



Summary notice concerning the initiation of an in-depth investigation in Case FSP. 100154, pursuant to Articles 10(3)(d) of Regulation (EU) 2022/2560

(C/2024/2832)

On 3 April 2024, in accordance with Article 10(3) of Regulation (EU) No 2022/2560 of the European Parliament and of the Council ⁽¹⁾ (the 'FSR'), the Commission decided to initiate an in-depth investigation in the above-mentioned case after finding, based on a preliminary review, sufficient indications that Shanghai Electric UK Ltd. and Shanghai Electric Hong Kong International Engineering Company (the 'Notifying Parties') in the public procurement procedure described below has been granted foreign subsidies that distort the internal market. The initiation of the in-depth investigation with regard to the notified public procurement procedure is without prejudice to the final decision in this case.

1. The public procurement procedure

On 27 September 2023, 'Societatea PARC FOTOVOLTAIC ROVINARI EST S.A.' (hereinafter 'the Contracting Authority') initiated an open public procurement procedure with a value of approximately EUR 375 million for the design, construction and operation of a photovoltaic park in Romania. The procedure was on the Tender Electronic Daily (TED) platform under the reference Romania-Târgu Jiu: Construction work for power plant, 2023/S 189-592487. TED Link: Works - 592487-2023 - TED Tenders Electronic Daily (europa.eu)

2. The Notifying Party and the foreign financial contributions notified

Shanghai Electric UK Co., Ltd. and Shanghai Electric Hong Kong International Engineering Co., Ltd. are 100 % owned and controlled by Shanghai Electric Group Co., Ltd. Shanghai Electric UK Co., Ltd. and Shanghai Electric Hong Kong International Engineering Co., Ltd. are global suppliers of industrial-grade solutions of energy, manufacturing and the integration of digital intelligence.

On 22 January 2024, the Contracting Authority forwarded to the Commission a notification within the meaning of Article 29(1) FSR, submitted by the Notifying Parties. The Commission found the notification to be incomplete. Consequently, on 19 February 2024, the Commission adopted a decision pursuant to Article 29(4) FSR and Article 7(1) of Commission Implementing Regulation (EU) 2023/1441 ⁽²⁾ declaring the notification incomplete.

On 4 March 2024, the Notifying Parties submitted a complete notification, therefore pursuant to Article 7 of Implementing Regulation (EU) No 2023/1441, the Commission declared the effective date of the notification as 4 March 2024. In accordance with Article 30(2) of FSR, the Commission has carried the preliminary review of the completed notification within 20 working days.

3. Indications of the presence of foreign subsidies

Based on the information available to it at this stage, the Commission considers that there are sufficient indications that the Notifying Parties – in accordance with Article 28(1)(b) FSR have received the following foreign subsidies within the meaning of Article 3 FSR:

- Government grants made available to the Notifying Parties and their holding companies during the period of three years prior to notification, which conferred a specific benefit to the Notifying Parties.
- Tax refunds, fiscal incentives and levies of approximately at least EUR 389 million made available to the Notifying Parties and their holding companies during the period of three years prior to notification, which conferred a specific benefit to the Notifying Parties.

⁽¹⁾ Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (OJ L 330, 23.12.2022, p. 1).

⁽²⁾ Commission Implementing Regulation (EU) 2023/1441 of 10 July 2023 on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market (OJ L 177, 12.7.2023, p. 1).

- Financing made available to the Notifying Parties and their holding companies during the period of three years prior to notification, which conferred a specific benefit to the Notifying Parties.
- Sales of goods and provision of services of at least approximately EUR 546 million made available to the Notifying Parties and their holding companies during the period of three years prior to notification, which conferred a specific benefit to the Notifying Parties.

4. Indication of a distortion on the internal market

Based on the information available to it at this stage, the Commission considers that there are sufficient indications that the foreign subsidies preliminarily identified in Section 3 are liable to improve the competitive position of the Notifying Parties in the internal market and, in doing so, actually or potentially negatively affect competition in the internal market within the meaning of Article 4 FSR.

First, the absolute amount of these potential foreign subsidies benefitting the Notifying Parties is significantly higher than the value of the contracts for which the Notifying Parties' consortium is bidding. In line with the considerations in recital (19) FSR that foreign subsidies covering a substantial part of the estimated value of a contract to be awarded in a public procurement procedure are likely to cause distortions. While the Commission attempted to obtain the financial proposals of the tenderers, these were not made available by the Contracting Authority during the preliminary review. The Commission is therefore unable to assess the financial offer proposed by the Notifying Parties and does not exclude that subsidies identified have had a potential distortive effect on the offer, which may be reflected in its financial offer.

Second, the Notifying Parties have not provided any information concerning the specific nature, conditions, purpose or use of the potential foreign subsidies identified in Section 3 above. Nevertheless, although the measures were granted to Shanghai Electric Holdings Group Co., Ltd or Shanghai Electric Group Co., Ltd., in view of the capital rights existing within the group structure, the evidence that the Commission has in its possession concerning intra-group financing, and no indication that the potential subsidies granted to the parent were limited in such a way that they could not have been used by or benefitted the Notifying Parties, the Commission considers these foreign subsidies as having a potential distortive effect on the offer and therefore on the internal market.

Finally, the financial assistance provided by Shanghai Electric Group Co., Ltd. entities to the Notifying Parties for their business operations, and the loss-making characteristics of foreign operations of Shanghai Electric Group Co., Ltd., are additional indications, when considered along with the other elements identified in this decision.

5. Conclusion

Considering the significant potential economic advantages to the Notifying Parties through Shanghai Electric Group Co. Ltd resulting from the above subsidies identified of at least several billion EUR received three years prior to notification described in Sections 3 and 4 above, the Commission considers having sufficient indications that the Notifying Parties have been granted foreign subsidies that may distort the internal market.

6. Invitation for comments

In accordance with Articles 10(3)(d) and 40(1) FSR and Article 8(1) of Implementing Regulation (EU) 2023/1441 (the 'FSIR') the Commission invites any natural or legal person, Member State as well as the third country that granted the foreign subsidies identified in Section 3 to submit their comments. In accordance with Article 8(3) FSIR, where the submitted written comments include confidential information, the submitting person shall provide a non-confidential version of the submission at the same time as the confidential version.

In duly justified cases, the providers of comments may request that their identity is not disclosed. Anonymity will be granted based on explicit good cause shown in the request.

In order to be fully taken into account in the procedure, comments should reach the Commission not later than 10 working days following the date of this publication. Observations can be sent to the Commission by email to grow-fsr-pp-notifications@ec.europa.eu, with reference FSP. 100154.