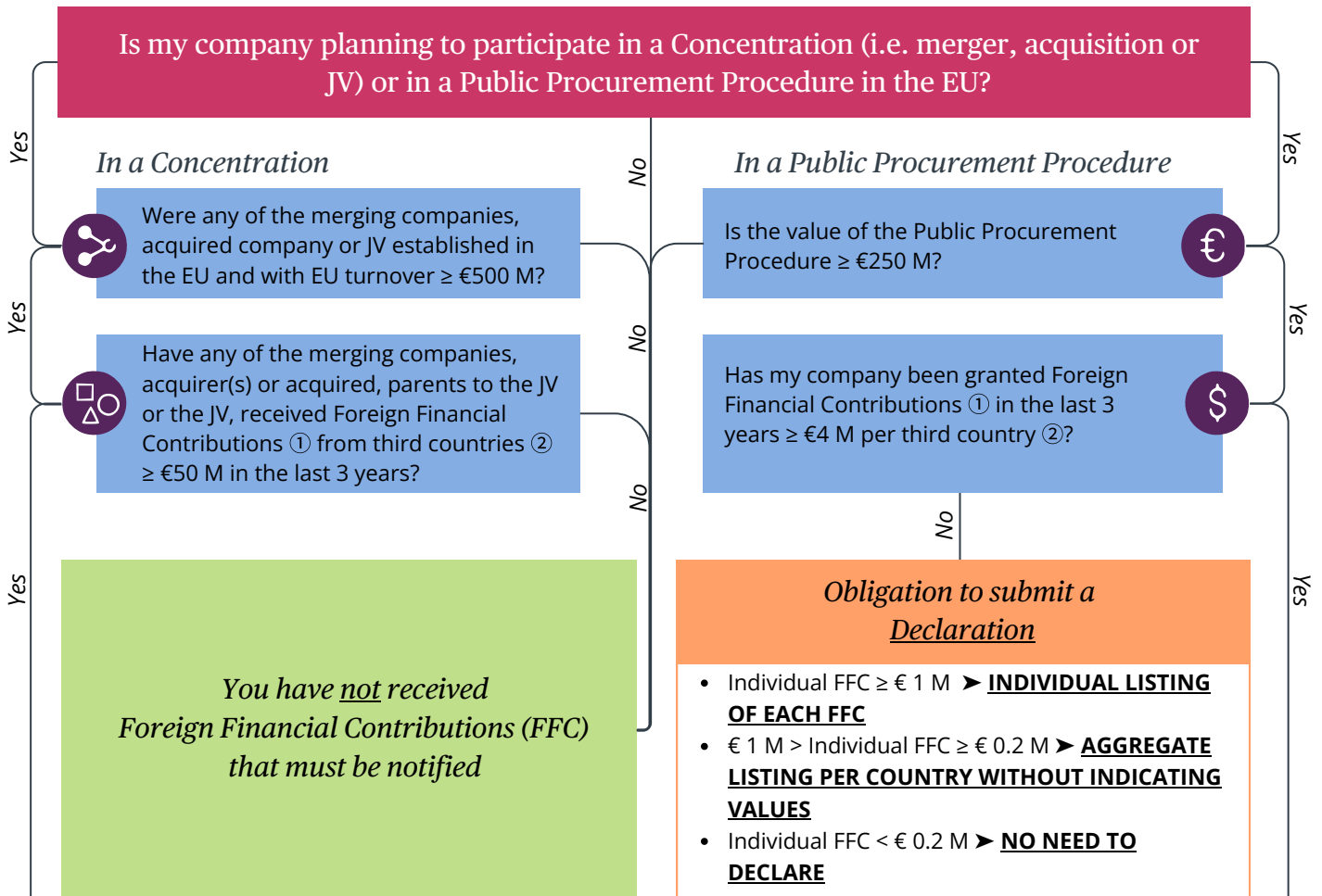


Has your company received Foreign Subsidies that must be notified?

EU Foreign Subsidies Regulation



Obligation to submit a Notification

The amount of information to provide in a Notification will vary depending on the amount and nature of the FFC:

DETAILED NOTIFICATION

Individual FFC “most likely to distort” ^③ the internal market and \geq €1 M

The DETAILED NOTIFICATION entails:

- Ascertaining whether the FFC is “most likely to distort”.
- Information on the form of each FFC, third country granting it (and entity), FFC’s purpose and economic rationale, conditions attached, characteristics, and use.
- Whether the FFC is selective and confers a benefit.
- Supporting documents.
- Possible positive effects (not mandatory).
- **For PPP:** Whether the FFC has been granted only for operating costs linked with the PPP and justifying the absence of unduly advantageous tender.
- **For Concentrations:** Questionnaire to assess the FFC’s impact on the internal market.

NO NEED TO REPORT

Individual FFC < € 1 M

OVERVIEW

Individual FFC not “most likely to distort” the internal market and \geq € 1 M

The OVERVIEW only requires (i) information on the type of FFC, (ii) description of the purpose of the FFC, (iii) information on the granting entity, and (iv) an estimated aggregate value of the FFC per third country.

The Overview DOES NOT NEED TO INCLUDE:

- Individual FFC which are not selective: (i) deferrals of payments of taxes and/or social security contributions, (ii) tax amnesties and tax holidays, (iii) normal depreciation, and (iv) loss-carry forward rules.
- Tax relief for the avoidance of double taxation.
- Provision/purchase of goods/services (except financial services) at market terms in the ordinary course of business, i.e. following a competitive, transparent, and non-discriminatory tender.
- **For PPP:** FFC from third country which has granted aggregated FFC \leq € 4 M in the 3 years prior to the notification.
- **For Concentrations:** FFC from third country which has granted aggregated FFC \leq € 45 M in the 3 years prior to the notification

* There are specific exceptions for investment funds in Concentrations.

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Definitions

① **Foreign financial contributions (FFC)**

FFC are any (i) transfer of funds (e.g. capital injections, grants, loans, guarantees, fiscal incentives, setting off of operating losses, debt forgiveness and debt to equity swaps and rescheduling), (ii) foregoing of liabilities (e.g. tax exemptions and granting of special or exclusive rights without adequate remuneration), or (iii) provision or purchase of goods or services to/by a foreign country.

A FFC may be a foreign subsidy (FS), but not all FFC are necessarily FS. The identification of a FS requires a complex assessment but in essence, a FS is a FFC by a third country that confers an advantage and is limited to one or more companies/sectors of the economy.

Notification thresholds on the FSR relate to FFC and not to FS.

② **When are financial contributions “foreign”?**

Only financial contributions granted by a third country (i.e. not a Member State of the EU) are caught. A third country includes its central government and public authorities of all levels (region, local...). It also includes by “public entities” and “private entities” attributable to the third country:

- **Public entities:** Companies whose capital is owned by the public sector and companies over which the State exerts a direct or indirect dominant influence.
- **Private entities:** Financial contributions granted by private entities may be attributable to the third country when the private entity is acting as an intermediary or when a stringent regulatory framework mandates certain transfers between private companies.

③ **When are FFC “most likely to distort” the internal market?**

FFC most likely to distort the internal market are:

- FS granted to an ailing undertaking.
- FS in the form of unlimited guarantee.
- Export financing measure not in line with the OECD Arrangement.
- **For Concentrations:** FS directly facilitating a concentration (i.e. covering a substantial part of the purchase price of the target).
- **For PPP:** FS enabling an undertaking to submit an unduly advantageous tender (i.e. covering a substantial part of the estimated value of a contract to be awarded in a PPP).

Need help identifying FFC?



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