



## Joint statement on the draft Implementing Regulation for the EU's Foreign Subsidies Regulation

**Brussels, 4 April 2023** – Our organisations, representing a broad array of industries from Europe and its leading trading partners, support the objectives of Regulation (EU) 2022/2560 on foreign subsidies distorting the internal market (the ‘**Regulation**’).

Despite positive recent steps from the European Commission (the ‘**Commission**’) to clarify the obligations imposed by the Regulation, the proposed Implementing Regulation (the ‘**Draft IR**’) would still generate unintended consequences and create a disproportionate burden for EU and non-EU businesses with a global presence. We fear that companies will not be in a position to comply with the Regulation as the reporting obligations currently stand. The Regulation imposes requirements which are unfamiliar to business and which necessitate the design of elaborate internal compliance mechanisms that do not currently exist. The uncertainty in the proposed regime risks creating a chilling effect on investment and participation in the European economy.

With this in mind, we set out below the main areas in which further refinement of the Draft IR is essential in order to create a framework that is both legally proportionate and operationally workable for companies and the Commission alike:

1. **Narrow the scope of reporting obligations:** To reduce administrative burdens and streamline businesses’ compliance efforts, the IR should materially limit the reporting obligations on companies. While many ideas can be posited to achieve this goal, we call upon the Commission to consider the following clear-cut, objective mechanisms. Firstly, we ask that reporting obligations be limited to those contributions that the Regulation itself expressly considers most likely to distort the internal market, such as financial contributions granted to unviable businesses, unlimited guarantees for debts or liabilities, and financial contributions directly facilitating M&As or tenders. This simple approach would significantly reduce the burden on companies to a manageable level, while ensuring that the Commission focuses its efforts on the most relevant contributions. Alternatively, at a minimum, we recommend the Commission to exempt the notification of financial contributions granted by third countries through competitive tenders, as well as non-selective tax measures and other generally available measures, such as relief packages granted due to the COVID-19 pandemic. We also ask the Commission to raise the proposed *de minimis* thresholds, thus obviating the need to report immaterial contributions.

2. **Exempt the disclosure of classified information:** When third-country governments deem certain contracts to be classified, the mere disclosure of their existence to the Commission – let alone their content – could trigger prosecution and criminal penalties for businesses. This tension would create a ‘conflict of laws’ scenario and undermine trust between partners. We ask the Commission to exempt businesses from the need to disclose classified information.
3. **Allow all relevant parties to supply information directly to the Commission:** Under the Draft IR, businesses would be required to disclose sensitive business information that is not directly available to them. This includes information only available to suppliers and subcontractors in public procurement procedures – such as their stocks, investments and purchases – as well as information only available to acquisition targets, such as the number and identity of rival bidders and the fate of their bids. To safeguard the business secrets of all parties, avoid the sharing of competitively-sensitive information, and ensure that all information supplied is accurate, we ask the Commission to establish a direct information-sharing channel for subcontractors, suppliers and M&A targets to engage the Commission.
4. **Clarify key concepts:** Businesses need further guidance as to how the Commission intends to implement some of the key concepts and mechanisms in the Regulation and in the Draft IR. We request clarity on how the Commission will delineate in practice the broad concept of ‘financial contribution’. We would also welcome guidance on how businesses should attribute financial contributions to third countries, including in cases where granting entities are unwilling to disclose their relationship with third-country governments. Additionally, we would also welcome general guidance on the ‘balancing test’ in order to allow businesses to adequately self-assess the ‘broader positive effects’ of foreign subsidies.

We stand ready to work constructively with the Commission to refine the Draft IR – including through the Foreign Subsidies Advisory Committee in any capacity – to ensure that the Regulation creates a level playing field while also being proportionate and ensuring legal certainty for businesses keen to provide much-needed investment in Europe.

#### **Adigital**

**AIM European Brands Association**

**American Chamber of Commerce to the European Union**

**Australian Business in Europe (Belgium)**

**British Chamber of Commerce | EU and Belgium**

**Computer & Communications Industry Association**

**European Australian Business Council**

**Europe India Chamber of Commerce**

**Invest Europe**

**Japan Business Council in Europe**

**Korea Business Association Europe**

**National Foreign Trade Council**

**SwissHoldings**