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## LEGAL UPDATE

### *FSR Enforcement in Practice: Key Takeaways from the Lisbon Metro Violet Line Case*

*The European Commission’s decision in the Lisbon Metro Violet Line tender constitutes the first conditional clearance issued under the Foreign Subsidies Regulation (“FSR” or “Regulation”) in a public procurement context. It provides a more concrete indication of how the Commission intends to apply the Regulation in practice, how it interprets “distortive” foreign subsidies, and what types of commitments it considers adequate to remedy identified concerns.*

The FSR, in force since 13 July 2023, empowers the European Commission to assess whether foreign financial contributions granted by non EU governments may distort competition within the internal market. In the public procurement context, notification is required where the estimated contract value is at least EUR 250 million (net of VAT) and the bidder, including its main subcontractors and key suppliers, has received EUR 4 million or more in aggregate foreign financial contributions from any single third country over the preceding three years; where contributions fall below this threshold, a declaration shall still be submitted. In case, following its preliminary review, the Commission identifies sufficient indications that a foreign financial contribution could constitute a distortive subsidy, it may open an in depth investigation, which may ultimately result in the acceptance of commitments, the prohibition of the award, or a no objection decision.

The case stems from the tender launched by Metropolitano de Lisboa for the design and construction of the new Violet Line, part of a broader strategy to expand and

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modernise the Lisbon metro network. The estimated contract value exceeded the EUR 250 million threshold that triggers mandatory notification under the FSR. One of the bidding consortia, led by Mota-Engil, included a Chinese rolling stock manufacturer as a key subcontractor, submitted an FSR notification to the Commission.

The Commission's preliminary review identified indications that certain contributions received by such Chinese company could constitute foreign subsidies capable of distorting competition. As a result, on 5 November 2025, it opened an in-depth investigation. To address the Commission's concerns, the consortium proposed a set of commitments, ultimately accepted by the Commission, including the replacement of the Chinese rolling-stock manufacturer with Pojazdy Szynowe PESA Bydgoszcz Spółka Akcyjna, a Polish rolling stock manufacturer. This allowed the consortium's participation in the tender to proceed.

At the same time, the case exposes several structural challenges for foreign companies, particularly state-owned enterprises, participating in EU public procurement procedures. The FSR's definition of "foreign financial contribution" is broad and capture a wide range of transactions that, in many jurisdictions, are considered routine commercial arrangements, such as loans from state-owned banks or tax incentives. For companies operating in mixed or state-led economies, this results in a substantial volume of information that must be collected and disclosed, even when the underlying transactions can have no direct impact on the competitiveness of their bid.

It is important to recognise that foreign companies have long played a constructive role in European infrastructure markets. Their participation has often increased competition, reduced costs for public authorities, and accelerated project delivery. These contributions should not be overlooked in the broader policy debate. In this regard, the FSR's balancing test, requiring the Commission to consider the positive effects of foreign subsidies, remains a critical safeguard.

The Lisbon case also further demonstrates the need for predictability and proportionality in FSR enforcement. Foreign investors require clear guidance on structuring their participation in EU tenders, documenting financial contributions, and anticipating potential concerns. While the Commission's decision offers initial

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clarity, further decisional practice will be essential to ensure that the FSR does not inadvertently deter legitimate foreign investment or undermine the EU's reputation as an open and competitive market.

The implications of this case extend well beyond the specific tender. Contracting authorities will need to anticipate potential FSR-related delays when planning procurement timelines, particularly in large infrastructure projects where notification obligations are more likely to arise. Bidders will likely face closer attention to how consortia are structured and key subcontractors are chosen. Foreign companies, especially those operating in jurisdictions where public financial support is a common feature of the economic environment, will require robust internal systems to identify, document, and monitor foreign financial contributions in a manner consistent with FSR requirements.

For foreign investors more broadly, this development reinforces the need to integrate the FSR into existing compliance frameworks. Strategies must now account for multiple regulatory layers, including instruments such as the EU FDI Screening Regulation, each pursuing distinct policy objectives and imposing separate procedural obligations. The cumulative effect is a more complex regulatory landscape in which early assessment, internal coordination, and transparent engagement with authorities become essential components of successful participation in EU markets.

A non confidential version of the decision will be issued in the Official Journal of the European Union following the completion of the Commission's confidentiality review.

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