ICC Response to the EC consultation on the draft Foreign Subsidies Regulation Guidelines

ICC is pleased that the Commission has advanced its work on the guidelines for the application of the **Foreign Subsidies Regulation (FSR)**. As expressed in its response to the call for evidence, ICC considers that it is necessary to clarify some of the FSR's wording, and that it is useful to understand how the first years of practice with this new regulation have developed – particularly given the lack of published formal decisions from the Commission. ICC expressly welcomes the analytical approach adopted in the draft guidelines, which allows for case-by-case development and provides regular updates. While the draft guidelines contribute meaningfully to this clarification in certain areas, there are areas where they create additional uncertainties. But overall, the practical guidance offered and the resulting reduction in legal uncertainty are highly appreciated. In this context, ICC emphasizes that the level of protection of non-subsidized companies against unfairly subsidized ones afforded by the FSR, in line with its objectives, must not be diminished.

ICC uses this opportunity to remind the Commission that there are many aspects of the FSR that need clarifications, explanations and simplification, notably on jurisdictional issues, on procedural matters - such as the information to be provided in the notification forms - and other practical topics, including exemptions from reporting obligations. Those aspects are not covered by the draft guidelines, but they could - and should - be covered in the future. In this regard, ICC refers to the last paragraphs of its response to the call for evidence. In addition to what additional future guidelines could do, the Commission could simplify things through new implementing regulations.

Significant challenges also arise in relation to how the FSR is intertwined with taxation aspects, including the interpretation of requirements and the risk of duplicative reporting. As of now, there is insufficient guidance about the proper scope and interpretation of FSR requirements in the context of taxation, creating significant legal uncertainty and commercial risk for businesses attempting to comply with notification requirements.

Moreover, the FSR imposes new demands on businesses' existing reporting operations. This burden is exacerbated not only by broad definitions, but also by the disproportionately low *de minimis* threshold for reportable foreign financial contributions, combined with the short timelines for compiling data to meet FSR notification requirements, in particular after a public procurement tender is announced. FSR requirements also overlap with other existing reporting frameworks, resulting at least partially in duplicative effort and reporting fatigue that is at odds with the Commission's broader ambition to reduce the administrative burden created by regulations. We, therefore, welcome the opportunity to submit our views notably on two issues:

- Clearer and more precise guidelines from the Commission's low thresholds which are essential to ensure effective compliance and are not aligned with the notification requirements;

- As practice has shown that the large majority of notifiable concentrations do not distort competition within the EU internal market (so far, only one case was closed with a commitment decision), the Commission should publish a simplified procedure for the notification of concentrations (Article 47 para 1 (a) FSR) to reduce the burden for notifying parties.

ICC's specific remarks below are organized following the sections and sub-sections of the draft guidelines, but they are followed by proposals related to taxation aspects which are not sufficiently taken into account in the current draft and, therefore, could not be inserted in the existing sections.

Section 1

The draft guidelines do not provide explanation or examples for what constitutes "foreign financial contribution", yet for most companies, the trickiest matter is not assessing whether any subsidies are distortive, but determining what a subsidiary is and organizing the required information.

ICC believes that the current scope of the "foreign financial contribution" is overly broad. It is confusing and creates a significant and disproportionate administrative burden on companies, particularly those with complex international structures. In addition, the current requirement to report a vast array of contributions, irrespective of their potential to distort the EU market, is inefficient and consumes significant resources.

In this regard, ICC proposes the following recommendations:

(1) **Narrow the definition of "Foreign Financial Contribution"**: ICC recommends that the draft guidelines should provide two lists of subsidies that are (i) less likely to be distortive, and (ii) likely to be distortive, and focus the reporting duty on the latter. A more targeted approach would enhance the efficiency of the review process and reduce the compliance costs for companies.

(2) **Introduce *de minimis* exemptions**: ICC proposes the introduction of clearer and higher *de minimis* thresholds for reporting. This would effectively filter out innocuous contributions and allow the Commission to concentrate its resources on the most material cases of potential market distortion.

(3) **Expand the application of the State aid General Block Exemption Regulation (GBER) to FSR**: ICC proposes that the FSR be compatible with the GBER, that financial contributions qualifying for the GBER if they were granted by EU Member States should not be reported to the Commission when they are granted by foreign states.

Section 2

Sub-section 2.2

It follows from the FSR and its interpretation by the draft guidelines that, when an undertaking must notify a concentration or its participation in a public procurement procedure, it will always be regarded as being engaged in economic activity in the European Union. It is only when the Commission envisages to act *ex officio* that the question of whether an undertaking engages in an economic activity in the European Union is open and must be settled. This could be explicitly acknowledged in the guidelines to avoid burdensome discussions about this issue. In addition, by scoping in all undertakings whose conduct is "liable to have an impact on the EU", the draft creates uncertainty about which economic activities fall under FSR jurisdiction, as undertakings cannot reasonably anticipate what the Commission may deem as “liable” activity.

Sub-section 2.3

Points 2.3.1 and 2.3.2 should be inverted, since assessing whether a subsidy is intended or directed to the internal market can largely be done through a formalistic approach, and therefore seems easier than assessing whether a subsidy is actually used in the internal market (without intention), which is more of a factual question that needs to follow the fate of the subsidy within the accounts of the undertaking. For the same reason, it is paradoxical that point 2.3.2 is longer and more detailed than point 2.3.1. In the latter, it would be useful to understand how the Commission intends to prove that a subsidy which is not formally meant to be used in the internal market ends up being used in that way. Accordingly, the guidelines need to provide more clarity on the standard of proof to determine whether (and how) a subsidy is used in the internal market. There are two pillars to ensure the standard of proof. The first pillar is that the questions need to seek factual information, which can be responded to and verified by the investigated undertakings. The second pillar is that the investigated undertakings should have reasonable procedural grounds to refuse and rebut potential allegations. The Commission’s rules on the right to be heard and the Hearing Officer mechanism provide a practical rule of thumb to ensure such procedural protection. Similarly, it would be useful to explain how the undertaking can rebut an accusation that a subsidy not intended to be used in the internal market has nevertheless been used in such a manner. For instance, when a subsidy intended to be used in a foreign country itself has been fully spent for the purpose it was intended to, there are good reasons to deduce that it can no longer be used in the internal market, unless special circumstances arise, like the fact the subsidy helps the undertaking to locally produce at lower costs and export part of its output to the EU internal market. The Commission may also consider effective and practical exemptions for low-risk foreign financial contributions that are not likely to distort the internal market (such as contributions aimed at public policy objectives aligned with the European Union’s agenda).

In contrast, point 2.3.3 seems to imply that all subsidies are liable to improve an undertaking’s competitive position in the EU by “freeing up” its resources, even when a subsidy has no apparent EU nexus. By taking the position that any non-EU subsidy could indirectly benefit an undertaking’s EU activities by enabling internal resource reallocation, the draft guidelines could be viewed as creating a presumption of cross-subsidization. This would be a concerning departure from the balanced position adopted by the Commission in its 2024 “Staff Working Document”, which took the view that subsidies used by foreign subsidiaries to develop local activities have no apparent relationship with the EU internal market, unless the Commission can objectively demonstrate cross-subsidization. The guidelines should also focus more on the “Design and conditions of the foreign subsidies” since it is a good indicator of where the subsidy ends up used: when the purpose of the subsidy is to have an impact on a foreign market only, and when, in addition, its design and conditions are such that there is no way to circumvent this purpose, that should be enough to persuade the Commission that the subsidy does not have any effect on the internal market.

In addition to inverting the burden of proof for cross-subsidization, point 2.3.3 also provides limited guidance to undertakings on the arguments that could prove the absence of cross-subsidization. It also unhelpfully disregards potentially relevant evidence like established internal policies, bylaws and transfer pricing rules which may discourage cross-subsidization.

In factor d) (applicable laws), the legal design of the subsidy should be added to the other factors, since it can help to assess where the subsidy will finally end up. In factor e) (economic situation of the company), especially when an official bankruptcy procedure has not yet been opened, it could be possible and even attractive to channel a subsidy to another part of the world in order to protect it from the local creditors. We also suggest the Commission consider whether past practice can be included as a consideration for likelihood of cross-subsidization. For instance, if a holding company or affiliate of the economic undertaking under investigation received a foreign subsidy in, e.g. 2 years ago, and there is no indication of funds flow between the subsidized entity and the economic undertaking in question. We consider this can be evidence of the unlikeliness of cross-subsidization.

For points 2.3.2 and 2.3.3, we also find a proportionality test necessary in assessing whether a foreign subsidy is intended or directed to the internal market, especially when the foreign subsidy is granted to support certain activities that do not take place in the Union. For instance, if an R&D activity is conducted by an undertaking outside the Union and is subsidized, we question whether the Commission will consider the whole amount of foreign subsidy received for such activities, or will apply a proportionality approach in its assessment, given that the outcome of the subsidized R&D can be used in many other parts of the world; we call for the Commission's clarification on this.

This is particularly important when taking into account the non-insignificance rule in point 2.3.4.

Regarding precisely point 2.3.4, ICC agrees that the Commission must only consider non-insignificant subsidies and that it is not possible to define such threshold in absolute terms. However, the wording grants large discretion to the Commission on how to use this criterion. The Commission should instead consider introducing a materiality threshold or at least a safe harbor within which insignificance is assumed. In addition to the materiality thresholds, the Commission may also consider providing certain (non-binding and non-exhaustive) examples to provide a blueprint on how it intends to use this large discretion. This approach will increase legal foreseeability and allow undertakings to conduct self-assessment prior to implementation. As it takes a while for the Commission to publish its cases, the example-based guidance will be useful for undertakings, especially in the initial years of enforcement. The increased foreseeability may also help to reduce the number of redundant cases and allow the Commission to better manage its workload. These thresholds should of course be set at a reasonable level to avoid undermining the effectiveness of the FSR. When combining several subsidies to assess non-insignificance, the Commission should only take into account subsidies that are otherwise liable to improve the competitive position of the undertaking in the internal market.

Sub-section 2.4

Given the wording of the FSR, the Commission is right to dedicate an extensive subsection to the question of whether a subsidy that improves an undertaking's competitive position also negatively affects competition in the internal market.

It is important to highlight the fact that State aid prohibition within the EU is based on an identical criterion to the FSR, since Article 107 of the TFEU focuses on "*any aid granted by a Member State or through State resources in any form whatsoever which <u>distorts or threatens to distort competition</u> by favoring certain undertakings or the production of certain goods*". It is well known that when implementing this rule, the Commission does not pay much attention to how much state aid affects competition or approaches the question in a very simplistic way (e.g. through the use of the notion of "manifest effects"). Given that the main purpose of the FSR is to put in place a level playing field, the Commission should ensure that distortion of competition is studied in the same way under both frameworks, *i.e.,* the FSR and State aid rules. This will allow undertakings to benefit from their existing know-how. This should also include applying to the FSR any exemptions applied in the context of State aid (e.g., GBER).

In point 2.4.1, it is difficult to follow the Commission where the draft guidelines say that, when the effect on competition is "not appreciable", the only consequence is that the negative effect is only "less likely". Like for the improvement of the competitive position, a "non-insignificant effect" threshold should be considered, under which the subsidy would be deemed to have no effect on competition. And as already remarked under sub-section 2.3, when the Commission combines several subsidies, it should only combine subsidies that are liable to improve the undertaking's competitive position.

The introduction of point 2.4.2 is difficult to understand. If an undertaking modifies the functioning of competition through means other than foreign subsidies, and assuming all its actions are lawful, those modifications should not be deemed "negative" since they are just part of the normal functioning of markets. Through bolder innovation and better management, an efficient undertaking usually "affects" competition in a way that should be deemed positive, rather than negative. Consequently, the negative impact of a foreign subsidy should be assessed in itself, or possibly in combination with other illegal behaviors, but not in combination with lawful actions.

Moreover, point 2.4.2 proposes that the existence of a distortion would require only a "reasonable link" between a foreign subsidy, an undertaking's improved competitive position and the negative impact on competition. This is problematic, as it sets a lower standard than existing mechanisms such as the EU Merger Regulation, which requires the Commission to demonstrate a "significant impediment to effective competition". Additionally, point 2.4.2 also suggests that a subsidy only needs to contribute to a distortion, rather than be its main cause, which creates a risk of overlap with merger control, and could potentially lead to duplicative assessments. Overall, point 2.4.2 and its broad "reasonable link" standard mean virtually any foreign subsidy could be deemed distortive, even if its impact on competition is minor and ancillary. This would make the FSR applicable to essentially any transaction. In other words, it could lead to a dilution of the level of protection intended by the FSR, *i.e.* maintaining robust standards, and not blurred ones, is essential to ensure that the objectives of the FSR are fully achieved.

ICC agrees with the principle in point 2.4.2 that a negative impact can be actual or potential. However, to align with what is said about potential impacts, when the Commission concludes, without a detailed assessment, that subsidies listed in Article 5(1) of the FSR negatively affect competition, the undertaking under investigation should be able to rebut this finding not only by proving that it does not distort competition but, alternatively, that it cannot potentially distort it. This especially matters when the envisaged impact takes place when the undertaking is only considering concentration or preparing to submit a tender. Such rebuttal may also help to develop a better understanding of external factors such as sliding scale: the more the impact is only "potential", the more the Commission must justify the relevant negative impact.

ICC welcomes the detailed methodology provided by points 2.4.3 and 2.4.4, albeit noting that no such methodology is applied when the Commission examines the compatibility of State aid under article 107, in contradiction with the "level playing field" goal of the FSR.

In point 2.4.4.1, other examples of "outbidding" behaviors could be mentioned to illustrate the variety of possible scenarios. However, not all higher acquisition prices should be deemed "outbidding" ones. The assessment must provide sufficient flexibility to consider the specific circumstances of each case. While a higher acquisition price may indicate a distortive subsidy, there are legitimate exceptions that must be acknowledged. For instance, a non-EU acquirer may face higher difficulties to complete the deal (e.g. because of foreign investment controls, which are generally more aggressive for non-EU acquirers), leading to longer timeline and execution uncertainty that could be compensated by offering a (reasonably) higher price. In addition, the Commission should be careful when considering that, absent from any alternative bidder, the offer nevertheless had a crowding out effect. First, the lack of other bidders could be explained by other causes. Second, the effect of the Commission's intervention could be negative for the seller, who is at risk of losing its only opportunity to exit from the target's capital. This could be harmful for the EU economy, notably in declining sectors that are of little interest for investors or, on the contrary, in tech sectors where founders and venture capital investors need to find an exit strategy but where EU-based investors are rare or risk-adverse.

Points 2.4.4.3 and 2.4.4.4 imply complex economic assessments. ICC understands that they are unlikely to be used in the framework of concentrations and public tenders, since they seem hardly compatible with the tight timelines applicable to such procedures.

Sub-section 2.5

ICC again welcomes the detailed methodology provided by the draft guidelines. It must be stressed that in several of the envisaged steps, misinterpreting the data could be dangerous, which means that the Commission should be especially careful. If the Commission adopts a formalistic approach and a strict enforcement trend on this issue, it may discourage undertakings that are planning to lawfully offer lower prices as a competitive strategy.

Moreover, point 2.5.1 seems to expand the scope of financial contribution disclosures in public procurement beyond the definition of 'economic operator' in Article 28 of the FSR. While the FSR limits mandatory disclosures to the bidding entity, its direct subsidiaries and parent companies, the draft suggests the Commission may request information from any group entity under "specific circumstances". However, it is not clear from the draft when these "specific circumstances" would be deemed to arise. If the Commission opts to regularly extend its information requests beyond the "economic operator" defined in Article 28, this will create significant uncertainty for notifying parties, potentially hindering their ability to participate in public tenders due to the tight deadlines involved. To address these concerns, the guidelines should clarify that information requests beyond the relevant 'economic operator' will be made only in exceptional, justifiable cases, with the Commission bearing the burden of proof.

Point 2.5.2 raises a legal issue: in several member states, contracting authorities are entitled to exclude abnormally low offers; it does not mean that they precisely explore the reason why the offer is abnormally low. They should not be forbidden to use their powers to exclude such offers, and they certainly cannot be forbidden by virtue of simple guidelines.

Section 3

Sub-section 2

In para. 101, instead of saying that "*the more distortive the foreign subsidy is, the <u>less likely</u> it is that its negative effects will be outweighed by its positive effects*", it would be more correct to say that "*the most distortive the foreign subsidy is, the hardest it will be to prove that its negative effects will be outweighed by its positive effects"*. This approach would help the Commission to conduct a more balanced assessment, while allowing undertakings to explain the pros and cons in a realistic and tangible manner.

Although ICC globally agrees with the observations in Section 3, it cannot but stress, again, that they are not always in line with the "level playing field" goal of the FSR. For instance, ICC understands that the positive environmental or social effects described in point 3.2.2 will be taken into account irrespective of whether they benefit to the consumers of the relevant market that is negatively affected by the subsidy, while, when applying general competition law to undertakings active in the internal market, the Commission imposes that positive effects benefit to such consumers (see the last horizontal guidelines). ICC also points that while in general, positive effects should be felt in the internal market since they must counterweight negative effects on the internal markets, there are circumstances where the Commission should take a broader view, notably when those "external" positive effects contribute to the EU's sustainable development objectives.

Para. 116 is interesting but hardly relevant for undertakings (subsidized or not) who have no say in the way public tenders are conceived. The way the Commission treats the FSR should not be dependent on the contracting authorities' approaches.

Sub-section 3

ICC understands that the positive effects of a subsidy shall be taken into account by themselves, without considering other causes leading to these very effects. That is not in line with what has been said of negative effects in other sections. There is no reason to treat differently positive and negative effects in this respect. Especially when we consider that the main goal of this legislation is to level the playing field.

Para. 123 is not fully consistent with para. 119. While the latter states that the intention of the subsiding foreign country must not be taken into account, the former only makes sense if the positive effect is intentional, and not accidental. It would be more consistent to simply say that the situation will be compared to a counterfactual where the subsidy is lower, in order to assess whether the existence and the size of the positive effect remain the same.

Para. 125 is understandable but leads to an almost absolute discretion being granted to the Commission when it conducts its balancing test. Even if effects are not always quantifiable, the Commission should be open to quantification, which could be the main element of the test in certain situations or at least a contributing element in others. That is all the more important given the subsequent paragraphs from which it can be deduced that, in practice, the balancing test will often be the basis for evaluating redressive measures. Given the importance of prices in concentrations cases (risk of outbidding competitors) and in public tenders (undue low prices), redressive measures will often take the form of price adjustments, *i.e.* quantitative measures.

In point 3.3.4, ICC does not understand why a positive effect cannot be triggered by several subsidies, in the same way that a negative effect can.

Section 4

The call-in powers pursuant to Article 21(5) and Article 29(8) of the FSR are a useful supplementary instrument for achieving the objectives of the FSR. It is proper that the Commission may also conduct *ex officio* investigations below the FSR reporting thresholds if there is reasonable suspicion of distortion of competition. At the same time, however, the Commission's broad and vague call-in powers under these articles lead to uncertainty regarding the predictability and calculability of transactions. There is a need for improvement here. The Commission should act prudently when reviewing transactions and tender offers below the thresholds and make its call-in powers clearer and more predictable. In particular, the Commission should exercise foresight with respect to timing and refrain from fully exploiting the margin of discretion provided in the draft guidelines. It is essential that the Commission carefully consider the substantial burden placed on businesses and the potential impact on ongoing processes. The discretionary application of the Commission’s call-in powers could also require undertakings to implement costly FSR compliance regimes regardless of their intention to participate in a notifiable event.

We would recommend raising the threshold and the exemption of qualifying tax incentives under the Pillar Two Directive.

The guidelines should stress that the Commission will carefully study the elements provided by complainants. It is critical that the undertakings are granted fair and reasonable grounds to reject and rebut the Commission’s concerns within the applicable standard of proof.

It must be ensured that the process is predictable and transparent for the companies concerned, particularly with regards to delays and the associated effects on transactions and procurement procedures.

The Commission should add an informal procedural step to the ones that are provided by the FSR: when receiving a complaint, at least when the latter is not fully substantiated, it should offer the undertaking the possibility to rapidly dismiss and refute the complainant’s allegation before requesting full notification. Such a mechanism would help prevent the initiation of formal procedures in cases where the allegations are manifestly unfounded complainant’s allegations. When the undertaking is aware that it has received subsidies that may warrant further investigations, it should be possible for it to submit a preliminary and informal filing in advance, enabling the Commission to decide at an earlier stage whether to request a formal notification, thereby avoiding the disruption and uncertainty that could arise if such a request is made later in the process. This approach would contribute to greater procedural efficiency and legal certainty for undertakings potentially affected by the FSR.

Given ICC's extensive experience in discussing tax matters, it has been found useful to expose the following considerations that combine the views of our Taxation and Competition Commissions.

Proposals concerning taxation aspects

We would like to highlight three main areas intertwined with taxation aspects where clarification and guidance would be beneficial, namely:

1. Clarify the interpretation of FSR with respect to taxation

Tax measures that are part of national tax legislation and therefore generally applicable to all taxpayers, including outside of the list provided under Article 5 of Regulation (EU) 2022/2560, should not need to be reported under FSR.

The issue of interpretation faced by businesses can be attributed to including "the foregoing of revenue that is otherwise due" in the definition of a "financial contribution," in combination with additional guidance in questions and answers (Q&A) prepared by the Commission services that confirm Annex I, Table 1, point B(6)(a) of Implementing Regulation (EU) 2023/1441 provides an exhaustive enumeration of 'tax benefits' that have to be reported.

A common-sensical interpretation would be:

- Statutory deductions and credits made in calculating the tax liability for corporate income tax purposes, do not amount to a "tax benefit" and should not be reportable (e.g. loss relief between group companies in the same jurisdiction);

- Statutory exemptions from the corporate income tax base, and other tax features aimed at mitigating double taxation do not amount to a "tax benefit" and should not be reportable (e.g. a participation exemption for a distribution or capital disposal);

- Timing differences, arising from the application of national tax legislation that applies to any taxpayer, do not amount to a "tax benefit" and should not be reportable (e.g. accelerated depreciation / amortization);

- There is no "tax benefit" if different rates of corporate income tax, state, cantonal, city or municipal tax apply to a taxpayer, as proscribed in tax legislation that applies to any taxpayer;

- There is no "tax benefit" if different rates of indirect tax apply to a supply of goods or services and importations that fall into a specific category, including zero rates, as proscribed in national tax legislation that applies to any taxpayer. This includes cases where such differentiation serves to simplify tax administration or to safeguard the neutrality of the tax system;

- Patent box regimes, innovation box regimes, and research and development tax credits or similar regimes, which conform to OECD requirements and apply to any taxpayer who meets the relevant criteria, should not be reportable. As ICC, we would like to note that such regimes are also available in EU Member States and exempted under EU State aid rules;

- VAT refund schemes implemented by third countries should be recognized under the FSR as general tax measures consistent with both EU law and WTO rules. They do not confer a selective advantage and should be excluded from notification and assessment requirements under Regulation (EU) 2022/2560;

- Tax incentives for decarbonization are already exempt from State aid challenges, thus tax incentives designed to tackle the shared challenge of climate change should not be considered to be reported, provided their design is comparable to what State aid rules exempts.

Further guidance from the Commission would be welcome to clarify other practical points of interpretation, including:

- How the grant date of a tax-related financial contribution should be determined in practice (where our suggestion would be to take account of the tax year in which the benefit is effectively claimed by means of e.g. tax return or other filings, definitely in cases where the tax-related financial contribution cannot be quantified at the time of grant); and

- How the value of a tax-related financial contribution should be calculated.

2. Observe the principle of proportionality for FSR reporting

The €1 million *de minimis* for FSR reporting is not proportionate and does not reflect an amount that would be potentially distortive or advantageous in commercial reality, in light of the minimum thresholds for public procurement tenders (€125m / €250m value) and concentrations (€500m turnover) that would trigger a FSR notification requirement.

The *de minimis* for reporting an individual financial contribution should be increased to the higher of (i) €50m, aggregate amount per annum from a given country, or (ii) 10% of the total public procurement tender value / 10% of the consideration value for a concentration.

If the thresholds for reporting are not exceeded, neither a notification nor a declaration should be necessary or else the thresholds do not ease the administrative burden imposed by FSR.

The requirement for economic operators which do not exceed the relevant public procurement thresholds, to declare all foreign financial contributions received and confirm that the foreign financial contributions received are not notifiable (Article 29) should therefore be removed.

3. Focus the scope of FSR with respect to taxation

Any entity in scope of FSR reporting requirements that belongs to a multinational group with an ultimate parent company located in a territory that has adopted the OECD's Pillar II framework should not have to report any tax-related financial contributions included in Pillar II calculations.

The Pillar II framework should ensure that, globally, the multinational group is subject to a minimum effective tax rate of 15% in each jurisdiction in which they operate.

This effectively erodes the benefit of any tax-related financial contributions the multinational group may have received.

Following the same logic, a similar exception for reporting tax-related financial contributions should exist for any financial contributions businesses included in tax calculations required under other minimum tax regimes, e.g. the Global Intangible Low-Taxed Income (GILTI) and Corporate Alternative Minimum Tax (CAMT) regimes in the US. Specifically for the US, every legal entity within a US federal consolidated filing group should qualify for this exemption as long as the group is required to calculate GILTI and/or CAMT as part of its total tax liability.

The Commission should also take into account the fact that tax-related financial contributions from territories not included in the list of heaven tax systems since they align with international tax good governance standards for tax transparency, fair taxation and measures against base erosion and profit shifting.

The EU list is already used in the application of administrative and legislative defensive measures to jurisdictions included in the list, and existing EU legislation explicitly refers to the list (e.g., mandatory automatic exchange of information and reporting requirements for tax schemes involving listed countries).

Lastly, the Commission could consider making clear standards for the completeness of the foreign financial contributions and specifying clear granularity requirements, to enhance the predictability for enterprises in preparing materials and improve the efficiency and standardization of material preparation.