

Factual Summary report on the public consultation on the FSR Review Report

DG for Competition and DG for Internal Market, Industry, Entrepreneurship and SMEs

This document should be regarded solely as a summary of the contributions submitted by stakeholders in the context of the public consultation launched to gather views and feedback on specific aspects of the implementation and enforcement of the Foreign Subsidies Regulation (FSR), as part of the Commission's review pursuant to Article 52 FSR. It cannot in any circumstances be regarded as the official position of the Commission or its services. Responses to the consultation activities cannot be considered as a representative sample of the views of the EU population.

1. Introduction

1.1 Background

The Foreign Subsidies Regulation (FSR) (Regulation (EU) 2022/2560) became applicable on 13 July 2023. It enables the European Commission to address distortions in the internal market caused by foreign subsidies. Under Art. 52(2) FSR, the Commission is required to publish a report reviewing the implementation and enforcement of the Regulation by 14 July 2026 and every three years thereafter.

1.2 Timing and structure of the consultation

In preparation of the report, the Commission sought input from stakeholders directly or indirectly involved in implementing the FSR, as well as from the general public, on how the FSR and its Implementing Regulation¹ have operated in practice to date.

To this end, a public consultation and a call for evidence were published in parallel.²

The public consultation was open for 14 weeks and replies could be provided in any of the 24 EU official languages. It included a dedicated online questionnaire of 33 questions covering general aspects of the FSR and issues relating specifically to concentrations and public procurement. For each closed question, participants were given the opportunity to provide explanations to their answers. The questions address the period from the FSR entry into force on 13 July 2023 up to the end of 2025.

In order to ensure a fair and transparent consultation process, only responses received through the online questionnaire are taken into account in this summary.

1.3 Overview of the respondents

Overall, the Commission received 54 responses to the public consultation. The respondents were based in Belgium (12), Canada (6), France (5), Germany, Poland, Italy, Czechia (4 each), Austria, UK, China (3 each), Finland, Sweden (2 each), Spain and Denmark (1 each) (see Figure 1).

¹ Commission Implementing Regulation (EU) 2023/1441 of 10 July 2023 on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market (OJ L 177, 12.7.2023, pp. 1–44): https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2023.177.01.0001.01.ENG .

² https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1954 ; https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14760-Foreign-subsidies-review-report/public-consultation_en .

Most of the respondents were companies (23), followed by business associations (15), public authorities (11), academic/research institutions (2), an NGO (1), a EU citizen (1) and Others (1) (see Figure 2).

The fields of specialisation of the respondents are diverse. Public sector respondents include public authorities which are involved with public procurement and concentrations, some serving as contact points for the FSR in their respective countries. Among private sector respondents, the most represented sectors are energy and transport. Replies were also submitted by stakeholders active in sectors such as construction, postal, telecommunications, industrial solutions etc. Several pension funds, law firms and other business associations also took part in the consultation.

2 Summary of key messages

2.1 Determination of Distortion

28 out of the 54 respondents consider that the framework for assessing distortions under Article 4 FSR is not sufficiently clear and predictable, and that the indicators under Article 4(1) FSR are drafted at a high level of generality. They called for greater clarity on their practical application, including how the Commission weighs different indicators and what evidentiary rules apply. Moreover, 13 stakeholders believe that there should be more clarity on the practical significance that each of the indicators has in the distortion analysis. Additionally, the threshold for intervention by the Commission as a result of the applicable distortion test is considered to be rather low. 10 respondents consider the framework for assessing distortions as clear and predictable. 3 of them note that the FSR is a new legal instrument and although there is more flexibility and discretion on the side of the Commission, the decisional practice will evolve with time and as such that would provide further predictability for the parties concerned. 16 of the stakeholders involved in the public consultation did not express an opinion on the matter (see Figure 6).

27 respondents do not perceive the criteria in Article 5 FSR for identifying categories of foreign subsidies most likely to distort the internal market as sufficiently clear and appropriate. 18 respondents indicate that the criteria are too broadly defined, mentioning the concepts of foreign subsidies directly facilitating concentrations or enabling the submission of unduly advantageous tenders. In addition, 5 respondents question the absence of objective criteria explaining why the categories of subsidies provided in Article 5 FSR are presumed “most likely” to distort competition in the internal market. 17 respondents consider that the criteria are sufficiently clear and appropriate, while 10 respondents did not express an opinion on the matter (see Figure 6).

2.2 Balancing Test

24 of the respondents consider that the balancing test (Art. 6 FSR) lacks transparency and proportionality, in particular as regards the procedural application of the test and the substantiation required from parties. 23 stakeholders observe that the test would need clarification on the definition of positive and negative effects, the legal framework for assessment and its practical application. They add that the Commission is granted a considerable margin of discretion to apply the test and that the standards of proof applied to positive and negative effects should be consistent, including as regards the respective burden to substantiate those effects. 7 respondents perceive the balancing test to be transparent and proportional, while 23 respondents do not express any opinion on this point (see Figure 6).

2.3 Ex Officio Investigations

25 respondents consider the ex officio tool (Art. 9 FSR) an adequate instrument to contribute to ensuring a level playing field on the internal market. 17 respondents view the ex officio tool as having a lot of potential in the enforcement of the objectives enshrined in the FSR, while at the same time 11 respondents emphasise that its application should be effective and not prejudice predictability and legal certainty for businesses. 5 respondents observed that the effective enforcement of the tool requires sufficient resources on the Commission's side. At the same time, economic operators would benefit from clearer procedural guidance. 20 respondents did not have an opinion while 9 consider that the tool is not sufficient to contribute to a level playing field in the internal market (see Figure 6).

When it comes to the effect of the ex officio tool on non-EU economic operators' commercial activities in the Union, including its potential implications for business planning investment decisions, 21 of the respondents consider that it is too early to assess whether such effects are material; 10 expect that there will be an impact, 2 do not perceive any change and 21 do not have an opinion (see Figure 7). 8 respondents indicate that greater predictability and clarity in the enforcement of the ex officio tool would be needed to ensure sufficient legal certainty for non-EU economic operators when making commercial and investment decisions in the EU.

2.4 Tool-specific findings - Concentrations

Thresholds, procedure and timeline

23 out of the 54 respondents consider that the notification thresholds for concentrations (Art. 20 FSR) are too low and highlight that too many irrelevant cases are caught. This can cause administrative burden for undertakings as well as for the Commission, as the number of notified transactions so far exceeded what was estimated prior to the entry into force of the Regulation. 2 respondents consider that the notification thresholds are too high, while 8 other respondents consider that the thresholds are appropriate proxies for identifying the most relevant cases, although some of them note that a potential increase could still benefit the enforcement of the FSR by reducing administrative burden for unproblematic cases. 21 respondents did not express an opinion on the matter (see Figure 10).

27 respondents, primarily businesses and business associations, consider that the reporting of foreign financial contributions in Section 5 of the Form FS-CO³ is neither clear nor proportionate. They explain that the completion of this section is particularly burdensome due to its broad scope. Several respondents highlight that the notion of 'foreign financial contribution' is too widely defined and encompasses a vast range of ordinary commercial transactions with no apparent link to potential distortions. In addition, they note practical difficulties in retrieving historical and decentralised information across large corporate groups. One respondent considers that the requirements set out in Section 5 of the Form FS-CO are clear and proportionate, while the remaining 26 respondents expressed no opinion on this matter (see Figure 11).

³ The Form FS-CO is the mandatory notification form for concentrations meeting the filing thresholds under the FSR, requiring detailed information about the deal and any financial contributions from non-EU countries to assess potential market distortions.

With regard to the timelines and costs of preliminary reviews and in-depth investigations in concentrations (Art. 25 FSR), 13 respondents consider that the associated costs are disproportionate, while 11 respondents consider that the preliminary review timelines are too long. 4 respondents consider that the timelines and costs are adequate and manageable in terms of planning, whereas 25 respondents expressed no opinion on the matter (see Figure 12).

Perceived overlap with EUMR and FDI filings

24 respondents have occasionally or frequently experienced situations where the same concentration was subject to notification requirements under the FSR and merger control⁴ and/or foreign direct investment screening.⁵ According to the respondents, these overlaps generate additional administrative burden, uncertainty and delays, in particular due to the limited alignment of information requirements and the broad and demanding scope of the Form FS-CO. 5 respondents have never notified a concentration under another regulatory regime, while 25 respondents expressed no opinion on the matter (see Figure 13).

Impact on deal planning

With regard to the impact of the timelines and costs of concentrations notifications on deal planning and closing, 28 respondents consider that the notification obligations can lead to moderate or significant delays and uncertainty. Among these respondents, 20 also indicate that the notification requirements can generate significant additional costs. They explain that a filing may involve all the business units within a corporate group and require internal training as well as the use of external legal advice, which is both costly and time-consuming. Only one respondent considers that the delays and costs are minimal, while 25 respondents expressed no opinion on this matter (see Figure 14).

Perceived impact of the FSR on concentration transactions

With regard to the impact of the FSR on the participation of non-EU operators in concentration transactions in the EU, 10 respondents consider that it is too early to assess whether the Regulation has had such an effect. 7 respondents consider, based on their experience and expectations, that the FSR may have reduced non-EU participation in concentration transactions, citing in particular the broad definition of foreign financial contributions, the lack of decisional practice and of a simplified procedure, the narrow scope of reporting exemptions, and the extensive information gathering requirements. By contrast, 2 other respondents consider that no change occurred, and 35 respondents expressed no opinion on the matter (see Figure 15).

⁴ Merger control filings may take place either at EU level under Council Regulation (EC) No 139/2004 (the EU Merger Regulation) or at national level under the merger control regimes of the Member States, depending on the jurisdictional thresholds applicable to the transaction.

⁵ Foreign direct investment screening refers to national screening mechanisms operated by Member States pursuant to Regulation (EU) 2019/452, which establishes a framework for the screening of foreign direct investments into the Union on grounds of security or public order. While the Regulation provides for cooperation and information exchange at EU level, screening decisions remain within the exclusive competence of the Member States operating such mechanisms.

Experience with prior notifications

25 respondents consider that the information required in the Form FS-CO and more generally by the Implementing Regulation is neither proportionate nor reasonable, in particular for SMEs. They indicate that in certain cases, requests for information sent by the Commission are excessive and sometimes unnecessary for the assessment of transactions. By contrast, 2 respondents consider that the information requirements are acceptable, while the 27 remaining respondents expressed no opinion on the matter (see Figure 16).

2.5 Tool-specific findings – Public Procurement Procedures

Thresholds

10 respondents consider the thresholds for public procurement procedures (Art. 28 FSR) as appropriate proxies for identifying the most relevant cases of potentially distortive foreign subsidies. 20 respondents advocate for an increase in the current threshold based on the need to reduce administrative burden. 8 respondents, who advocate for lowering the thresholds, focus on the significance of smaller contracts in strategic sectors (green technologies, digital infrastructure, defense-related supplies) where foreign subsidies can still be distortive. 16 respondents expressed no opinion on this matter (see Figure 17).

Timelines and costs

3 respondents do not notice any impact of the FSR notification obligations on timelines and costs regarding public procurement procedures. Minimal delays are reported twice, and minimal additional costs five times. 6 respondents report that they have experienced moderate delays. Significant delays or uncertainty are reported by 22 responses, equally to significant additional costs. 21 respondents expressed no opinion on these matters (see Figure 18).

2 respondents consider the timelines for preliminary review and in-depth investigation of notified foreign financial contributions (Art. 30 FSR) adequate for the overall public procurement procedure and proportionate in terms of costs. 18 respondents believe the adequacy of timelines depends on the complexity of the case. 16 respondents consider the timelines too long in general. One response consider FSR investigations-related costs disproportionate while 17 respondents expressed no opinion (see Figure 19).

4 respondents are satisfied, and 8 partially satisfied, with transparency and accessibility of the outcome of the Commission's review of notified foreign financial contributions in public procurement procedures. 19 respondents disagree and raise the two following issues: first, the lack of transparency regarding the outcomes of concluded investigations, thereby highlighting the need for these findings to be published and contain comprehensive information; second, the level of transparency during the ongoing proceedings, thereby highlighting limited visibility on the progress of the investigation. 23 respondents do not express any opinion (see Figure 20).

6 respondents fully support, and 12 partially support, the statement that the framework for assessing distortions in public procurement procedures (Art. 4 and 27 FSR), including the indicators (Art. 4(1) FSR), is clear and predictable, while 16 respondents do not support this statement. The respondents dissatisfied with this framework consider it to be too general and open to interpretation, highlighting the uncertainty

about how the indicators would be applied in specific tenders. 20 respondents expressed no opinion (see Figure 21).

6 respondents consider the texts of the FSR and its Implementing Regulation clear and precise enough for contracting authorities/entities to understand their obligations. 10 respondents disagree with this statement while 23 respondents report that these texts are only partially clear and precise for contracting authorities/entities. They point to differing levels of expertise of contracting authorities/entities and to implementation details remaining ambiguous. 15 respondents did not express their views on that matter (see Figure 22).

Notification requirements

8 respondents report that the scope of the notification obligation in public procurement procedures is clear and predictable. They acknowledge that the FSR sets out a regulatory framework and as such it must leave enough space for practical application. 31 respondents do not find the scope of the notification obligation clear and predictable, pointing at key definitions remaining ambiguous and inconsistent application across Member States and tenders. 15 respondents expressed no opinion on this (see Figure 23).

4 respondents support the statement that the structure and information requirements of the Form FS-PP⁶ and the Implementing Regulation are proportionate for notifications and declarations in public procurement procedures, and 8 respondents consider them understandable. In that context, the online FS-PP forms and references to the European Single Procurement Document are mentioned by 2 respondents. 20 respondents do not consider the structure and information requirements of Form FS-PP and the Implementing Regulation proportionate, and 12 do not find them understandable. 20 respondents did not have any opinion on these matters (see Figure 24).

Participation

22 respondents report a lack of knowledge or opinion on the participation by non-EU companies in EU public procurement procedures in relation to the FSR. 14 respondents notice reduced participation but not necessarily associated with a positive outcome, as they consider that the current FSR framework would discourage participation of both non-EU and EU companies. 14 respondents consider it too early to make any findings. 4 responses state that the FSR did not affect participation by non-EU companies in EU public procurement procedures (see Figure 25).

Role of the FSR

30 respondents acknowledge the importance of the FSR for the integrity and proper functioning of the internal market. Yet, majority of them (17) simultaneously point to the costs associated with FSR implementation, whereby the Regulation's positive impact is balanced against concerns related to administrative burden, procedural complexity, and legal uncertainty, which are said to potentially affect the efficiency of procurement procedures and, in some cases, participation in them. Overall, respondents

⁶ The Form FS-PP is the notification form for public procurement procedures meeting the filing threshold under the FSR.

indicate the need for the FSR to be reviewed and simplified, with the aim of achieving a more targeted and proportionate regulatory framework.

Annex: Figures underpinning the Summary

Figure 1: Number of respondents per country of origin

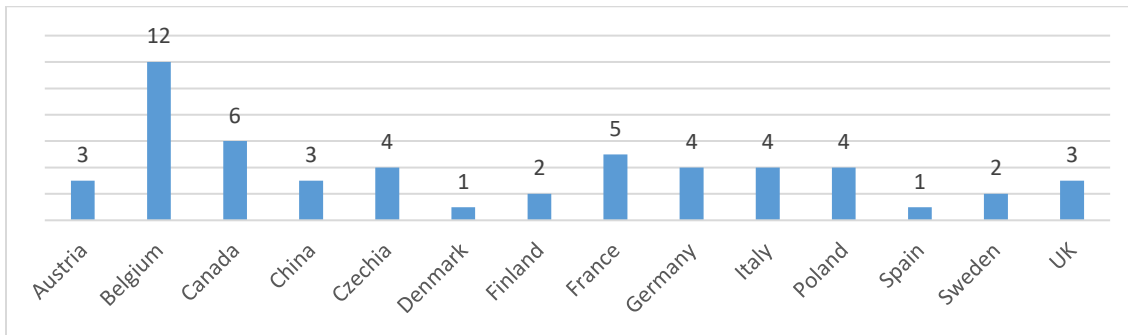


Figure 2: Participation per category of stakeholders

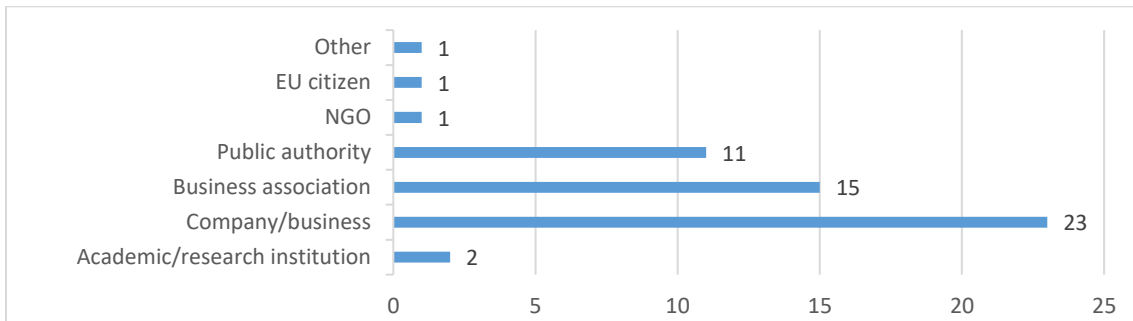


Figure 3: Involvement with the FSR

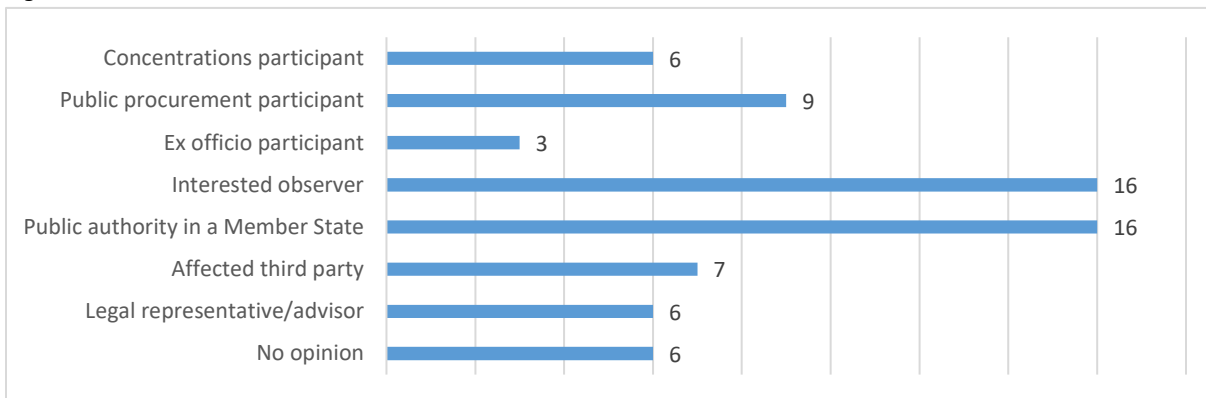


Figure 4: Size of respondent organizations

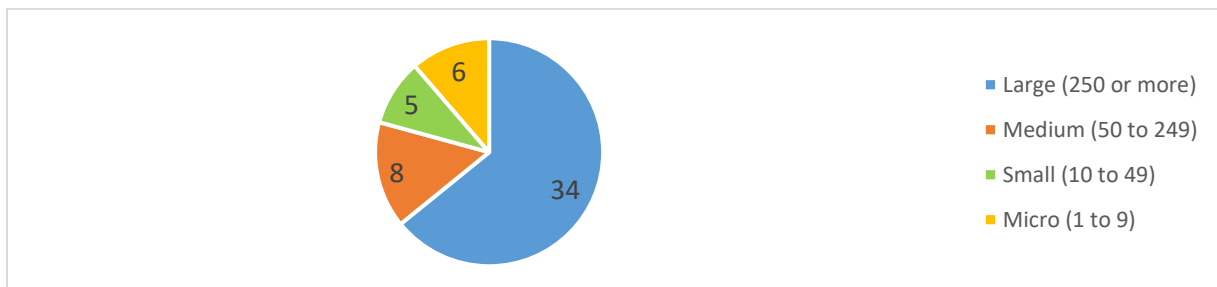


Figure 5: Level of familiarity with the FSR

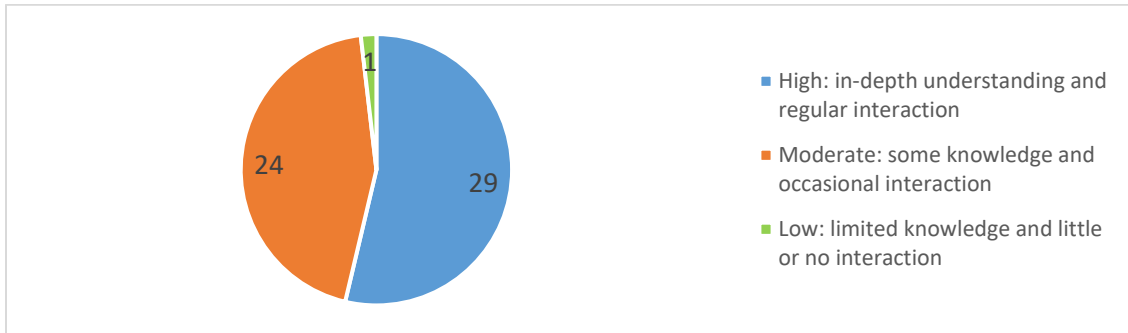


Figure 6: On the basis of your knowledge and experience, do you consider that the following statements are correct?

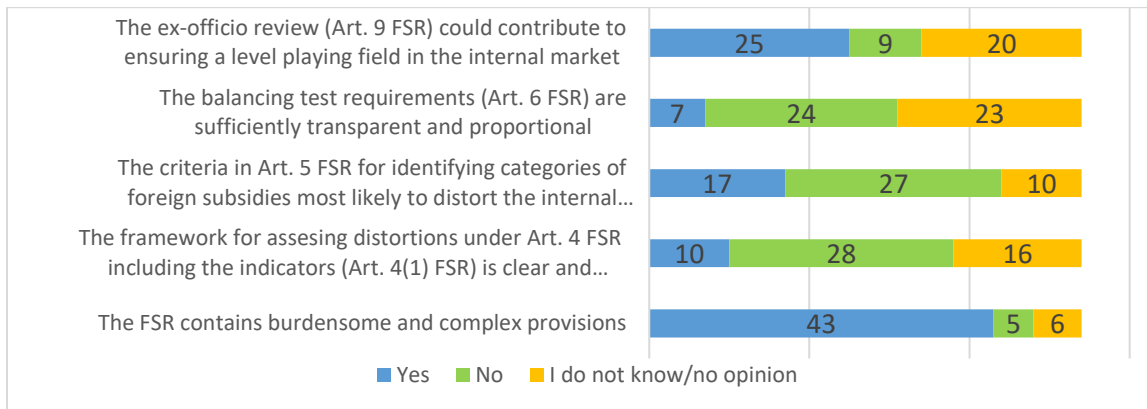


Figure 7: On the basis of your knowledge and experience, do you consider that ex officio review (Art. 9 FSR) has already affected or could in any way affect non-EU companies' participation in economic activities in the internal market, including greenfield investments?

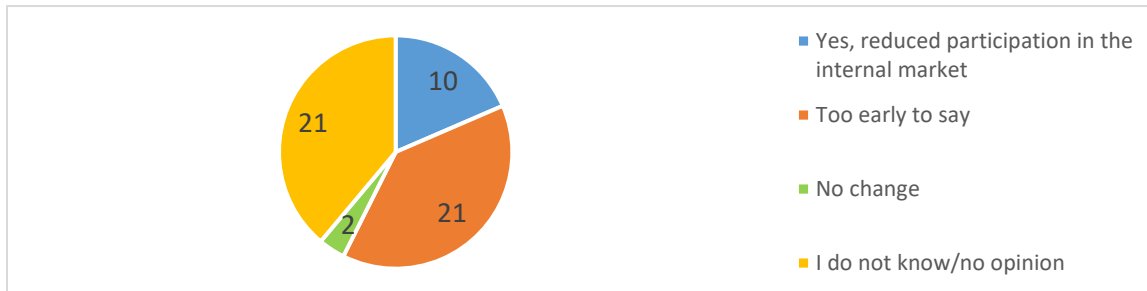


Figure 8: On the basis of your knowledge and experience, how successful do you think the FSR has been in addressing possible distortions in the internal market caused by foreign subsidies?

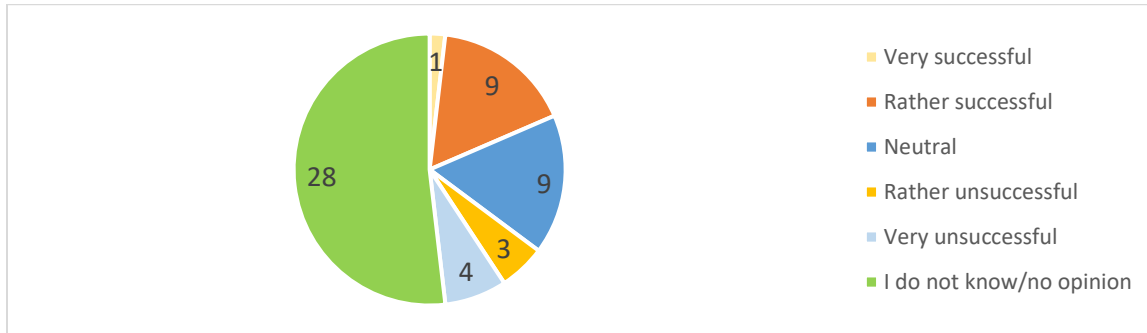


Figure 9: On the basis of your knowledge and experience, how effective do you think the FSR has been in addressing possible distortions in priority sectors identified by other European Commission initiatives (i.e. clean industrial deal, EU automotive action plan, defence readiness omnibus, etc.)

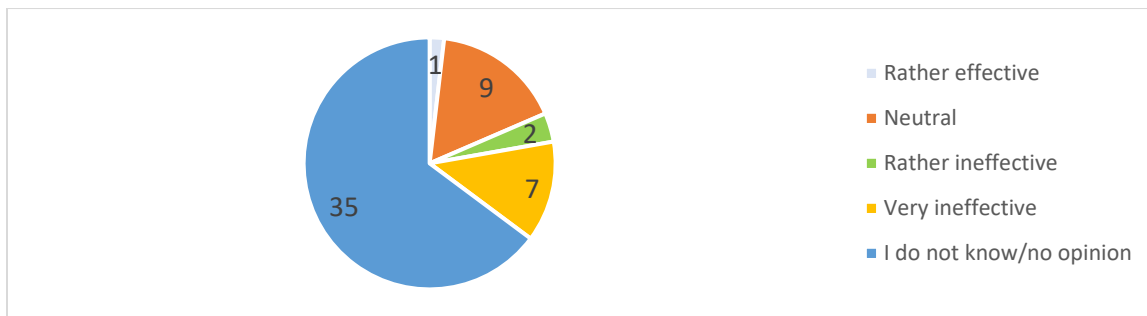


Figure 10: Do you consider that the current notification thresholds for concentrations, as set out in Art. 20 FSR, are appropriate proxies for identifying the most relevant cases of potentially distortive foreign subsidies?

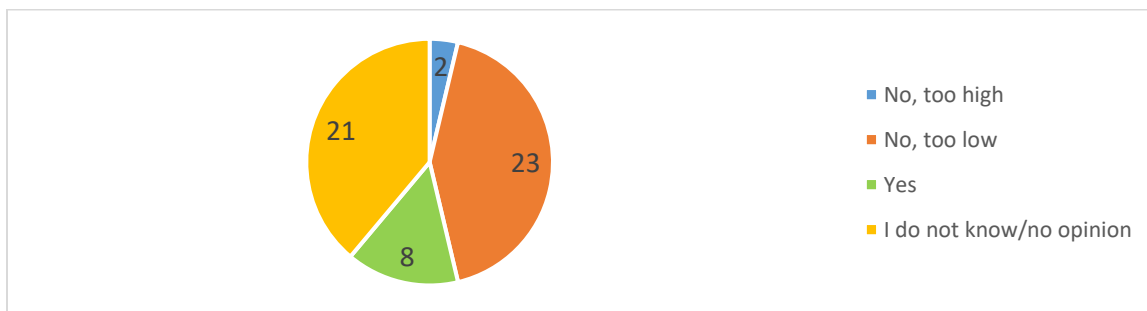


Figure 11: On the basis of your knowledge and experience, do you consider that the reporting of financial contributions for concentrations (Section 5 of Form FS-CO) is clear and proportionate?

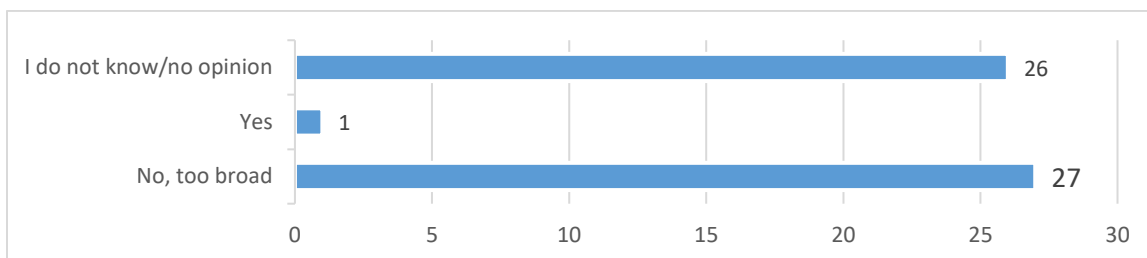


Figure 12: On the basis of your knowledge and experience, do you consider that the timelines for preliminary review and in-depth investigation of concentrations (Art. 25 FSR) are adequate for merger planning and proportionate in terms of costs (e.g. legal or advisory costs)?

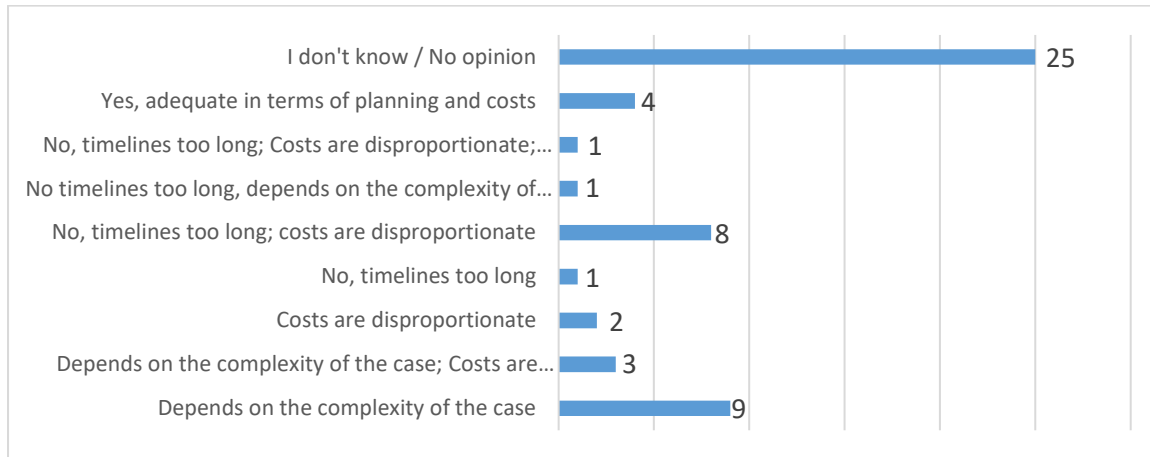


Figure 13: Have you experienced situations where the same concentration was subject to notification requirements under the FSR and another regulatory regime (e.g., EU Merger Regulation, national foreign direct investment (FDI) screening mechanisms, etc.)?

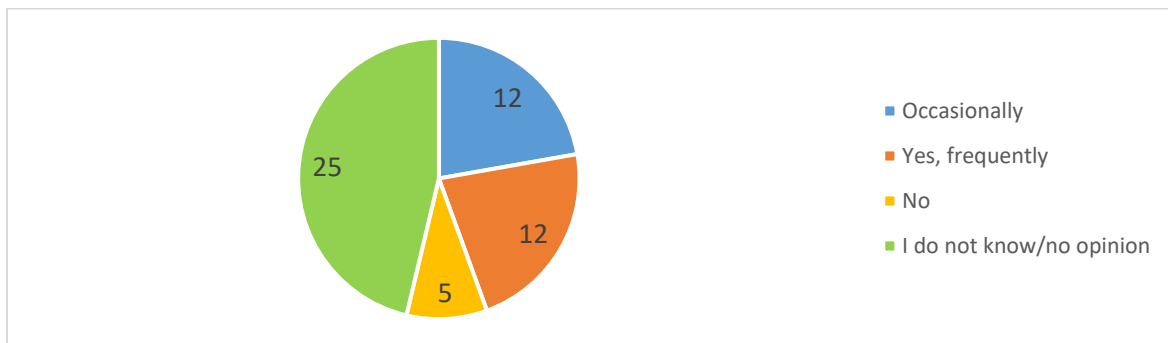


Figure 14: On the basis of your knowledge and experience, how do notification obligations affect the timelines and costs of M&A transactions?

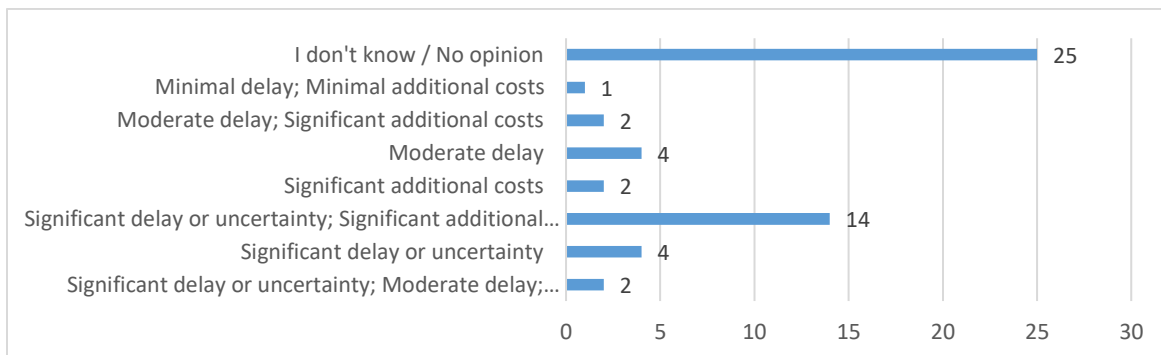


Figure 15: On the basis of your knowledge and experience, do you consider that the FSR has in any way affected participation by non-EU countries in mergers and acquisitions involving the EU?

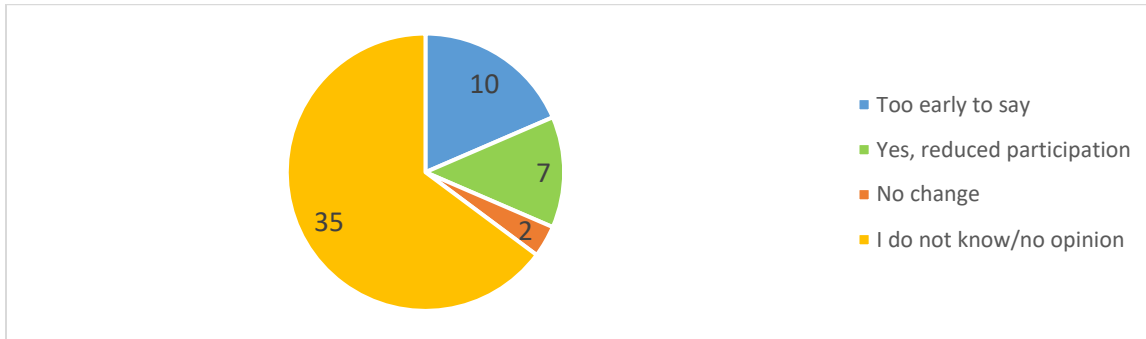


Figure 16: On the basis of your knowledge and experience, do you consider that the structure and information requirements of Form FS-CO and the Implementing Regulation are proportionate and reasonable for notifying concentrations?

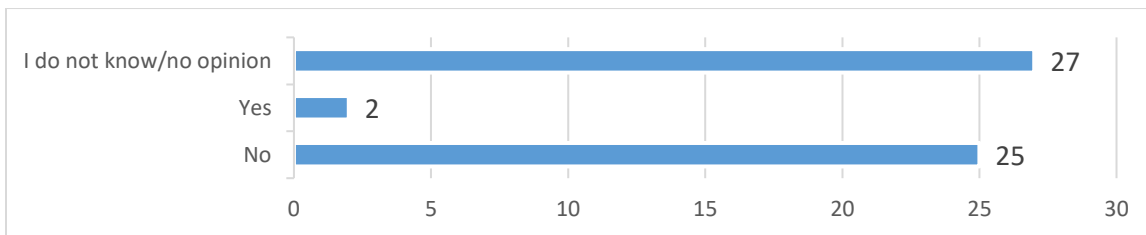


Figure 17: On the basis of your knowledge and experience, do you consider that the current thresholds for public procurement procedures, as set out in Art. 28 FSR, are appropriate proxies for identifying the most relevant cases of potentially distortive foreign subsidies?

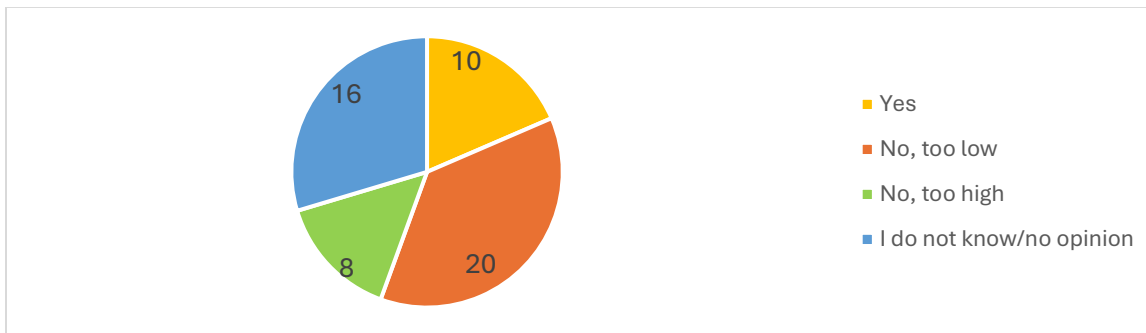


Figure 18: On the basis of your knowledge and experience, how do notification obligations under the FSR affect timelines and costs with regard to public procurements? [multiple choice possible]

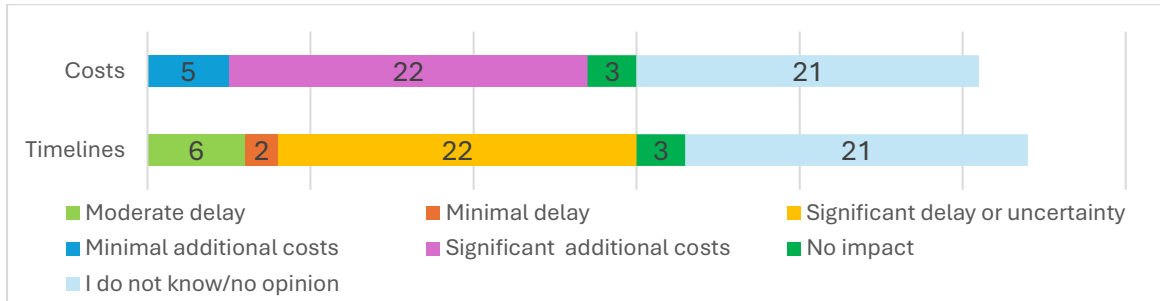


Figure 19: On the basis of your knowledge and experience, do you consider that the timelines for preliminary review and in-depth investigation of notified foreign financial contributions in public procurement procedures (Art. 30 FSR) are adequate for the overall public procurement procedure and proportionate in terms of costs (e.g. legal or advisory costs)?

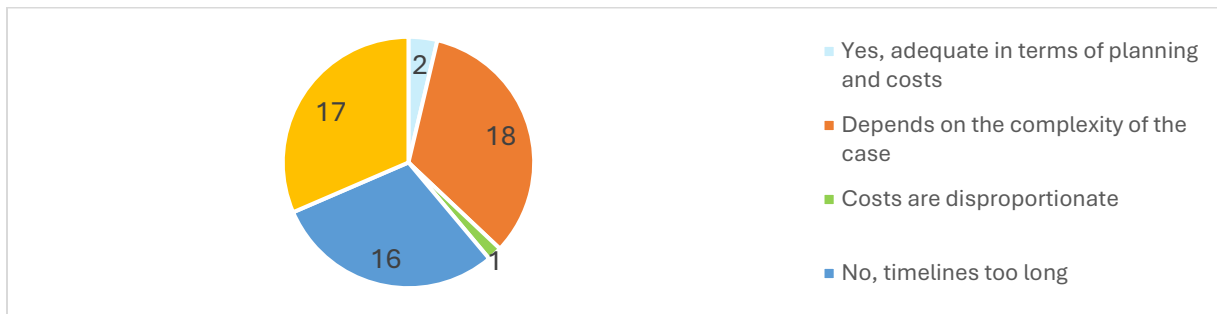


Figure 20: On the basis of your experience, do you consider that the outcome of the Commission's review of notified foreign financial contributions in public procurement procedures is transparent and accessible?

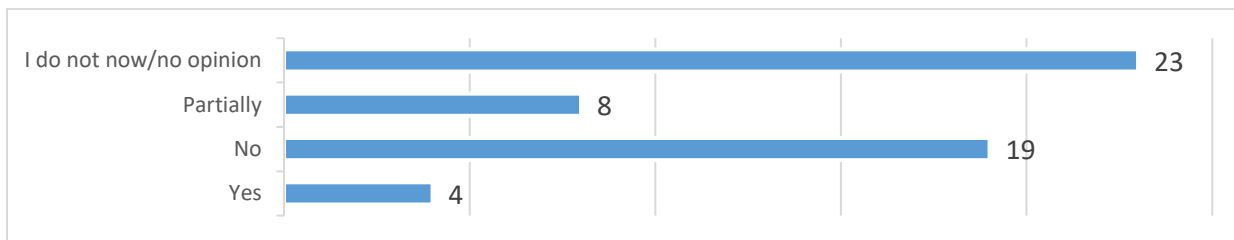


Figure 21: On the basis of your knowledge and experience, do you consider that the framework for assessing distortions in public procurement procedures (Art. 4 and 27 FSR), including the indicators (Art. 4(1) FSR), is clear and predictable?

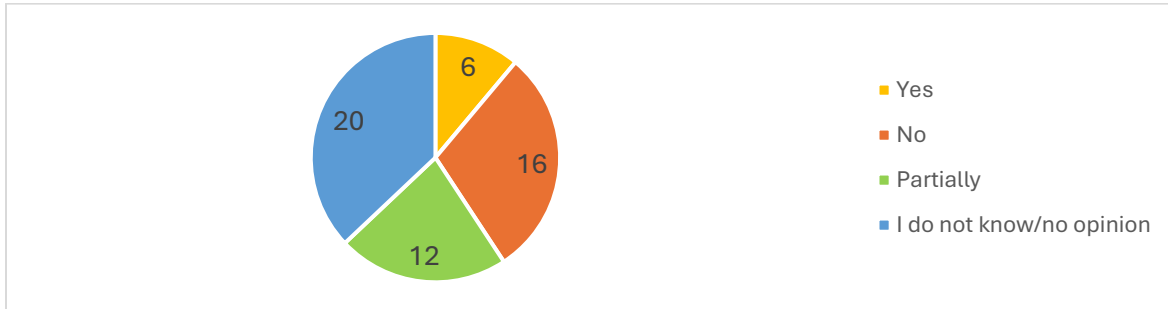


Figure 22: Do you consider that the texts of the FSR and its Implementing Regulation are clear and precise enough for contracting authorities/entities to understand their obligations under the FSR?

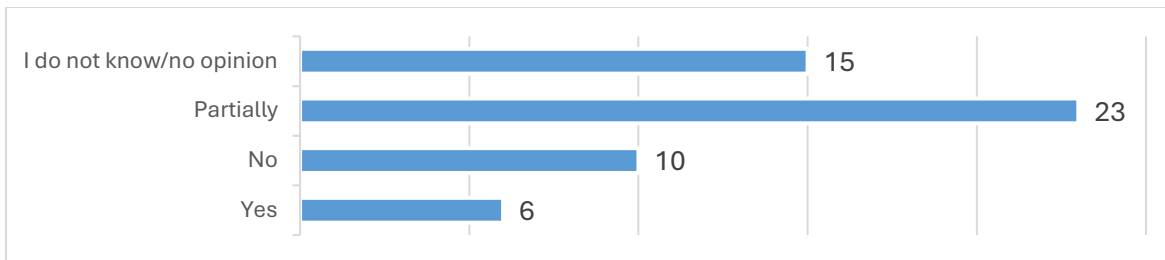


Figure 23: On the basis of your knowledge and experience, do you consider that the scope of the notification obligation in public procurement procedures, as set out in Art. 28 FSR, is clear and predictable? For example: which entities fall under the obligation to notify foreign financial contributions, definition of 'main' subcontractor, etc.

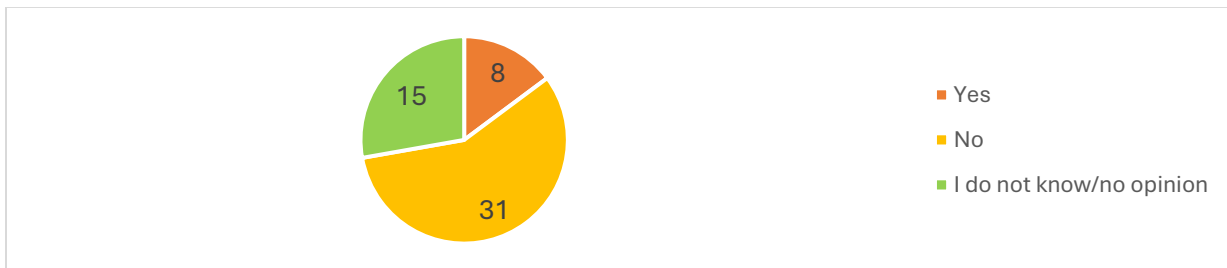


Figure 24: On the basis of your knowledge and experience, do you consider that the structure and information requirements of Form FS-PP and the Implementing Regulation are proportionate and understandable for notifications and declarations in public procurement procedures? [multiple choices possible].

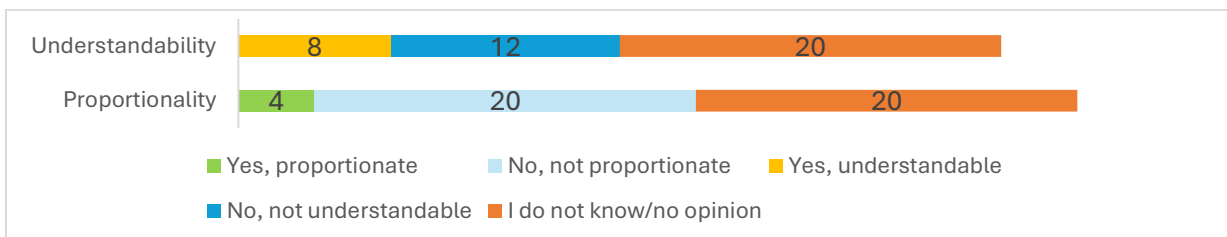


Figure 25: On the basis of your knowledge and experience, do you consider that the FSR has affected participation by non-EU countries in EU public procurement procedures?

