation in European markets. They add a price to receiving foreign subsidies, risking to undermine the EU's competitiveness relative to other jurisdictions. They limit the appetite to participate in innovative M&A and procurement activity. Likewise, they risk undermining Europe's work to transform its competitiveness through investment and public procurement.

The Commission has recently clarified that investments by an LP attributable to a non-EU government into a non-government-controlled fund will not be considered to directly facilitate an acquisition of control by the fund if the LP's investment is 'pari passu' with other investors. While this clarification is helpful, it raises questions about the meaning of 'pari passu' in this context. LP investments are individually negotiated, often with slight differences based on factors such as the size or timing of commitments, and some investors negotiate limitations on transaction participation based on their own internal policies. We recommend that the Commission further clarify that such investments will be considered made on a 'pari passu' basis if their terms do not confer a material advantage that enables the fund to offer more favourable terms to potential sellers than those offered to other investors. An advantage could be considered as material if (inter alia) the LP attributable to a non-EU government is conferred governance rights that are more favourable than those conferred to other LPs.

Given these challenges, Invest Europe considers there is scope to reduce the level of detail required from firms seeking to apply this exemption, especially in cases where the investments and structures are clearly unproblematic. This would better align the regulatory burden with the risks posed and maintain the Commission's ability to monitor genuinely distortive foreign subsidies without imposing unnecessary compliance costs.

We urge the Commission to consider pragmatic, short-term relief through lighter disclosure requirements in the application of the exemption while building up experience and a clear body of case law to justify medium-term broadening of the exemption.

We recommend introducing a simplified notification procedure tailored to PE/VC funds. Such a procedure would principally use the GP's nationality and the structure's governance features as proxies to determine reporting scope. This approach would significantly reduce or eliminate the need for full disclosure of all individual LPs unless specific governance, control, or state-linked factors warrant further scrutiny. We believe this is aligned with the Commission's interest of managing more efficiently the review of unproblematic filings and free up resources to pursue the Commission's policy objectives.

Finally, we urge the Commission to hone the scope of the FSR to focus on the most material and risky foreign financial contributions (whether in terms of dealing with actual filings or considering ex officio investigations), particularly those granted in non-market economies and selective incentives not freely available to all market actors, with a clear nexus to the notified transaction or procurement. This risk-based targeting would protect less risky activities from unnecessary scrutiny, enhance regulatory efficiency, and reinforce legal certainty.

Furthermore, we encourage the Commission to reinforce thresholds and introduce clear procedural guardrails to provide a clear and transparent framework for investigations into sub-threshold transactions. Such investigations introduce costs that can make deals unviable, and lengthy screening processes that can cause parties to abandon deals. They, accordingly, limit high-potential startups' access to appealing exit opportunities, discouraging them from establishing in Europe in favour of other jurisdictions which provide a suite of exit options for founders. The above-mentioned measures would align with the Commission's priorities to facilitate smoother exit opportunities for SMEs and startups, thereby supporting dynamic, innovation-driven capital formation in Europe.

In conclusion, while supporting the regulation's overall objectives, the PE/VC sector needs an FSR framework that balances effective market protection with proportionality and practical operability. Recalibrated rules, focused on material risks and structural realities, will safeguard competitiveness and promote continued investment in Europe.