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FSR: Legal Tool or Political Weapon? Nuclear Lessons

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From legal tool to political shortcut?

The [EU Foreign Subsidies Regulation \(FSR\)](#) was initially designed as a legal tool to ensure that foreign state support does not distort competition in the EU internal market. It seeks to scrutinize subsidies by non-EU countries similar to state aid provided by EU countries. That was the idea. However, recent developments suggest attempts to use – or misuse – the FSR as a political shortcut rather than a neutral procedural legal tool.

The Czech Nuclear Case

The recent Czech nuclear tender provides a case in point, as [Korea Hydro & Nuclear Power \(KHNP\)](#) must have been wondering just that over a nuclear power plant construction tender issued by the Czech Republic (worth EUR 16b) it had thought won. Initial reports mentioned that the European Commission, via DG GROW, did not raise any concern on the bid under the FSR. The Koreans, it appeared, were playing by the rules, seemingly on track for their first-ever foray into Europe.

But not everyone was satisfied. Électricité de France (EDF), thwarted local player in the Czech nuclear procurement and unabashed European champion, reportedly escalated its complaints directly to the European Commission's President Ursula von der Leyen. This overrode the entire formal FSR review process including Commissioner Stéphane Séjourné – a Commission Executive Vice-President, no less – who is in charge for the FSR portfolio. If successful, the message of this action would have to be that if the legal FSR review doesn't go your way, you go political.

This raised crucial questions about due process. Is the FSR being applied within the checks and balances originally foreseen? Or is it at risk of being reinterpreted on the fly, depending on who is doing the asking?

A Regulation under strain

The Czech nuclear tender is not the only case where the FSR is making a difference. The FSR has

triggered far more reviews than expected; DG GROW reportedly processing more than 1,000 public procurement files. And, also on the transactional side, the FSR's reach is already producing significant behavioral changes. Companies now withdraw or avoid participation in tenders to steer clear of potential FSR complications.

Therefore, a tool meant to ensure fairness could increasingly be seen as a deterrent, particularly for non-EU bidders, if the process can be overridden by direct political appeals. That, in turn, would undermine both legal certainty and trust in the Commission's procedural integrity.

Strategic autonomy or strategic ambiguity?

As the Czech nuclear tender also highlights, the FSR process can quickly stray into the wider geopolitical landscape. The EU wants to foster strategic autonomy and green investment (e.g. in nuclear energy), and at the same time strengthen its strategic autonomy. But what are the criteria for choosing between a Korean supplier and a European champion like EDF?

That can be a fine line to tread. If FSR enforcement becomes a cover for political preference, legal certainty and market trust suffer. If the Korean bid adheres the market principles and passes the legal threshold, then the case for disqualifying it becomes far less compelling. Using FSR to shield EU powers would not only extend its mandate but risk undermining its legitimacy.

Fortunately, in the Czech nuclear tender, the Commission and the Czech government chose to uphold the process. Mindful to avoid a breach a duty of "sincere cooperation" during an investigation into potentially distortive foreign subsidies, the [Czechs signed the deal with KHNP](#) after their Supreme Administrative Court lifted the interim injunction. President von der Leyen was not seen to pick up the undue European champion mantle pitched by EDF, and instead the European Commission meanwhile stated that its preliminary investigation under the FSR remains on-going, but with a strong message that procedural integrity remains a priority.

A defining moment for the FSR

This may well be a defining moment for the FSR. If the EU wants to remain an open economy while managing the geopolitical shifts, it must ensure that the FSR operates as intended: as a neutral, rules-based system. Political interventions that bypass formal procedure undermine this system and risk turning the FSR into a credibility trap.

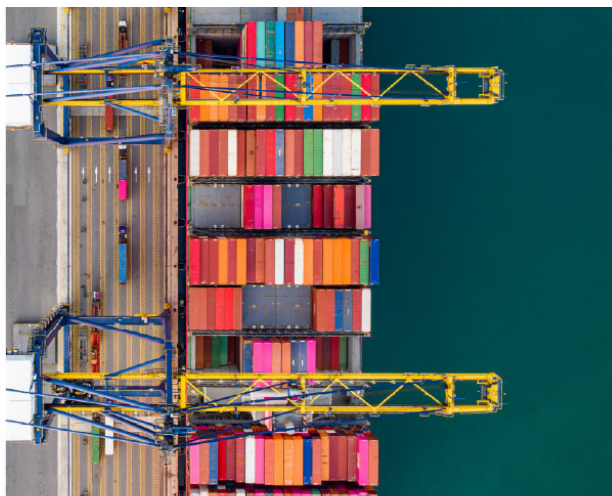
The real test of the FSR isn't whether it blocks or clears any particular deal. It's whether it does so fairly and transparently. This includes a clear boundary between law and politics: when legal instruments are used to serve political ends, the distinction between strategic autonomy and strategic protectionism becomes dangerously unclear. The Czech nuclear tender experience is encouraging in this regard.

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