

# EU Commission disqualifies Chinese supplier in its first FSR procurement decision

On 21 April 2026, the European Commission (**Commission**) adopted its first conditional clearance decision following an in-depth investigation under the EU Foreign Subsidies Regulation (**FSR**)'s procurement instrument. Although the Commission approved the participation of a consortium in the tender for the contract to design and construct the new Lisbon "Violet" line, it disqualified the consortium's Chinese subcontractor, which was found to have received foreign subsidies that distorted the procurement procedure. A likely consequence of the decision, which highlights the continuing FSR challenges for large Chinese companies, is that consortium leaders in EU procurement processes will become more selective in choosing their consortium members and subcontractors, to avoid the rejection of their bid.

## Background

On 17 April 2025, Metropolitano de Lisboa E.P.E., Lisbon's underground railway company, launched a EUR 600 million public procurement procedure for a new subway line (the **Public Contract**).

A consortium led by Mota-Engil Engenharia e Construção, S.A (**Consortium**) participated in the tender, with Portugal CRRC Tangshan Rolling Stock Unipessoal LDA (**CRRC Portugal**) as the rolling stock supplier. CRRC Portugal is the local affiliate of CRRC Tangshan Co., Ltd., which is in turn a fully owned subsidiary of the CRRC Group Corporation Ltd. (**CRRC**), a Chinese majority state-owned enterprise.

While the Consortium members submitted FS-PP notifications, CRRC Portugal submitted only a declaration that it had not received any foreign financial contributions. It also explained that it did not consider itself an economic operator in the tender, but merely a supplier to the Consortium. Apparently CRRC Portugal argued that this qualification was justified as, among other reasons, the rolling stock it supplied to the Consortium accounted for less than 10% of the overall value of the Public Contract.

As was foreseeable, however, the Commission considered CRRC Portugal a "main subcontractor" under Article 29(5)

and recital 54 of the FSR, as the rolling stock supplied by CRRC Portugal ensured compliance with key elements of the Public Contract. Following a preliminary review, the Commission found that there were sufficient indications that CRRC Portugal had indirectly benefitted from foreign subsidies distorting the internal market and [initiated](#) an in-depth investigation on 4 November 2025.

## Conditional Clearance

On 21 April 2026, the Commission concluded its in-depth investigation and adopted a conditional clearance decision, approving the Consortium's participation in the tender under the condition that the Consortium replace CRRC Portugal with a Polish rolling stock manufacturer.

According to the Commission's press release, the in-depth investigation confirmed the preliminary findings that the subsidies received by CRRC indirectly benefitted CRRC Portugal. This had given the Consortium an unfair competitive edge, to the detriment of other bidders participating in the tender and the integrity of the EU's internal market. Finding that the commitment to replace CRRC Portugal with a rolling stock supplier that had not received subsidies removed the distortion of competition in the internal market, the Commission approved the Consortium's participation in the tender with a European rolling stock supplier.

The conditional clearance decision allows *Metropolitano de Lisboa* to award the contract, while the Commission will continue to monitor the Consortium's compliance with its commitments.

### Significance of the Decision

This case marks the first time the Commission concluded an in-depth investigation under the FSR's public procurement instrument with a final decision. Previous procurement in-depth investigations (one of which involved another CRRC company)<sup>1</sup> were terminated following the investigated companies' withdrawal from the tender, citing the impossibility to respond to the Commission's questions due to certain Chinese regulations restricting the export of data from China. Tender withdrawal also terminated the Commission's FSR jurisdiction.

CRRC Portugal reportedly made an early offer to withdraw from the Consortium. The Commission decided to continue its probe. Presumably the Commission took the view that it could take its in-depth investigation to a final decision because of CRRC Portugal's particular role in this case as a subcontractor to a consortium that had submitted an FSR notification. The Commission may have concluded that FSR jurisdiction flowed from the Consortium's tender participation and its related FSR notification, which would not have been affected by a withdrawal by CRRC Portugal.

The Commission may in this case have been particularly interested in concluding its investigation with a formal decision as it was reportedly concerned that Portugal CRRC could re-enter the bidding at a later stage "through the back door". This may have been because the Commission had indications that CRRC Portugal's withdrawal was not genuine – according to one source<sup>2</sup>, Mota-Engil kept prices and technical arrangements in its bid that matched those offered by Portugal CRRC. A final decision with distortion findings and continuous monitoring rights precludes such an outcome. The final decision, when published, will provide further insight into the jurisdictional aspect of the case.

The final decision will also provide interesting insight into the Commission's distortion analysis. In particular, it will be interesting to see whether in the very tight timeframe of an in-depth investigation the Commission obtained sufficient evidence to establish to what extent subsidies received by CRRC in China indirectly benefitted CRRC Portugal and led to distortion or relied on the FSR's "available evidence" standard in its distortion analysis.

In addition, the final decision will show whether the Commission sought to examine how much Chinese subsidies affected prices offered by the Consortium and whether, absent these subsidies, the Consortium including CRRC Portugal as a subcontractor would nevertheless have been able to submit the most advantageous bid. Such a counterfactual analysis should be required considering the FSR's equal playing field rationale. If the – hypothetical – unsubsidized price would still be the most competitive, there would be no distortion of the tender outcome or detriment to competitors.

This case is also noteworthy because the Commission examined for the first time subsidies received by a main subcontractor, rather than a direct bidder. The Commission, unsurprisingly, concluded that CRRC Portugal was a main subcontractor as it ensured key elements of the contract performance, "notably the supply of rolling stock and its maintenance, which are mandatory components of the tender in the procedure." It was therefore irrelevant that CRRC's economic share of the total project value was quite low. The decision will provide further guidance on the factors considered by the Commission when determining whether a subcontractor is a "main subcontractor" according to Article 29(5) of the FSR.

### Conclusion

This is the first time that the Commission has established in a formal FSR decision that Chinese subsidies distort the market in the EU. The case highlights that the Commission continues to tightly scrutinize Chinese companies, including those participating in EU public procurement procedures. It also establishes a precedent for the Commission's power to investigate Chinese subsidies even where the Chinese company is not a direct bidder, closing another route for Chinese companies to remain active in Europe while staying below the FSR radar. It will therefore still be a while until Chinese companies find a way to overcome the challenges created by the FSR for their European activities. The – presumably intended – consequence of the decision is that consortium leaders in EU procurement processes will become more selective in choosing their consortium members, and subcontractors, to avoid the rejection of their bids. From an EU taxpayer perspective, on the other hand, the consequence is that the costs of many EU procurement processes will increase.

A non-confidential version of the Commission's final decision will be published in the Official Journal of the European Union once confidentiality issues are resolved.

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1 See statement by Commissioner Breton on withdrawal by CRRC Qingdao Sifang Locomotive Co., Ltd. from public procurement following the Commission's opening of an investigation under the Foreign Subsidies Regulation, 26 March 2024.

2 South China Morning Post, China's CRRC drops bid for Lisbon metro deal as EU finds 'billions' in subsidies probe, 21 April 2026.

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