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## 中华人民共和国商务部

### 关于对欧盟《外国补贴条例》调查相关做法 进行贸易投资壁垒调查的申请书

【附件】

申请人：

中国机电产品进出口商会

2024年6月17日



附件一

中国机电商会社团法人登记证书

副本



社会团体法人

# 登记证书

发证机关：中华人民共和国民政部



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名称：中国机电产品进出口商会

住所：北京市朝阳区潘家园南里12号楼9层

法定代表人：张钰晶

注册资金：捌佰万元整

活动地域：全国

业务范围：行业自律 协调招标 国际合作  
信息交流 专业展览 业务培训  
咨询服务

## 持证须知

一、《社会团体法人登记证书》是社会团体法人依法成立和进行活动的凭证。《社会团体法人登记证书》经加盖社团登记管理机关印章后，方为有效。

二、《社会团体法人登记证书》分正本和副本，正本和副本具有同等法律效力。社会团体法人应当将正本悬挂于办公住所的醒目位置。

三、《社会团体法人登记证书》不得涂改、转让、出租、出借，除社团登记管理机关以外，其他任何单位和个人不得扣留、收缴。

四、社会团体法人变更登记事项，应当依照有关规定向原登记管理机关申请换领《社会团体法人登记证书》；如遗失或损毁《社会团体法人登记证书》，应当立即向登记管理机关报告，并依照有关规定申请补发。

五、社会团体法人终止活动，应当在办理注销登记时将《社会团体法人登记证书》交回原登记管理机关。

六、本证书由民政部统一印制，未经允许，其他任何单位和个人不得擅自印制。

2019年度年检合格

2020年度年检合格

2021年度年检合格

## 附件二

### 欧盟《外国补贴条例》全文

## I

*(Legislative acts)*

## REGULATIONS

**REGULATION (EU) 2022/2560 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 14 December 2022**  
**on foreign subsidies distorting the internal market**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) A strong, open and competitive internal market enables both European and foreign undertakings to compete on merits. The Union benefits from a sophisticated and effective system of State aid control, aiming at ensuring fair conditions for all undertakings engaging in an economic activity in the internal market. This State aid control system prevents Member States from granting State aid that unduly distorts competition in the internal market.
- (2) At the same time, both private undertakings and public undertakings which are directly or indirectly controlled or owned by a state, might receive subsidies from third countries, which are then used, for instance, to finance economic activities in the internal market in any sector of the economy, such as participation in public procurement procedures, or the acquisition of undertakings, including those with strategic assets such as critical infrastructure and innovative technologies. Such foreign subsidies are currently not subject to Union State aid rules.
- (3) This Regulation covers all economic sectors, including those that are of strategic interest to the Union and critical infrastructures, such as those mentioned in Article 4(1), point (a), of Regulation (EU) 2019/452 of the European Parliament and of the Council <sup>(3)</sup>.
- (4) Foreign subsidies can distort the internal market and undermine the level playing field for various economic activities in the Union. This could in particular occur in the context of concentrations entailing a change of control over Union undertakings, where such concentrations are fully or partially financed through foreign subsidies, or where economic operators benefiting from foreign subsidies are awarded contracts in the Union.

<sup>(1)</sup> OJ C 105, 4.3.2022, p. 87.

<sup>(2)</sup> Position of the European Parliament of 10 November 2022 (not yet published in the Official Journal) and decision of the Council of 28 November 2022.

<sup>(3)</sup> Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79 I, 21.3.2019, p. 1).

- (5) No existing Union instruments address distortions caused by foreign subsidies. Trade defence instruments enable the Commission to act when subsidised goods are imported into the Union, but not when foreign subsidies take the form of subsidised investments, or when services and financial flows are concerned. Under the WTO Agreement on Subsidies and Countervailing Measures, the Union has the possibility to initiate State-to-State dispute settlement against certain foreign subsidies granted by WTO members and limited to goods.
- (6) It is therefore necessary to complement existing Union instruments with a new tool to effectively deal with distortions in the internal market caused by foreign subsidies in order to ensure a level playing field. In particular, the new tool complements Union State aid rules which deal with distortions in the internal market caused by Member State subsidies.
- (7) It is important that rules and procedures to investigate foreign subsidies that actually or potentially distort the internal market be laid down and, where relevant, that those distortions be redressed. Foreign subsidies could distort the internal market if an undertaking benefitting from the foreign subsidy engages in an economic activity in the Union. The proper application and enforcement of this Regulation are to contribute to the resilience of the internal market against distortions caused by foreign subsidies and thereby contribute to the Union's open strategic autonomy. This Regulation therefore establishes rules for all undertakings, including public undertakings which are directly or indirectly controlled by a State, engaging in an economic activity in the Union. Special attention is to be given to the impact of this Regulation on small and medium-sized enterprises (SMEs) given the significance of the economic activities pursued by them and their contribution to the fulfilment of the Union's key policy goals.
- (8) To ensure a level playing field throughout the internal market and consistency in the application of this Regulation, the Commission is the sole authority competent to apply this Regulation. The Commission should have the power to examine any foreign subsidy, to the extent it is in the scope of this Regulation, in any sector of the economy on its own initiative, relying thereby on information from all available sources. To ensure effective control, in the specific case of large concentrations (mergers and acquisitions) and public procurement procedures above certain thresholds, the Commission should have the power to review foreign subsidies based on a prior notification by the undertaking to the Commission.
- (9) This Regulation should be applied and interpreted in light of the relevant Union legislation, including that relating to State aid, mergers and public procurement.
- (10) The implementation of this Regulation is without prejudice to the right of each Member State to protect its essential security interests in accordance with Article 346 of the Treaty on Functioning of the European Union (TFEU).
- (11) A foreign subsidy in the context of this Regulation should be understood as a financial contribution which is provided directly or indirectly by a third country, which confers a benefit and which is limited to one or more undertakings or industries. Those conditions are cumulative.
- (12) A financial contribution can be granted through public or private entities. Whether a public entity provided a financial contribution should be determined on a case-by-case basis with due regard to elements such as the characteristics of the relevant entity and the legal and economic environment prevailing in the third country in which the entity operates including the government's role in the economy of that country. Financial contributions can also be granted through a private entity if the actions of that private entity can be attributed to the third country. The concept of financial contribution includes a broad range of support measures which are not limited to monetary transfers, for instance, granting special or exclusive rights to an undertaking without receiving adequate remuneration in line with normal market conditions.
- (13) A financial contribution should confer a benefit on an undertaking engaging in an economic activity in the internal market. A financial contribution should be considered to confer a benefit on an undertaking if it could not have been obtained under normal market conditions. The existence of a benefit should be determined on the basis of comparative benchmarks, such as the investment practice of private investors, financing rates obtainable on the market, a comparable tax treatment, or the adequate remuneration for a given good or service. If no directly comparable benchmarks are available, existing benchmarks could be adjusted or alternative benchmarks could be established based on generally accepted assessment methods. Benefits can, for example, be conferred in the context

of the relationship established between public authorities and public undertakings, if such a relationship, and in particular any financing by the public authorities to public undertakings does not comply with normal market conditions. The provision or purchase of goods or services carried out following a competitive, transparent and non-discriminatory tender procedure, is presumed to be in line with normal market conditions. A financial contribution to an undertaking engaging in an economic activity in the internal market should not be considered as conferring a benefit when the benchmark assessment shows that the undertaking would have obtained that benefit under normal market conditions. Transfer pricing in the context of goods and services exchanged within an undertaking can confer a benefit if that transfer pricing is not in line with normal market conditions. The benefit conferred by a financial contribution may be passed to an undertaking engaging in an economic activity in the Union.

- (14) The benefit should be conferred on one or more undertakings or industries. The specificity of the foreign subsidy could be established by law or in fact.
- (15) A foreign subsidy should be considered granted from the moment the beneficiary obtains an entitlement to receive the foreign subsidy. The actual disbursement of the foreign subsidy is not a necessary condition for a foreign subsidy to fall within the scope of this Regulation.
- (16) A financial contribution provided exclusively for the non-economic activities of an undertaking does not constitute a foreign subsidy. However, if a financial contribution for a non-economic activity is used to cross-subsidise the economic activities of the undertaking, it can amount to a foreign subsidy falling under the scope of this Regulation. If an undertaking uses financial contributions, for instance in the form of special or exclusive rights, or financial contributions received to compensate for a burden imposed by public authorities, to cross-subsidise other activities, that cross-subsidisation could be an indication that the special or exclusive rights are provided without adequate remuneration, or that the burden is overcompensated and thus amounts to a foreign subsidy.
- (17) Once the existence of a foreign subsidy is established, the Commission should assess on a case-by-case basis whether it distorts the internal market. Unlike State aid granted by a Member State, foreign subsidies are not generally prohibited.
- (18) It is possible that the lack of transparency concerning many foreign subsidies and the complexity of the commercial reality make it difficult to unequivocally identify or quantify the impact of a given foreign subsidy on the internal market. To determine the distortion, it therefore appears necessary to use a non-exhaustive set of indicators. When assessing the extent to which a foreign subsidy can improve the competitive position of an undertaking and where, in doing so, that foreign subsidy actually or potentially negatively affects competition in the internal market, the Commission could have regard to certain indicators including the amount and nature of the foreign subsidy, the purpose and conditions attached to the foreign subsidy as well as its use in the internal market.
- (19) When using the indicators to determine the existence of a distortion in the internal market, the Commission could take into account various elements such as the size of the foreign subsidy in absolute terms or in relation to the size of the market or to the value of the investment. For instance, a concentration, in the context of which a foreign subsidy covers a substantial part of the purchase price of the target, is likely to be distortive. Similarly, 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. If a foreign subsidy is granted for operating costs, it seems more likely to cause distortions than if it is granted for investment costs. Foreign subsidies to SMEs could be considered less likely to cause distortions than foreign subsidies to large undertakings. Furthermore, the characteristics of the market, and in particular the competitive conditions on the market, such as barriers to entry, should be taken into account. Foreign subsidies in markets characterised by overcapacity or leading to overcapacity by sustaining uneconomic assets or by encouraging investment in capacity expansions that would otherwise not have been built are likely to cause distortions. A foreign subsidy to a beneficiary that shows a low degree of activity in the internal market,

measured for instance in terms of turnover achieved in the Union, is less likely to cause distortions than a foreign subsidy to a beneficiary that has a more significant level of activity in the internal market. Foreign subsidies not exceeding EUR 4 million over a consecutive period of three years should be deemed, as a general rule, unlikely to distort the internal market within the meaning of this Regulation. Foreign subsidies to a single undertaking not exceeding the amount of *de minimis* aid as defined by Article 3(2) of Commission Regulation (EU) No 1407/2013 <sup>(\*)</sup> per third country over a consecutive period of three years should be considered as not distorting the internal market within the meaning of this Regulation.

- (20) Like certain types of State aid, certain categories of foreign subsidies, such as unlimited guarantees, namely guarantees without any limitation as to the amount or the duration of such guarantee, are also likely to create distortions in the internal market because of their nature. The same is true for an unduly advantageous tender, the advantageous nature of which, such as its price, cannot be justified by other factors. Moreover, subsidies in the form of export financing could, unless provided in line with the OECD Arrangement on officially supported export credits, be a cause of particular concern because of their distortive effects. Since those categories of foreign subsidies are most likely to create distortions in the internal market, it is not necessary for the Commission to perform a detailed assessment based on indicators. An undertaking could in any event show that the foreign subsidy in question would not distort the internal market in the specific circumstances of the case.
- (21) Member States, as well as any natural or legal persons are able to submit information on the positive effects of a foreign subsidy, of which the Commission should take due account when carrying out the balancing test. The Commission should consider the positive effects of the foreign subsidy on the basis of the evidence about such positive effects submitted during the investigation. The positive effects should relate to the development of the relevant subsidised economic activity on the internal market. Other positive effects should be taken into account, where appropriate, in order to avoid that the balancing gives rise to unjustified discrimination. The Commission should also examine broader positive effects in relation to the relevant policy objectives, in particular those of the Union. Those policy objectives can include, in particular, a high level of environmental protection and social standards, and the promotion of research and development. The Commission should weigh those positive effects against the negative effects of a foreign subsidy in terms of distortion in the internal market. In the context of a public procurement procedure, the Commission should take into account the availability of alternative sources of supply for the goods and services concerned. The balancing can lead to the conclusion not to impose redressive measures where the positive effects of the foreign subsidy outweigh its negative effects. In the case of categories of foreign subsidies that are deemed most likely to distort the internal market, positive effects are less likely to outweigh negative effects. If the negative effects prevail, the balancing test can help to determine the appropriate nature and level of the commitments or redressive measures. In any event, given that the balancing test considers the positive effects of a foreign subsidy, applying that balancing test should not lead to an outcome for the undertaking that would be worse than if the balancing test had not been applied. Where the Commission carries out a balancing test, it should set out its reasoning in the decision closing an in-depth investigation.
- (22) Where the Commission examines a foreign subsidy on its own initiative, it should have the power to impose redressive measures on an undertaking to remedy any distortion caused by a foreign subsidy in the internal market. Those redressive measures should include structural and non-structural remedies, and the repayment of the foreign subsidy, and should be suitable to remedy the distortion in question and be proportionate. Where the Commission considers alternative redressive measures, which would each fully and effectively remedy the distortion, the Commission should choose the measure which is least burdensome for the undertaking under investigation.

<sup>(\*)</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).

- (23) The undertaking under investigation should have the possibility to offer commitments in order to remedy the distortion caused by the foreign subsidy. If the Commission considers that the commitments offered fully and effectively remedy the distortion, it could accept them and make them binding by decision. In that case, the Commission should not impose redressive measures.
- (24) The undertaking under investigation could offer to repay the subsidy, together with appropriate interest. The Commission should accept a repayment offered as a commitment if it can ascertain that the repayment fully remedies the distortion, is executed in a transparent and verifiable manner and is effective in practice, while taking into account the risk of circumvention of the objectives of this Regulation.
- (25) Unless the undertaking under investigation offers commitments that would fully and effectively remedy the identified distortion, the Commission should have the power to prohibit a concentration or the award of a contract before it takes place. Where the concentration has already been implemented, in particular in cases where no prior notification was required because the notification thresholds were not reached, the distortion can nonetheless be so substantial that it cannot be remedied by behavioural or structural measures or by the repayment of the subsidy. In such cases, the Commission should be able to decide to remedy the distortion by ordering the undertakings to dissolve the concentration.
- (26) The undertaking under investigation could offer or the Commission could, where proportionate and necessary, require the undertakings under investigation to inform the Commission of their participation in future concentrations or public procurement procedures in the Union for an appropriate period of time. The submission of such information, or the response or absence of a response from the Commission, cannot give rise to legitimate expectations on the part of the undertaking that the Commission will not later start an investigation of possible foreign subsidies to the undertaking participating in the concentration or in the public procurement procedure.
- (27) The Commission should have the power, on its own initiative, to examine any information on foreign subsidies. Member States and any natural or legal person or association should be able to provide the Commission with information on alleged foreign subsidies distorting the internal market. The Commission could establish a contact point to facilitate the provision of such information in a confidential manner. When Member States provide the Commission with relevant information on alleged foreign subsidies distorting the internal market, the Commission should ensure that those Member States receive an answer. To investigate possible foreign subsidies and whether they distort the internal market and to remedy such distortions, this Regulation establishes a procedure consisting of two steps, namely a preliminary review and an in-depth investigation. An undertaking subject to either of those two steps should be considered as an undertaking under investigation.
- (28) The Commission should be given appropriate investigative powers to gather all necessary information. It should therefore have the power to request information from any undertaking or association of undertakings throughout the whole procedure. In addition, the Commission should have the power to impose fines or periodic penalty payments for failure to supply the requested information in a timely manner or for supplying incomplete, incorrect or misleading information. The Commission should also be able to address questions to Member States or to third countries. Furthermore, the Commission should have the power to make fact-finding visits at premises located in the Union of an undertaking or association of undertakings, or, if the third country concerned is officially notified and raises no objections, at the premises of the undertaking in the third country. In order to ensure an effective inspection, the Commission should have the power to ask the undertaking or association of undertakings to consent to the inspection. The Commission should also have the power to take decisions on the basis of facts available if the undertaking under investigation or the third country that granted the subsidy does not cooperate.
- (29) Furthermore, where necessary to prevent irreparable damage to competition in the internal market, the Commission should have the power to adopt interim measures.

- (30) Where, as a result of the preliminary review, the Commission has sufficient indications of the existence of a foreign subsidy distorting the internal market, the Commission should have the power to launch an in-depth investigation to gather additional relevant information to assess the foreign subsidy. The undertaking under investigation should be allowed to exercise its rights of defence.
- (31) The Commission should close the in-depth investigation by adopting a decision. It should, as far as possible, endeavour to close the in-depth investigation within 18 months, taking into account, in particular, the complexity of the case as well as the level of cooperation of the undertakings and third countries concerned.
- (32) The Commission should have appropriate instruments to ensure the effectiveness of commitments and redressive measures. If an undertaking does not comply with a decision with commitments, a decision with redressive measures, or a decision ordering interim measures, the Commission should have the power to impose fines or periodic penalty payments of a sufficiently dissuasive nature. The Commission should take into account cases of repeated non-compliance when imposing such fines or periodic penalty payments. In order to reinforce the effectiveness of this Regulation, it is possible for the Commission to apply commitments or redressive measures simultaneously with fines or periodic penalty payments.
- (33) In order to ensure the correct and effective application of this Regulation, the Commission should have the power to revoke a decision and adopt a new one, where the decision was based on incomplete, incorrect or misleading information, where an undertaking acts contrary to its commitments or the redressive measures imposed, or where the commitments or redressive measures were not effective.
- (34) Given the potentially significant impact of concentrations on the internal market, the Commission should have the power, upon notification, to examine information on foreign financial contributions in the context of a proposed concentration. Undertakings should not be allowed to implement the concentration prior to the conclusion of the Commission's review. The examination by the Commission should follow the same procedure as that of the review of a foreign subsidy on the Commission's initiative, subject to adjustments to reflect the specificities of concentrations.
- (35) It is necessary to strike a balance between the effective protection of the internal market and the need to limit the administrative burden on undertakings subject to this Regulation. Therefore, only concentrations meeting combined thresholds as defined in this Regulation based on the size of the turnover in the Union and the size of the foreign financial contributions should be subject to mandatory prior notification.
- (36) Below the notification thresholds, the Commission should be able to require the notification of potentially subsidised concentrations that were not yet implemented or the notification of potentially subsidised bids prior to the award of a contract, if it considers that the concentration or the bid would merit *ex ante* review given its impact in the Union. The Commission should also have the possibility to carry out a review on its own initiative of concentrations already implemented or contracts already awarded.
- (37) When reviewing a concentration, the assessment of whether there is a distortion in the internal market should be limited to the concentration concerned, and only those foreign subsidies granted in the three years prior to the concentration should be considered in the assessment.
- (38) In the context of the *ex ante* review mechanism for concentrations, undertakings should be able to request pre-notification consultations with the Commission based on good faith, with the aim of receiving guidance on whether the thresholds for notification are met.

- (39) When a concentration is notified to the Commission pursuant to Article 4 of Council Regulation (EC) No 139/2004 <sup>(3)</sup> and to this Regulation, the Commission should endeavour to limit the administrative burden for the notifying parties under this Regulation. In particular, undertakings should have the option to indicate the specific information submitted in the context of a proceeding under this Regulation that the Commission also has the right to use in proceedings under Regulation (EC) No 139/2004.
- (40) The need to address foreign subsidies distorting the internal market is especially salient in public procurement, given its economic significance in the internal market and the fact that it is financed by taxpayer funds. The Commission should have the power, upon notification prior to the award of a contract, to examine information on foreign financial contributions to the participating economic operator in the context of a public procurement procedure. Prior notifications should be mandatory above a threshold set in this Regulation to capture economically significant cases while minimising the administrative burden and not hindering the participation of SMEs in public procurement. That obligation of prior notification above a threshold should also apply to groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU of the European Parliament and of the Council <sup>(4)</sup>, Article 19(2) of Directive 2014/24/EU of the European Parliament and of the Council <sup>(5)</sup> and Article 37(2) of Directive 2014/25/EU of the European Parliament and of the Council <sup>(6)</sup>. The Commission also has the right to request the prior notification of a foreign financial contribution during a public procurement procedure despite its estimated value being below the notification thresholds. The Commission should endeavour to limit interference with public procurement procedures, by taking into account how close the date of the award of the contract is when deciding whether to request such prior notification.
- (41) The balance between the development of a European defence and security equipment market, which is essential for maintaining a European Defence Technological and Industrial Base, and the protection of the national security of the Member States requires a specific regime for defence and security contracts covered by Directive 2009/81/EC of the European Parliament and of the Council <sup>(7)</sup>. Public procurement for the award of such contracts should therefore not be subject to notification requirements under this Regulation. Nonetheless, it should be possible to examine the foreign subsidies in the context of such contracts in an *ex officio* review. Furthermore, public procurement covered by Directive 2009/81/EC and exempted by that Directive or to which the conditions for the application of Article 346 TFEU are fulfilled, whilst taking into account, for instance, that in accordance with the case-law of the Court of Justice of the European Union, the possibility of recourse to such exemption should be interpreted in such a way that its effects do not extend beyond that which is strictly necessary for the protection of the legitimate interests that those provisions help to safeguard and the Commission's Interpretative communication on the application of Article 296 TFEU in the field of defence procurement, should not be covered by this Regulation.
- (42) Framework agreements are an efficient procurement technique widely used by contracting authorities and contracting entities. The flexibility offered to purchasers after the conclusion of the framework agreement should not be affected by this Regulation. Therefore, the obligation to notify foreign financial contributions in public procurement procedures provided for in this Regulation should be limited to the procedure preceding the conclusion of framework agreements themselves and should not apply to contracts based on a framework agreement.

<sup>(3)</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

<sup>(4)</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

<sup>(5)</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

<sup>(6)</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

<sup>(7)</sup> Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).

- (43) Taking into account the urgent nature of procurement procedures conducted in accordance with Article 27(3) or 28(6) of Directive 2014/24/EU or Article 45(3) of Directive 2014/25/EU, the Commission should exercise its best efforts to prioritise such procedures during a preliminary review and an in-depth investigation to reach a meaningful conclusion as soon as feasible. This should apply accordingly to similar procedures conducted in accordance with Directive 2014/23/EU.
- (44) Due to the specificities of multi-stage procedures in public procurement, the Commission should start a preliminary review with the relevant information available in a notification when submitting the request to participate. To ensure the completeness of information and the speed of investigation, an updated notification should be submitted with the final tender. The Commission should also have the right to ask for any supplementary information before the submission of the final tender.
- (45) This Regulation does not address access by third-country economic operators to the Union procurement market. That matter is covered by the relevant Union law and international agreements.
- (46) When a foreign financial contribution is notified in the context of a public procurement procedure, the assessment should be limited to that procedure.
- (47) Where appropriate, the Commission should seek ways to ensure the use of electronic means of communication for facilitating the fulfilment of obligations regarding public procurement under this Regulation.
- (48) It should be ensured that the principles governing public procurement, in particular proportionality, non-discrimination, equal treatment, transparency and competition, are respected as regards all economic operators involved in the public procurement procedure, regardless of investigations initiated and pending pursuant to this Regulation. This Regulation is without prejudice to Directives 2014/23/EU, 2014/24/EU and 2014/25/EU as regards the applicable obligations in the fields of environmental, social and labour law.
- (49) Contracting authorities or contracting entities are able to decide to award a contract in the form of separate lots, in accordance, in particular with Article 46 of Directive 2014/24/EU and Article 65 of Directive 2014/25/EU and in observance of the prohibition of artificial splitting. Foreign financial contributions should be notified for tenderers applying for lots of a value above an applicable threshold.
- (50) This Regulation should not affect the possibility for economic operators to rely on the capacities of other entities in accordance with Directives 2014/23/EU, 2014/24/EU and 2014/25/EU.
- (51) This Regulation should not affect the possibility of the contracting authority or contracting entity to require the economic operators to supplement, clarify or complete the relevant information or documentation, as provided by Directive 2014/23/EU, Directive 2014/24/EU or Directive 2014/25/EU or as provided by the national law implementing them, provided that such requests are made in full compliance with the principles of equal treatment and transparency.
- (52) There is a strong tendency for public purchasers to centralise their purchases to achieve economies of scale and efficiency gains. Such central purchasing bodies are contracting authorities or contracting entities in the meaning of Directives 2009/81/EC, 2014/24/EU and 2014/25/EU. It is therefore appropriate that the Commission should be able to examine foreign subsidies in the context of contracts awarded by such contracting authorities or contracting entities.

- (53) Foreign subsidies that enable an economic operator to submit a tender which is unduly advantageous in relation to the works, supplies or services concerned should be deemed to actually or potentially create a distortion in a public procurement procedure. Those distortions should therefore be assessed on the basis of a non-exhaustive set of indicators. The indicators should make it possible to determine how the foreign subsidy distorts competition by improving the competitive position of an undertaking and enabling it to submit an unduly advantageous tender. The opportunity should be given to economic operators to justify that the tender is not unduly advantageous, including by adducing the elements referred to in Article 69(2) of Directive 2014/24/EU or Article 84(2) of Directive 2014/25/EU, regulating abnormally low tenders. The prohibition of the award should apply only where the advantageous nature of the tender benefiting from foreign subsidies cannot be justified by other factors, where the tenderer would be awarded the contract and where the undertaking submitting the tender did not offer commitments considered appropriate and sufficient to fully and effectively remedy the distortion. Accordingly, the prohibition of the award concerns the specific procedure in which the unduly advantageous tender was submitted. The Commission's finding that an economic operator benefitted from a foreign subsidy distorting the internal market enabling it to submit an unduly advantageous tender therefore should not be considered as an element giving rise to an exclusion pursuant to the facultative grounds for exclusion laid down in Article 38(7) of Directive 2014/23/EU, Article 57(4) of Directive 2014/24/EU or Article 80 of Directive 2014/25/EU in the same or another public procurement procedure conducted in accordance with those Directives.
- (54) An unduly advantageous tender could also result from foreign subsidies granted to a subcontractor or supplier because of its competitive impact on the tender submitted to a contracting authority or contracting entity. However, to limit the administrative burden, only main subcontractors or main suppliers, that is those whose products or services relate to key elements of the contract or exceed a certain percentage of the value of the contract should notify foreign financial contributions. Elements of the contract can be considered to be key elements, in particular, on the basis of the specific relevance of the element to the quality of the tender including specific know-how, technology, specialised staff, patents or similar advantages available to the subcontractor or supplier, especially where those elements are relied upon for fulfilling the majority of at least one of the selection criteria in a public procurement procedure. In order to ensure a stable factual basis for review, the preliminary review should take into account the main subcontractors and suppliers already known at the stage of the submission of the complete notification or declaration or updated notification or declaration in the case of multi-stage procedures. This Regulation should not affect the possibility for economic operators to use new subcontractors in the execution of their contracts. As a result, changing subcontractors and suppliers after the submission of the complete notification or declaration or updated notification or declaration or during the execution of a contract should not create additional notification obligations, but it should be possible for the Commission to open an *ex officio* review if it has information, including from any Member State, natural or legal person or association, that those subcontractors and suppliers could have benefitted from foreign subsidies.
- (55) In line with the Directives on public procurement, the most economically advantageous tender from the point of view of the contracting authority or contracting entity should be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing, and can include the best price-quality ratio, which should be assessed on the basis of criteria, including qualitative, environmental or social aspects, linked to the subject-matter of the contract in question.
- (56) In the context of judicial remedies relating to the application of this Regulation concerning in particular public procurement procedures, a national court or tribunal within the meaning of Article 267 TFEU, which considers a decision on the question necessary to enable them to give judgment, has the right to, or in the case provided for in Article 267 TFEU, must, request the Court of Justice to give a preliminary ruling on the interpretation of Union law, including this Regulation. However, in light of the settled case-law of the Court of Justice, that national court or tribunal does not have the right to refer a question on the validity of the decision of the Commission at the request of an economic operator concerned which had the opportunity to bring an action for annulment of that decision, in particular if it was directly and individually concerned by that decision, but had not done so within the period laid down in Article 263 TFEU.

- (57) Taking into account the nature of the *ex ante* review mechanism for concentrations and public procurement awards, and the need for legal certainty regarding those specific transactions, a concentration or public procurement tender notified and assessed under the respective procedures should not be reviewed again by the Commission on its own initiative. It is possible, however, that the financial contributions of which the Commission was informed through the notification procedure also be relevant outside that concentration or procurement procedure.
- (58) Member States should cooperate effectively with the Commission in the application of this Regulation. To facilitate such cooperation, the Commission should be able to set up a cooperation mechanism.
- (59) In order to gather information on foreign subsidies, the Commission should have the possibility to launch investigations regarding specific sectors of the economy, particular types of economic activity or the use of particular foreign subsidy instruments. The Commission should be able to use the information obtained from such market investigations to review certain transactions in the framework of the procedures under this Regulation.
- (60) When the Commission suspects the existence of repeated foreign subsidies distorting the internal market or where several enforcement actions under this Regulation identify foreign subsidies distorting the internal market granted by the same third country, the Commission should be able to engage in a dialogue with the third country concerned to explore options aimed at obtaining the cessation or modification of the foreign subsidies distorting the internal market with a view to eliminating their distortive effects in the internal market. Where a bilateral agreement between the Union and a third country provides for a consultation mechanism that covers foreign subsidies distorting the internal market falling within the scope of this Regulation, such a consultation mechanism could be used to facilitate the third-country dialogue. The dialogue with the third-country should not preclude the Commission from opening or continuing reviews under this Regulation. The Commission should keep the European Parliament and the Council informed of relevant developments.
- (61) For reasons of legal certainty, it is appropriate to limit the period within which it is possible for the Commission to investigate a foreign subsidy to 10 years from the date of granting that foreign subsidy.
- (62) For the same reasons, it is appropriate to provide for limitation periods for the imposition and enforcement of fines or periodic penalty payments.
- (63) In the interest of transparency and legal certainty, it is appropriate that the Commission publishes or makes public, where applicable either in full or in a summary form all decisions it adopts under this Regulation.
- (64) The Commission, when publishing its decisions, should respect the rules on professional secrecy, including the protection of all confidential information, and business secrets, in accordance with Article 339 TFEU. The processing of personal data for the purposes of this Regulation should be carried out in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council <sup>(10)</sup> and Regulation (EU) 2016/679 of the European Parliament and of the Council <sup>(11)</sup>, whichever is applicable for the processing in question.

<sup>(10)</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>(11)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (65) Where information marked by the undertaking as confidential or a business secret does not seem to be covered by obligations of professional secrecy, it is appropriate to have a mechanism in place according to which the Commission has the right to decide the extent to which such information can be disclosed. Any decision to reject a claim that information is confidential should indicate a period at the end of which the information will be disclosed, so that the respondent can make use of any judicial protection available to it, including any interim measure.
- (66) The undertakings under investigation under this Regulation should have the opportunity to submit their observations on the grounds on which the Commission intends to adopt a decision and should therefore be entitled to have access to the file. While ensuring preservation of the rights of defence of the undertakings under investigation, it is essential that business secrets be protected.
- (67) If the provider of the information agrees, the Commission should be able to use information acquired under this Regulation in the application of other Union acts.
- (68) Member States and the Commission should take all necessary measures to ensure the protection of classified information in compliance with, in particular, the Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interest of the European Union <sup>(12)</sup>, Commission Decision (EU, Euratom) 2015/443 <sup>(13)</sup> and Commission Decision (EU, Euratom) 2015/444 <sup>(14)</sup>.
- (69) The implementation of this Regulation by the Union should comply with Union law, the WTO Agreement and be consistent with commitments made under other trade and investment agreements to which the Union or the Member States are parties. This Regulation should complement the Union effort to improve multilateral rules on addressing distortive subsidies.
- (70) Restrictions upon the freedoms set out in Articles 34, 49, 56 and 63 TFEU can be justified by the need to avoid unfair competition, provided that such restrictions, like other restrictions of fundamental freedoms comply with the general principles of Union law, such as proportionality, legal certainty, and with fundamental rights.
- (71) It is possible that the implementation of this Regulation overlaps with sectoral rules, in particular in the area of maritime and air transport. Therefore, it is necessary to clarify the relationship between this Regulation and sectoral instruments dealing with foreign subsidies, namely Council Regulation (EEC) No 4057/86 <sup>(15)</sup>, Regulation (EU) 2016/1035 of the European Parliament and of the Council <sup>(16)</sup> and Regulation (EU) 2019/712 of the European Parliament and of the Council <sup>(17)</sup>.
- (72) Acts of the Commission under this Regulation are subject to review by the Court of Justice in accordance with Article 263 TFEU. The Court of Justice should, in accordance with Article 261 TFEU, be given unlimited jurisdiction in respect of decisions by which the Commission imposes fines or periodic penalty payments.

<sup>(12)</sup> Agreement between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union (OJ C 202, 8.7.2011, p. 13).

<sup>(13)</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

<sup>(14)</sup> Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

<sup>(15)</sup> Council Regulation (EEC) No 4057/86 of 22 December 1986 on unfair pricing practices in maritime transport (OJ L 378, 31.12.1986, p. 14).

<sup>(16)</sup> Regulation (EU) 2016/1035 of the European Parliament and of the Council of 8 June 2016 on protection against injurious pricing of vessels (OJ L 176, 30.6.2016, p. 1).

<sup>(17)</sup> Regulation (EU) 2019/712 of the European Parliament and of the Council of 17 April 2019 on safeguarding competition in air transport, and repealing Regulation (EC) No 868/2004 (OJ L 123, 10.5.2019, p. 4).

- (73) In order to foster the predictability of this Regulation, the Commission should publish and regularly update guidelines regarding the criteria for determining the existence of a distortion caused by a foreign subsidy on the internal market, the application of the balancing test, the application of its power to request a prior notification of any concentration or foreign financial contributions received by an economic operator in a public procurement procedure, and the assessment of a distortion in a public procurement procedure. When issuing such guidelines, the Commission should conduct appropriate consultations with stakeholders and Member States. In order to facilitate the implementation of this Regulation in the early stages of its application, the Commission should endeavour to make public clarifications on the application of those provisions before the publication of the guidelines.
- (74) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in accordance with Article 291 TFEU. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(18)</sup> and relate to: decisions closing the in-depth investigations, the imposition of interim measures, decisions on concentrations that have been implemented in breach of the notification obligation or in breach of a decision with commitments or of a decision prohibiting a concentration or the award of the contract in a public procurement procedure, the revocation of certain decisions, and the implementing powers relating to the form, content, procedural details and related items regarding the preliminary review and the in-depth investigation.
- (75) The Commission should have the possibility to establish a simplified procedure under which it treats certain concentrations or public procurement procedures on the basis that they appear less likely to give rise to distortions of competition in the internal market caused by foreign subsidies.
- (76) In order to ensure a level playing field on the internal market also in the long term, with a view to ensuring appropriate coverage of cases investigated both through notifications as well as *ex officio* while limiting undue administrative burden, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending the notification thresholds for concentrations and for public procurement procedures, as well as reducing the time limits for the preliminary review and the in-depth investigations of notified concentrations or notified financial contributions in the context of a public procurement procedure. Without prejudice to the possibility of amending the notification thresholds for concentrations and public procurement by means of a legislative proposal, including in the context of the review provided for by this Regulation, those thresholds can be amended by a delegated act once during the period of delegation under this Regulation. In relation to financial contributions in the context of a public procurement procedure, the power to adopt such an act should be exercised in a way that takes into account the interests of SMEs. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making <sup>(19)</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (77) Where a concentration is notifiable pursuant to this Regulation, financial contributions to any of the parties to the concentration granted in the three years prior to the date of application of this Regulation should fall within the scope of this Regulation. In the context of a public procurement procedure, this Regulation should also apply to a financial contribution granted to an economic operator in the three years prior to the date of application of this Regulation,

<sup>(18)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>(19)</sup> OJ L 123, 12.5.2016, p. 1.

HAVE ADOPTED THIS REGULATION:

## CHAPTER 1

### GENERAL PROVISIONS

#### *Article 1*

#### **Subject matter and scope**

1. The purpose of this Regulation is to contribute to the proper functioning of the internal market by establishing a harmonised framework to address distortions caused, directly or indirectly, by foreign subsidies, with a view to ensuring a level playing field. This Regulation lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions. Such distortions can arise with respect to any economic activity, and in particular in concentrations and public procurement procedures.

2. This Regulation addresses foreign subsidies granted to an undertaking, including a public undertaking which is directly or indirectly controlled by the State, engaging in an economic activity in the internal market. Among others, an undertaking acquiring control of or merging with an undertaking established in the Union or an undertaking participating in a public procurement procedure in the Union is considered to be engaging in an economic activity in the internal market.

#### *Article 2*

#### **Definitions**

For the purposes of this Regulation, the following definitions apply:

- (1) 'an undertaking', in the context of public procurement procedures, means 'economic operator' as defined in Article 1, point (14) of Directive 2009/81/EC, Article 5, point (2) of Directive 2014/23/EU, Article 2(1), point (10) of Directive 2014/24/EU and Article 2, point (6) of Directive 2014/25/EU;
- (2) 'contract', in the context of public procurement procedures and unless otherwise specified, means a public contract as defined in Article 2(1), point (5) of Directive 2014/24/EU, 'contracts' as defined in Article 1, point (2) of Directive 2009/81/EC and 'supply, works and service contracts' as defined in Article 2, point (1) of Directive 2014/25/EU, as well as 'concessions' as defined in Article 5, point (1) of Directive 2014/23/EU;
- (3) 'a public procurement procedure' means:
  - (a) any type of award procedure covered by Directive 2014/24/EU for the conclusion of a public contract or Directive 2014/25/EU for the conclusion of a supply, works and service contract;
  - (b) a procedure for the award of a works or a service concession covered by Directive 2014/23/EU;
  - (c) procedures for awarding contracts falling under Directive 2009/81/EC, unless exempted by Member States on the basis of Article 346 TFEU;
  - (d) procedures for the award of contracts referred to in Article 10(4), point (a) of Directive 2014/23/EU, Article 9(1), point (a) of Directive 2014/24/EU or Article 20(1), point (a) of Directive 2014/25/EU;
- (4) 'contracting authority' in the context of public procurement procedures, means contracting authority as defined in Article 1, point (17) of Directive 2009/81/EC, Article 6 of Directive 2014/23/EU, Article 2(1), point (1) of Directive 2014/24/EU and Article 3 of Directive 2014/25/EU;

- (5) 'contracting entity' in the context of public procurement procedures, means contracting entity as defined in Article 1, point (17) of Directive 2009/81/EC, Article 7 of Directive 2014/23/EU and Article 4 of Directive 2014/25/EU;
- (6) 'a multi-stage procedure' means a public procurement procedure in accordance with Articles 28 to 32 of Directive 2014/24/EU and Articles 46 to 52 of Directive 2014/25/EU, either the restricted procedure, a competitive procedure with negotiation, a negotiated procedure without prior publication, a competitive dialogue or an innovation partnership, or a similar procedure according to Directive 2014/23/EU.

### *Article 3*

#### **Existence of a foreign subsidy**

1. For the purposes of this Regulation, a foreign subsidy shall be deemed to exist where a third country provides, directly or indirectly, a financial contribution which confers a benefit on an undertaking engaging in an economic activity in the internal market and which is limited, in law or in fact, to one or more undertakings or industries.
2. For the purposes of this Regulation, a financial contribution shall include, inter alia:
  - (a) the transfer of funds or liabilities, such as capital injections, grants, loans, loan guarantees, fiscal incentives, the setting off of operating losses, compensation for financial burdens imposed by public authorities, debt forgiveness, debt to equity swaps or rescheduling;
  - (b) the foregoing of revenue that is otherwise due, such as tax exemptions or the granting of special or exclusive rights without adequate remuneration; or
  - (c) the provision of goods or services or the purchase of goods or services.

A financial contribution provided by a third country shall include a financial contribution provided by:

- (a) the central government and public authorities at all other levels;
- (b) a foreign public entity whose actions can be attributed to the third country, taking into account elements such as the characteristics of the entity and the legal and economic environment prevailing in the State in which the entity operates, including the government's role in the economy; or
- (c) a private entity whose actions can be attributed to the third country, taking into account all relevant circumstances.

### *Article 4*

#### **Distortions in the internal market**

1. A distortion in the internal market shall be deemed to exist where a foreign subsidy is liable to improve the competitive position of an undertaking in the internal market and where, in doing so, that foreign subsidy actually or potentially negatively affects competition in the internal market. A distortion in the internal market shall be determined on the basis of indicators, which can include, in particular, the following:
  - (a) the amount of the foreign subsidy;
  - (b) the nature of the foreign subsidy;
  - (c) the situation of the undertaking, including its size and the markets or sectors concerned;
  - (d) the level and evolution of economic activity of the undertaking on the internal market;
  - (e) the purpose and conditions attached to the foreign subsidy as well as its use on the internal market.

2. Where the total amount of a foreign subsidy to an undertaking does not exceed EUR 4 million over any consecutive period of three years, that foreign subsidy shall be considered unlikely to distort the internal market.
3. Where the total amount of a foreign subsidy to an undertaking does not exceed the amount of *de minimis* aid as defined in Article 3(2), first subparagraph, of Regulation (EU) No 1407/2013 per third country over any consecutive period of three years, that foreign subsidy shall not be considered to distort the internal market.
4. A foreign subsidy may be considered not to distort the internal market to the extent that it is aimed at making good the damage caused by natural disasters or exceptional occurrences.

#### Article 5

##### **Categories of foreign subsidies most likely to distort the internal market**

1. A foreign subsidy is most likely to distort the internal market where it falls under one of the following categories:
  - (a) a foreign subsidy granted to an ailing undertaking, namely an undertaking which will likely go out of business in the short or medium term in the absence of any subsidy, unless there is a restructuring plan that is capable of leading to the long-term viability of that undertaking and that plan includes a significant own contribution by the undertaking;
  - (b) a foreign subsidy in the form of an unlimited guarantee for the debts or liabilities of the undertaking, namely without any limitation as to the amount or the duration of such guarantee;
  - (c) an export financing measure that is not in line with the OECD Arrangement on officially supported export credits;
  - (d) a foreign subsidy directly facilitating a concentration;
  - (e) a foreign subsidy enabling an undertaking to submit an unduly advantageous tender on the basis of which the undertaking could be awarded the relevant contract.
2. An undertaking under investigation shall be granted the possibility to provide relevant information as to whether a foreign subsidy falling under one of the categories set out in paragraph 1 does not distort the internal market in the specific circumstances of the case.

#### Article 6

##### **Balancing test**

1. The Commission may, on the basis of information received, balance the negative effects of a foreign subsidy in terms of distortion in the internal market, according to Articles 4 and 5 against the positive effects on the development of the relevant subsidised economic activity on the internal market, while considering other positive effects of the foreign subsidy such as the broader positive effects in relation to the relevant policy objectives, in particular those of the Union.
2. The Commission shall take into account the assessment under paragraph 1 when deciding whether to impose redressive measures or to accept commitments, and the nature and level of those redressive measures or commitments.

#### Article 7

##### **Commitments and redressive measures**

1. The Commission may impose redressive measures in order to remedy the distortion in the internal market actually or potentially caused by a foreign subsidy, unless it has accepted commitments offered by the undertaking under investigation pursuant to paragraph 2.

2. The Commission may accept commitments offered by the undertaking under investigation where such commitments fully and effectively remedy the distortion in the internal market. When accepting such commitments, the Commission shall make them binding on the undertaking under investigation in a decision with commitments in accordance with Article 11(3). The undertaking's compliance with the commitments agreed upon shall, where appropriate, be monitored.
3. Commitments or redressive measures shall be proportionate and fully and effectively remedy the distortion actually or potentially caused by the foreign subsidy in the internal market.
4. Commitments or redressive measures may consist, inter alia, of the following:
- (a) offering access under fair, reasonable, and non-discriminatory conditions to infrastructure, including research facilities, production capabilities or essential facilities, that were acquired or supported by the foreign subsidies distorting the internal market unless such access is already provided for by Union legislation;
  - (b) reducing capacity or market presence, including by means of a temporary restriction on commercial activity;
  - (c) refraining from certain investments;
  - (d) the licensing on fair, reasonable and non-discriminatory terms of assets acquired or developed with the help of foreign subsidies;
  - (e) the publication of results of research and development;
  - (f) the divestment of certain assets;
  - (g) requiring the undertakings to dissolve the concentration concerned;
  - (h) the repayment of the foreign subsidy, including an appropriate interest rate, calculated in accordance with the method set out in Commission Regulation (EC) No 794/2004 <sup>(20)</sup>;
  - (i) requiring the undertakings concerned to adapt their governance structure.
5. The Commission shall, where appropriate, impose reporting and transparency requirements, including periodic reporting regarding the implementation of the commitments and redressive measures listed in paragraph 4.
6. Where the undertaking under investigation proposes to repay the foreign subsidy including an appropriate interest rate, the Commission shall accept such repayment as commitment only where it can ascertain that the repayment is transparent, verifiable and effective, while taking into account the risk of circumvention.

#### *Article 8*

#### **Information on future concentrations and public procurement procedures**

In decisions adopted pursuant to Articles 11, 25 and 31, and where proportionate and necessary, the undertaking under investigation may be required to inform the Commission, for a limited period of time, of its participation in concentrations or public procurement procedures. That requirement is without prejudice to notification obligations pursuant to Articles 21 and 29.

<sup>(20)</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).

## CHAPTER 2

**EX OFFICIO REVIEW AND GENERAL PROVISIONS FOR THE REVIEW OF FOREIGN SUBSIDIES***Article 9***Ex officio review of foreign subsidies**

1. The Commission may on its own initiative examine information from any source, including Member States, a natural or legal person or an association, regarding alleged foreign subsidies distorting the internal market.
2. *Ex officio* reviews into public procurements shall be limited to awarded contracts.

Such reviews shall not result in the cancellation of the decision awarding a contract or in a termination of a contract.

*Article 10***Preliminary review**

1. Where the Commission considers that the information referred to in Article 9 indicates the possibility that a foreign subsidy distorting the internal market exists, the Commission shall seek all the information it considers necessary to assess, on a preliminary basis, whether the financial contribution under examination constitutes a foreign subsidy and whether it distorts the internal market. To that end, the Commission may, in particular:
  - (a) request information in accordance with Article 13; and
  - (b) conduct inspections within and outside the Union in accordance with Article 14 or Article 15.
2. Where a Member State has informed the Commission that a relevant national procedure is envisaged or has been opened, the Commission shall inform that Member State of the start of the preliminary review. In particular, the Commission shall inform Member States that have notified the Commission about a national procedure pursuant to Regulation (EU) 2019/452 of the start of the preliminary review. Where the preliminary review is initiated in relation to a public procurement procedure, the Commission shall also inform the contracting authority or contracting entity concerned.
3. Where the Commission, based on the preliminary review, has sufficient indications that an undertaking has been granted a foreign subsidy that distorts the internal market, it shall:
  - (a) adopt a decision to initiate an in-depth investigation ('decision to initiate the in-depth investigation') which summarises the relevant issues of fact and law and includes the preliminary assessment of the existence of a foreign subsidy and of the actual or potential distortion in the internal market;
  - (b) inform the undertaking under investigation;
  - (c) inform Member States and, where the in-depth investigation is initiated in relation to a public procurement procedure, the contracting authority or contracting entity concerned; and
  - (d) publish a notice in the *Official Journal of the European Union* inviting the submission of views in writing within a period of time prescribed by the Commission.
4. Where the Commission, in the course of a preliminary review, concludes that there are insufficient indications to initiate an in-depth investigation, either because there is no foreign subsidy or because there are insufficient indications of an actual or potential distortion in the internal market, it shall close the preliminary review, inform the undertaking under investigation and Member States that were informed pursuant to paragraph 2, as well as the contracting authority or contracting entity concerned where the preliminary review was initiated in relation to a public procurement procedure.

*Article 11***In-depth investigation**

1. During the in-depth investigation, the Commission shall further assess the foreign subsidy identified in the decision to initiate the in-depth investigation and seek all the information it considers necessary in accordance with Articles 13, 14 and 15.
2. Where the Commission finds, pursuant to Articles 4 to 6, that a foreign subsidy distorts the internal market, it may adopt an implementing act in the form of a decision imposing redressive measures ('decision with redressive measures'). That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 48(2).
3. Where the Commission, pursuant to Articles 4 to 6, finds that a foreign subsidy distorts the internal market and the undertaking under investigation offers commitments which the Commission deems appropriate and sufficient to fully and effectively remedy the distortion, it may adopt an implementing act in the form of a decision in order to make those commitments binding on the undertaking ('decision with commitments'). A decision accepting the repayment of a foreign subsidy in accordance with Article 7(6) shall be considered a decision with commitments. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 48(2).
4. The Commission shall adopt an implementing act in the form of a decision to raise no objection ('no objection decision') where it finds that:
  - (a) the preliminary assessment as set out in its decision to initiate the in-depth investigation is not confirmed; or
  - (b) a distortion in the internal market is outweighed by positive effects within the meaning of Article 6.

That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 48(2).

5. The Commission shall, as far as possible, endeavour to adopt a decision within a period of 18 months from the opening of the in-depth investigation.

*Article 12***Interim measures**

1. To preserve competition in the internal market and prevent irreparable damage, the Commission may adopt an implementing act in the form of a decision ordering interim measures, where:
  - (a) there are sufficient indications that a financial contribution constitutes a foreign subsidy and distorts the internal market; and
  - (b) there is a risk of serious and irreparable damage to competition on the internal market.

That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 48(2).

2. The interim measures may, in particular, but not exclusively, consist of the measures mentioned under Article 7(4), points (a), (c), and (d). No interim measures may be taken with regard to public procurement procedures.
3. The interim measures shall apply either for a specific period of time, which may be renewed in so far that is necessary and appropriate, or until the final decision is taken.

*Article 13***Requests for information**

1. To carry out the duties assigned to it by this Regulation, the Commission may require information in line with this Article.

2. The Commission may require an undertaking under investigation to provide all necessary information, including information regarding its tender in a public procurement procedure.
3. The Commission may also require such information from other undertakings or associations of undertakings, including information regarding their tenders in public procurement procedures, taking due account of the principle of proportionality.
4. A request for information pursuant to paragraph 2 or 3 shall:
  - (a) state its legal basis and its purpose, specify what information is required and set an appropriate time limit within which the information is to be provided;
  - (b) contain a statement that if the information supplied is incorrect, incomplete or misleading, the fines or periodic penalty payments provided for in Article 17 could be imposed;
  - (c) contain a statement that, pursuant to Article 16, a lack of cooperation allows the Commission to take a decision on the basis of the facts that are available to it.
5. At the request of the Commission, Member States shall provide it with all necessary information to carry out the duties assigned to it by this Regulation. Paragraph 4, point (a) shall apply *mutatis mutandis*.
6. The Commission may also request a third country to provide all necessary information. Paragraph 4, points (a) and (c) shall apply *mutatis mutandis*.
7. The Commission may interview a natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation. Where an interview is not conducted on the premises of the Commission or by telephone or other electronic means, prior to the interview the Commission shall:
  - (a) inform the Member State in whose territory the interview is to take place; or
  - (b) obtain the agreement of the third country in whose territory the interview is to take place.

#### Article 14

### Inspections within the Union

1. In order to carry out the duties assigned to it by this Regulation, the Commission may conduct the necessary inspections of undertakings and associations of undertakings.
2. Where the Commission undertakes such an inspection, the officials authorised by the Commission to conduct an inspection shall be empowered to:
  - (a) enter any premises, land and means of transport of the undertaking or association of undertakings;
  - (b) examine books and other business records, irrespective of the medium on which they are stored, access any information which is accessible to the entity subject to the inspection and take, or request copies or extracts from, those books or records;
  - (c) ask any representative or member of staff of the undertaking or association of undertakings for explanations of facts or documents relating to the subject-matter and purpose of the inspection and to record the answers;
  - (d) seal any business premises and books or records for the period of time of, and to the extent necessary for, the inspection.

3. The undertaking or association of undertakings shall submit to inspections ordered by decision of the Commission. The officials and other accompanying persons authorised by the Commission to conduct an inspection shall exercise their powers upon production of a Commission decision:

- (a) specifying the subject matter and purpose of the inspection;
- (b) containing a statement that, pursuant to Article 16, a lack of cooperation allows the Commission to take a decision on the basis of the facts that are available to it;
- (c) referring to the possibility to impose fines or periodic penalty payments provided for in Article 17; and
- (d) stating the right to have the decision reviewed by the Court of Justice pursuant to Article 263 TFEU.

4. In good time before the inspection, the Commission shall give notice of the inspection to the Member State in whose territory it is to be conducted and of the date on which it is to begin.

5. Officials and other persons authorised or appointed by the Member State in whose territory the inspection is to be conducted shall, at the request of the Member State or of the Commission, actively assist the officials and other accompanying persons authorised by the Commission. To that end, they shall enjoy the powers specified in paragraph 2.

6. Where officials or other accompanying persons authorised by the Commission find that an undertaking or association of undertakings opposes an inspection within the meaning of this Article, the Member State in the territory of which the inspection takes place shall provide them with the necessary assistance and shall request, where appropriate, the assistance of the police or of an equivalent enforcement authority so as to enable them to conduct their inspection. If the assistance provided for in this paragraph requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

7. Upon request of the Commission, a Member State shall in its own territory carry out any inspection or other fact-finding measure under its national law in order to establish whether there is a foreign subsidy distorting the internal market.

#### Article 15

### Inspection outside the Union

In order to carry out the duties assigned to it by this Regulation, the Commission may conduct inspections in the territory of a third country, provided that the government of that third country has been officially notified and raises no objection to the inspection. The Commission may also ask the undertaking or association of undertakings to give its consent to the inspection. Article 14(1), (2), and (3), points (a) and (b) shall apply *mutatis mutandis*.

#### Article 16

### Non-cooperation

1. The Commission may take a decision pursuant to Article 10, Article 11, Article 25(3), point (c) or Article 31(2), on the basis of the facts available, where an undertaking under investigation or a third country that granted the foreign subsidy:

- (a) provides incomplete, incorrect or misleading information in response to a request for information under Article 13;
- (b) fails to provide the information requested within the time limit prescribed by the Commission;
- (c) refuses to submit to the Commission's inspection within or outside the Union ordered under Article 14 or Article 15;  
or
- (d) otherwise impedes the preliminary review or the in-depth investigation.

2. Where an undertaking or association of undertakings, a Member State or the third country has supplied incorrect or misleading information to the Commission, that information shall be disregarded.
3. Where an undertaking, including a public undertaking which is directly or indirectly controlled by the State, fails to provide the necessary information to determine whether a financial contribution confers a benefit on it, that undertaking may be deemed to have received such benefit.
4. When applying facts available, the result of the procedure may be less favourable to the undertaking than if it had cooperated.

#### *Article 17*

### **Fines and periodic penalty payments**

1. The Commission may, by decision, impose fines or periodic penalty payments where an undertaking or an association of undertakings, intentionally or negligently:
  - (a) supplies incomplete, incorrect or misleading information in response to a request for information under Article 13, or does not supply the information within the prescribed time limit;
  - (b) produces the required books or other records related to the business in incomplete form during inspections under Article 14;
  - (c) in response to a question asked in accordance with Article 14(2), point (c):
    - (i) gives an incorrect or misleading answer;
    - (ii) fails to rectify within a time-limit set by the Commission an incorrect, incomplete or misleading answer given by a member of staff; or
    - (iii) fails or refuses to provide a complete answer on facts relating to the subject-matter and purpose of an inspection ordered by a decision adopted pursuant to Article 14(3);
  - (d) refuses to submit to inspections ordered under Article 14 or has broken seals affixed in accordance with Article 14(2), point (d); or
  - (e) fails to comply with the conditions for access to the file or the terms of disclosure imposed by the Commission pursuant to Article 42(4).
2. Fines imposed under paragraph 1 shall not exceed 1 % of the aggregate turnover of the undertaking or association of undertakings concerned in the preceding financial year.
3. Periodic penalty payments imposed under paragraph 1 shall not exceed 5 % of the average daily aggregate turnover of the undertaking or association of undertakings concerned in the preceding financial year for each working day of delay, calculated from the date established in the decision, until it submits complete and correct information as required by the Commission, or until it submits to an inspection.
4. Before adopting any decision in accordance with paragraph 1, point (a) the Commission shall set a final time limit of two weeks to receive the missing information from the undertaking or from the association of undertakings.
5. Where an undertaking does not comply with a decision with commitments pursuant to Article 11(3), a decision ordering interim measures pursuant to Article 12 or a decision with redressive measures pursuant to Article 11(2), the Commission may, by decision, impose:
  - (a) fines not exceeding 10 % of the aggregate turnover of the undertaking concerned in the preceding financial year; or
  - (b) periodic penalty payments not exceeding 5 % of the average daily aggregate turnover of the undertaking concerned in the preceding financial year for each day of non-compliance, starting from the day of the Commission decision imposing such penalty payments, until the Commission finds that the undertaking concerned complies with the decision.

The Commission may also impose such fines or periodic penalty payments where an undertaking does not comply with a decision adopted pursuant to Article 11, 25 or 31, which obliged the undertaking to inform the Commission of its future participation in concentrations or public procurement procedures pursuant to Article 8.

6. When setting the amount of the fine or periodic penalty payment, the Commission shall have regard to the nature, gravity and duration of the infringement, taking due account of the principles of proportionality and appropriateness.

7. Where the undertaking or association of undertakings concerned has satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may reduce the definitive amount of the periodic penalty payment compared to that under the original decision imposing periodic penalty payments.

#### *Article 18*

### **Revocation**

1. The Commission may revoke a decision taken pursuant to Article 11(2), (3) or (4), Article 25(3), and Article 31(1), (2) or (3), and adopt a new implementing act in the form of a decision in any of the following cases where:

- (a) the undertaking to which the initial decision was addressed acts contrary to its commitments or the redressive measures imposed;
- (b) the initial decision was based on incomplete, incorrect or misleading information;
- (c) commitments or redressive measures are not effective.

That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 48(2).

2. The revocation and adoption of a new decision by the Commission under paragraph 1 shall not affect the decision of the contracting authority or contracting entity awarding a contract. They shall also not affect a contract already concluded following such an award decision.

## **CHAPTER 3**

### **CONCENTRATIONS**

#### *Article 19*

### **Distortions in the internal market caused by foreign subsidies in concentrations**

When assessing whether a foreign subsidy in a concentration distorts the internal market within the meaning of Article 4 or 5, that assessment shall be limited to the concentration concerned. Only foreign subsidies granted in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest shall be considered in the assessment.

#### *Article 20*

### **Concentrations and notification thresholds**

1. For the purposes of this Regulation, a concentration shall be deemed to arise where a change of control on a lasting basis results from either of the following:

- (a) the merger of two or more previously independent undertakings or parts of undertakings;
- (b) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings.

2. The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of paragraph 1.

3. For the purposes of this Regulation, a notifiable concentration shall be deemed to arise where, in a concentration:

- (a) at least one of the merging undertakings, the acquired undertaking or the joint venture is established in the Union and generates an aggregate turnover in the Union of at least EUR 500 million; and
- (b) the following undertakings were granted combined aggregate financial contributions of more than EUR 50 million from third countries in the three years preceding the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest:
  - (i) in the case of an acquisition, the acquirer or acquirers and the acquired undertaking;
  - (ii) in the case of a merger, the merging undertakings;
  - (iii) in the case of a joint venture, the undertakings creating a joint venture and the joint venture.

4. A concentration shall not be deemed to arise where:

- (a) credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive conduct of that undertaking or provided that they exercise such voting rights only with a view to preparing the disposal of all or part of that undertaking or of its assets or the disposal of those securities and that any such disposal takes place within one year of the date of acquisition;
- (b) control is acquired by an office-holder according to the law of a Member State relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings;
- (c) the operations referred to in paragraph 1, point (b) are carried out by the financial holding undertakings as defined in Article 2, point 15 of Directive 2013/34/EU of the European Parliament and of the Council <sup>(21)</sup> provided that the voting rights in respect of the holding are exercised, in particular in relation to the appointment of members of the management and supervisory bodies of the undertakings in which they have holdings, only to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of those undertakings.

The period of one year referred to in the first subparagraph, point (a) may be extended by the Commission on request where the institutions or companies concerned can show that the disposal was not reasonably possible within the period set.

5. Control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

- (a) ownership or the right to use all or part of the assets of an undertaking;
- (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

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<sup>(21)</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

6. Control shall be acquired by persons or undertakings which:
  - (a) are holders of the rights or entitled to rights under the contracts concerned; or
  - (b) while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom.

#### Article 21

##### **Prior notification of concentrations**

1. Notifiable concentrations shall be notified to the Commission prior to their implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.
2. The undertakings concerned may also notify the proposed concentration when they demonstrate to the Commission a good faith intention to conclude an agreement or, in the case of a public bid, where they have publicly announced their intention to make such a bid, provided that the intended agreement or bid would result in a notifiable concentration under paragraph 1.
3. A concentration which consists in a merger within the meaning of Article 20(1), point (a) or in the acquisition of joint control within the meaning of Article 20(1), point (b) shall be notified jointly by the parties to the merger or by those acquiring joint control as the case may be. In all other cases, the notification shall be made by the person or undertaking acquiring control of the whole or parts of one or more undertakings.
4. Where the undertakings concerned fail to meet their obligation to notify, the Commission may review a notifiable concentration in accordance with this Regulation by requesting the notification of that concentration. In that case the Commission shall not be bound by the time limits referred to in Article 24(1) and (4).
5. The Commission may request the prior notification of any concentration which is not a notifiable concentration within the meaning of Article 20 at any time prior to its implementation where the Commission suspects that foreign subsidies may have been granted to the undertakings concerned in the three years prior to the concentration. Such concentration shall be deemed to be a notifiable concentration for the purposes of this Regulation.

#### Article 22

##### **Calculation of turnover**

1. Aggregate turnover shall comprise the amounts derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services falling within the undertakings' ordinary activities after deduction of sales rebates and of value added tax and other taxes directly related to turnover. The aggregate turnover of an undertaking concerned shall not include the sale of products or the provision of services between any of the undertakings referred to in paragraph 4.

Turnover in the Union shall comprise products sold and services provided to undertakings or consumers in the Union.

2. By way of derogation from paragraph 1, where the concentration consists of the acquisition of parts, whether or not constituted as legal entities, of one or more undertakings, only the turnover relating to the parts which are the object of the concentration shall be taken into account with regard to the seller or sellers.

However, two or more transactions within the meaning of the first subparagraph of this paragraph which take place within a two-year period between the same persons or undertakings shall be treated as one and the same concentration arising on the date of the latest transaction.

3. The following shall be used instead of turnover:
- (a) for credit institutions and other financial institutions, the sum of the following income items as defined in Council Directive 86/635/EEC <sup>(22)</sup>, after deduction of value added tax and other taxes directly related to those items, where appropriate:
    - (i) interest income and similar income;
    - (ii) income from securities:
      - income from shares and other variable yield securities,
      - income from participating interests,
      - income from shares in affiliated undertakings;
    - (iii) commissions receivable;
    - (iv) net profit on financial operations;
    - (v) other operating income;
  - (b) for insurance undertakings, the value of gross premiums written which comprises all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after the deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums.

For the purposes of point (a), for a credit institution or financial institution the turnover in the Union shall comprise the income items, as defined in that point, which are received by the branch or division of that institution established in the Union.

For the purpose of point (b), for an insurance undertaking, the turnover in the Union shall comprise gross premiums received from Union residents.

4. Without prejudice to paragraph 2, the aggregate turnover of an undertaking concerned shall be calculated by adding together the respective turnovers of:

- (a) the undertaking concerned;
- (b) the undertakings in which the undertaking concerned, directly or indirectly:
  - (i) owns more than half the capital or business assets,
  - (ii) has the power to exercise more than half the voting rights,
  - (iii) has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing those undertakings, or
  - (iv) has the right to manage the affairs of those undertakings;
- (c) the undertakings which have in the undertaking concerned any of the rights or powers referred to in point (b);
- (d) the undertakings in which an undertaking as referred to in point (c) has any of the rights or powers referred to in point (b);
- (e) the undertakings in which two or more undertakings as referred to in points (a) to (d) jointly have any of the rights or powers referred to in point (b).

<sup>(22)</sup> Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

5. Where undertakings concerned jointly have the rights or powers listed in paragraph 4, point (b), in calculating the aggregate turnover of the undertakings concerned:

- (a) account shall be taken of the turnover resulting from the sale of products and the provision of services between the joint undertaking and any third undertakings, and this turnover shall be apportioned equally amongst the undertakings concerned;
- (b) no account shall be taken of the turnover resulting from the sale of products or the provision of services between the joint undertaking and each of the undertakings concerned or any other undertaking connected with any one of them, as set out in paragraph 4, points (b) to (e).

#### Article 23

### Aggregation of financial contributions

The aggregate financial contribution to an undertaking concerned shall be calculated by adding together the respective financial contributions provided by third countries to all undertakings referred to in Article 22(2) and Article 22(4), points (a) to (e).

#### Article 24

### Suspension of concentrations and time limits

1. A notifiable concentration shall not be implemented before its notification.

In addition:

- (a) where the Commission receives a complete notification, the concentration shall not be implemented for a period of 25 working days after that receipt;
- (b) where the Commission initiates an in-depth investigation no later than 25 working days after receipt of the complete notification, the concentration shall not be implemented for a period of 90 working days after the opening of the in-depth investigation. That period shall be extended by 15 working days where the undertakings concerned offer commitments pursuant to Article 7 with a view to remedying the distortion in the internal market;
- (c) where the Commission has adopted a decision under Article 25(3), point (a) or (b), the concentration may be implemented thereafter.

The period of time referred to in points (a) and (b) shall begin on the working day following that of the receipt of the complete notification or of the adoption of the relevant Commission decision.

2. Paragraph 1 shall not prevent the implementation of a public bid or of a series of transactions in securities including those convertible into other securities admitted to trading on a market such as a stock exchange, by which control is acquired from various sellers, provided that:

- (a) the concentration is notified to the Commission pursuant to Article 21 without delay; and
- (b) the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of its investments based on a derogation granted by the Commission under paragraph 3 of this Article.

3. The Commission may, upon request, grant a derogation from the obligations laid down in paragraphs 1 or 2. A request to grant a derogation shall state the grounds for such request. In deciding on the request, the Commission shall take into account in particular the effects of the suspension on one or more of the undertakings concerned by the concentration or on a third party and the risk of a distortion in the internal market posed by the concentration. Such a derogation may be made subject to certain conditions and obligations in order to ensure that there is no distortion in the internal market. A derogation may be applied for and granted at any time, either before notification or after the transaction.

4. The time limits provided for in paragraph 1, point (b) of this Article shall be extended if the undertakings concerned make a request to that effect not later than 15 working days after the opening of the in-depth investigation pursuant to Article 10. The undertakings concerned may make only one such request.

The time limits provided for in paragraph 1, point (b) of this Article may be extended at any time following the opening of the in-depth investigation, by the Commission with the agreement of the undertakings concerned.

The total duration of any extension or extensions pursuant to this paragraph shall not exceed 20 working days.

5. The Commission may, exceptionally, suspend the time limits provided for in paragraph 1 where the undertakings have not supplied the complete information which it has required under Article 13 or have refused to submit to an inspection ordered by decision pursuant to Article 14.

6. The Commission may adopt a decision pursuant to Article 25(3) without being bound by the time limits referred to in paragraphs 1 and 4 of this Article, where:

- (a) it finds that a concentration has been implemented in breach of the commitments attached to a decision taken under Article 25(3), point (a); or
- (b) a decision has been revoked pursuant to Article 25(1).

7. Any transaction carried out in breach of paragraph 1 shall be considered valid only after a decision pursuant to Article 25(3) has been adopted.

8. This Article shall have no effect on the validity of transactions in securities including those convertible into other securities admitted to trading on a market such as a stock exchange, unless the buyer and seller were aware or ought to have been aware that the transaction was carried out in breach of paragraph 1.

#### *Article 25*

#### **Procedural rules applicable to the preliminary review and the in-depth investigation of notified concentrations**

1. Articles 10, 11(1), (3) and (4), Articles 12 to 16 and 18 shall apply to notified concentrations.
2. The Commission may initiate an in-depth investigation under Article 10(3) no later than 25 working days after receipt of the complete notification.
3. After the in-depth investigation, the Commission shall adopt an implementing act in the form of one of the following decisions:
  - (a) a decision with commitments pursuant to Article 11(3);
  - (b) a no objection decision pursuant to Article 11(4); or
  - (c) a decision prohibiting a concentration, where the Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 4 to 6.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 48(2).

4. Decisions pursuant to paragraph 3 shall be adopted within 90 working days after the opening of the in-depth investigation, extended as the case may be pursuant to Article 24(1), point (b), and paragraphs (4) and (5). If the Commission does not adopt a decision within that time limit, the undertakings concerned shall be allowed to implement the concentration.

5. In any request for information to an undertaking, the Commission shall specify whether time limits will be suspended pursuant to Article 24(5), in the event the undertaking fails to provide complete information in the prescribed time limit.

6. The Commission may, where it finds that a concentration notifiable under Article 21(1) or notified upon request of the Commission under Article 21(5) has already been implemented and that foreign subsidies in that concentration distort the internal market pursuant to Articles 4, 5 and 6, adopt one of the following measures:

- (a) require the undertakings concerned to dissolve the concentration, in particular through the dissolution of the merger or the disposal of all the shares or assets acquired, to restore the situation prevailing prior to the implementation of the concentration; or, where that restoration is not possible through dissolution of the concentration, any other measure appropriate to achieve such restoration as far as possible;
- (b) order any other appropriate measure to ensure that the undertakings concerned dissolve the concentration or take other restorative measures as required in its decision.

The Commission may impose the measures referred to in points (a) and (b) of this paragraph either in a decision pursuant to paragraph 3, point (c), of this Article or by separate decision.

The Commission may adopt, by means of an implementing act in the form of a decision, any of the measures referred to in points (a) or (b) of this paragraph where it finds that a concentration has been implemented in breach of a decision taken pursuant to paragraph (3), point (a), of this Article which has found that, in the absence of the commitments, the concentration would fulfil the criterion laid down in paragraph 3, point (c) of this Article.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 48(2).

7. The Commission may also adopt an implementing act in the form of a decision ordering interim measures referred to in Article 12 where:

- (a) a concentration has been implemented in breach of Article 21;
- (b) a concentration has been implemented in breach of a decision with commitments under paragraph 3, point (a) of this Article.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 48(2).

## Article 26

### **Fines and periodic penalty payments applicable to concentrations**

1. The Commission may impose fines or periodic penalty payments as set out in Article 17.

2. The Commission may, by decision, also impose fines upon undertakings concerned not exceeding 1 % of their aggregate turnover in the preceding financial year where those undertakings, intentionally or negligently, supply incorrect or misleading information in a notification pursuant to Article 21 or supplement thereto.

3. The Commission may, by decision, also impose fines upon undertakings concerned not exceeding 10 % of their aggregate turnover in the preceding financial year where those undertakings, intentionally or negligently:

- (a) fail to notify a notifiable concentration in accordance with Article 21 prior to its implementation, unless they are expressly authorised to do so by Article 24;
- (b) implement a notified concentration in breach of Article 24;
- (c) implement a notified concentration prohibited in accordance with Article 25(3), point (c);
- (d) circumvented or attempted to circumvent the notification requirements, as referred to in Article 39(1).

## CHAPTER 4

## PUBLIC PROCUREMENT PROCEDURES

*Article 27***Foreign subsidies distorting the internal market in the context of public procurement procedures**

Foreign subsidies that cause or risk causing a distortion in a public procurement procedure shall be understood as foreign subsidies that enable an economic operator to submit a tender that is unduly advantageous in relation to the works, supplies or services concerned. The assessment pursuant to Article 4 of whether there is a distortion in the internal market and whether a tender is unduly advantageous in relation to the works, supplies or services concerned shall be limited to the public procurement procedure in question. Only foreign subsidies granted during the three years prior to the notification shall be taken into account in the assessment.

*Article 28***Notification thresholds in public procurement procedures**

1. For the purposes of this Regulation, a notifiable foreign financial contribution in a public procurement procedure shall be deemed to arise where:
  - (a) the estimated value of that public procurement or framework agreement net of VAT, calculated in accordance with the provisions laid down in Article 8 of Directive 2014/23/EU, Article 5 of Directive 2014/24/EU and Article 16 of Directive 2014/25/EU, or a specific procurement under the dynamic purchasing system, is equal to or greater than EUR 250 million; and
  - (b) the economic operator, including its subsidiary companies without commercial autonomy, its holding companies, and, where applicable, its main subcontractors and suppliers involved in the same tender in the public procurement procedure was granted aggregate financial contributions in the three years prior to notification or, if applicable, the updated notification, equal to or greater than EUR 4 million per third country.
2. Where the contracting authority or contracting entity decides to divide the procurement into lots, a notifiable foreign financial contribution in a public procurement procedure shall be deemed to arise where the estimated value of the procurement net of VAT exceeds the threshold laid down in paragraph 1, point (a) and the value of the lot or the aggregate value of all the lots to which the tenderer applies is equal to or greater than EUR 125 million and the foreign financial contribution is equal to or greater than the threshold laid down in paragraph 1, point (b).
3. Procedures for the award of contracts falling within the scope of Directive 2009/81/EC shall not fall under this Chapter.
4. Procedures for the award of contracts provided by Article 32(2), point (c), of Directive 2014/24/EU, and Article 50, point (d), of Directive 2014/25/EU shall be covered by the provisions of Chapter 2 of this Regulation and shall be excluded from the application of Chapter 4 of this Regulation.
5. By way of derogation from Article 29(1), where the works, supplies or services can be supplied only by a particular economic operator, in accordance with Article 31(4), of Directive 2014/23/EU, Article 32(2), point (b), of Directive 2014/24/EU and Article 50, point (c), of Directive 2014/25/EU and the estimated value of the contract is equal to or greater than the value set in paragraph 1, point (a), of this Article economic operators submitting a tender or a request to participate shall inform the Commission of all foreign financial contributions if the condition set out in paragraph 1, point (b) of this Article is fulfilled. Without prejudice to the possibility to initiate a review under Chapter 2 of this Regulation, the submission of such information shall not be considered a notification and shall not be subject to investigations under this Chapter.

6. The contracting authority or contracting entity shall state in the contract notice or, where a procedure without a prior publication is conducted, in the procurement documents, that the economic operators are under the notification obligation as set out in Article 29. However, the absence of such a statement is without prejudice to the application of this Regulation for contracts falling under its scope.

#### *Article 29*

### **Prior notification or declaration of foreign financial contributions in the context of public procurement procedures**

1. Where the conditions for the notification of financial contributions in accordance with Article 28(1) and (2) are met, economic operators participating in a public procurement procedure, shall notify the contracting authority or contracting entity of all foreign financial contributions as defined in Article 28(1), point (b). In all other cases, economic operators shall list in a declaration all foreign financial contributions received and confirm that the foreign financial contributions received are not notifiable in accordance with Article 28(1), point (b). In an open procedure, the notification or declaration shall be submitted only once, together with the tender. In a multi-stage procedure, the notification or declaration shall be submitted twice, first with the request to participate and then as an updated notification or updated declaration with the submitted tender or final tender.

2. Once the notification or declaration is submitted, the contracting authority or contracting entity shall transfer the notification or declaration to the Commission without delay.

3. Where a notification or declaration is missing from the request to participate or the tender, the contracting authority or contracting entity may request the economic operators concerned to submit the relevant document within 10 working days. Tenders or requests to participate from economic operators subject to the obligations specified under this Article and ultimately not accompanied by the notification or declaration submitted in accordance with paragraph 1, despite a request made by the contracting authority or contracting entity in accordance with this paragraph, shall be declared irregular and rejected by the contracting authority or contracting entity. The contracting authority or contracting entity shall inform the Commission of that rejection.

4. The Commission shall examine the content of the notification received without undue delay. Where the Commission finds that the notification is incomplete, it shall communicate its findings to the contracting authority or contracting entity and to the economic operator concerned, and request that the economic operator completes its content within 10 working days. Where a notification accompanying a tender or request to participate remains incomplete despite a request made by the Commission in accordance with this paragraph, the Commission shall adopt a decision declaring that tender irregular. In that decision the Commission shall also request the contracting authority or contracting entity to adopt a decision rejecting such an irregular tender or request to participate.

5. The obligation to notify foreign financial contributions under this Article shall apply to economic operators, groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU, Article 19(2) of Directive 2014/24/EU and Article 37(2) of Directive 2014/25/EU, as well as to main subcontractors and main suppliers known at the time of submission of the complete notification or declaration, or complete updated notification or declaration. For the purposes of this Regulation, a subcontractor or supplier shall be deemed to be main where their participation ensures key elements of the contract performance and in any case where the economic share of their contribution exceeds 20 % of the value of the submitted tender.

6. On behalf of groups of economic operators, main subcontractors and main suppliers, the main contractor within the meaning of Directives 2014/24/EU and 2014/25/EU or main concessionaire within the meaning of Directive 2014/23/EU shall ensure the submission of the notification or declaration. For the purposes of Article 33, the main contractor or main concessionaire is responsible only for the veracity of data linked to its own foreign financial contributions.

7. Where the contracting authority or contracting entity examining tenders suspects the presence of foreign subsidies, although a declaration was submitted, it shall communicate such suspicions to the Commission without delay. Without prejudice to the powers of contracting authorities or contracting entities, laid down in Directives 2014/24/EU and 2014/25/EU, to examine whether a tender is abnormally low, the contracting authority or contracting entity shall not perform an assessment of whether a tender is abnormally low where such an assessment would be initiated on the suspicions indicating a possible presence of foreign subsidies alone. Where the Commission concludes that there is no unduly advantageous tender within the meaning of this Regulation, it shall inform the relevant contracting authority or contracting entity thereof. Other legal or natural persons may report to the Commission any information relating to foreign subsidies distorting the internal market and may communicate any suspicions that a false declaration has possibly been made.

8. Without prejudice of the possibility for the Commission to start an *ex officio* procedure, where the Commission suspects that an economic operator may have benefitted from foreign subsidies in the three years prior to the submission of the tender or request to participate in the public procurement procedure, it may before the award of the contract request the notification of the foreign financial contributions provided by third countries to that economic operator in any public procurement procedure which are not notifiable under Article 28(1) or fall within the scope of Article 30(4). If the Commission has required the notification of such a financial contribution, the financial contribution shall be deemed to be a notifiable foreign financial contribution in a public procurement procedure and be subject to the provisions set out in Chapter 4.

#### Article 30

##### **Procedural rules applicable to the preliminary review and the in-depth investigation of notified financial contributions in public procurement procedures**

1. Articles 10, 11 (1), (3) and (4), 13, 14, 15, 16, 18 and 23 shall apply to notified financial contributions in public procurement procedures.
2. The Commission shall carry out a preliminary review no later than 20 working days after it receives a complete notification. In duly justified cases, the Commission may extend this time limit by 10 working days once.
3. The Commission shall decide whether to initiate an in-depth investigation within the time limit for completing the preliminary review and inform the economic operator concerned and the contracting authority or the contracting entity without delay.
4. Where the Commission had closed a preliminary review without adopting a decision and receives new information leading it to suspect that a submitted notification or declaration was incomplete, or where such a notification or declaration is not transferred to the Commission, it may request additional information in accordance with Article 29(4). The Commission may reopen a preliminary review based on this new information. Where the preliminary review is initiated under this Chapter, and without prejudice to the possibility to initiate a preliminary review under Chapter 2, as the need may arise, the starting point for the determination of the duration of the preliminary review is the receipt of the new notification or declaration by the Commission.
5. The Commission may adopt a decision closing the in-depth investigation no later than 110 working days after it has received the complete notification. This period may be extended once by 20 working days, after consultation with the contracting authority or contracting entity, in duly justified exceptional cases including the investigations referred to in paragraph 6 or in cases referred to in Article 16(1), points (a) and (b).
6. By way of derogation from paragraph 2, where the public procurement procedure is a multi-stage procedure, the Commission shall examine the complete notification submitted with the request to participate within 20 working days from the receipt of that notification, without closing the preliminary review or reaching a decision on opening an in-depth investigation. After the deadline of 20 working days elapses, the preliminary review shall be suspended until the submission

of a final tender or a tender in the case of a restricted procedure. Once the tender or final tender containing a complete updated notification is submitted, the preliminary review shall be resumed and the Commission has 20 working days to finalise it, taking into account any additional information. The Commission shall adopt a decision closing any ensuing in-depth investigation within 90 working days from the submission of the completed updated notification.

#### Article 31

##### **Commission decisions**

1. Where, after an in-depth investigation, the Commission finds that an economic operator benefits from a foreign subsidy distorting the internal market pursuant to Articles 4, 5 and 6, and where the economic operator concerned offers commitments that fully and effectively remedy the distortion in the internal market, it shall adopt an implementing act in the form of a decision with commitments pursuant to Article 11(3). That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 48(2).
2. Where the economic operator concerned does not offer commitments or where the Commission considers that the commitments referred to in paragraph 1 are neither appropriate nor sufficient to fully and effectively remedy the distortion, the Commission shall adopt an implementing act in the form of a decision prohibiting the award of the contract to the economic operator concerned ('decision prohibiting the award of the contract'). That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 48(2). Following that decision, the contracting authority or contracting entity shall reject the tender.
3. Where, after an in-depth investigation, the Commission does not find that an economic operator benefits from a foreign subsidy distorting the internal market, it shall adopt an implementing act in the form of a decision pursuant to Article 11(4). That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 48(2).
4. The assessment under Article 6 shall not result in a modification of the tender or final tender submitted by the economic operator that is incompatible with Union law.

#### Article 32

##### **Evaluations in public procurement procedures involving a notification and suspension of award**

1. During the preliminary review and the in-depth investigation, all procedural steps in the public procurement procedure may continue, except for the award of the contract.
2. If the Commission decides to open an in-depth investigation pursuant to Article 30(3), the contract shall not be awarded to an economic operator submitting a notification under Article 29 until the Commission takes a decision under Article 31(3) or before the time limits set in Article 30(5) or (6) elapse. If the Commission has not adopted a decision within the applicable time limit, the contract may be awarded to any economic operator, including the economic operator submitting the notification.
3. Where the contracting authority or contracting entity finds that the most economically advantageous tender was submitted by an economic operator, which submitted a declaration within the meaning of Article 29 and where the Commission has not opened a review in line with Articles 29(8), 30(3) or 30(4), the contract may be awarded to the economic operator submitting such a tender before the Commission takes any of the decisions referred to in Article 31 or before the time limits laid down in Articles 30(2), 30(5) or 30(6) elapse or before the Commission takes any of the decisions referred to in Article 31 regarding other tenders under investigation.
4. Where the Commission adopts a decision in accordance with Article 31(2) concerning a tender which the contracting authority or contracting entity has found to be the most economically advantageous tender, the contract may be awarded to the economic operator not subject to a decision under Article 31(2) having submitted the next best tender.

5. Where the Commission adopts a decision in accordance with Article 31(1) or (3), the contract may be awarded to any economic operator having submitted the most economically advantageous tender, including, to the economic operator having submitted the notification under Article 29.
6. The contracting authority or the contracting entity shall inform the Commission without undue delay of any decision relating to the cancellation of the public procurement procedure, the rejection of the tender or request to participate by the economic operator concerned, the submission of a new tender by the economic operator concerned or the award of the contract.
7. The principles governing public procurement procedures, including the principles of proportionality, non-discrimination, equal treatment, transparency and competition, shall be observed as regards all economic operators involved in the public procurement procedure. The investigation of foreign subsidies pursuant to this Regulation shall not result in the contracting authority or the contracting entity treating the economic operators concerned in a way that is contrary to those principles. Environmental, social and labour requirements shall apply to economic operators in accordance with Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, or other Union law.
8. Time limits referred to in this Chapter shall begin on the working day following that of the receipt of the notification or of the adoption of the relevant Commission decision.

#### Article 33

#### **Fines and periodic penalty payments applicable to financial contributions in the context of public procurement procedures**

1. The Commission may impose fines or periodic penalty payments as set out in Article 17.
2. The Commission may, by decision, also impose fines upon the economic operators concerned that do not exceed 1 % of their aggregate turnover in the preceding financial year, where those economic operators intentionally or negligently supply incorrect or misleading information in a notification or declaration pursuant to Article 29 or in a supplement thereto.
3. The Commission may, by decision, impose fines upon the economic operators concerned that do not exceed 10 % of their aggregate turnover in the preceding financial year where those economic operators, intentionally or negligently:
  - (a) fail to notify foreign financial contributions in accordance with Article 29 during the public procurement procedure;
  - (b) circumvent or attempt to circumvent the notification requirements, as referred to in Article 39(1).

#### CHAPTER 5

#### **COMMON PROCEDURAL PROVISIONS**

#### Article 34

#### **Relationship between procedures**

1. A financial contribution notified in the context of a concentration under Article 21 or in the context of a public procurement under Article 29 may be relevant to and assessed under this Regulation in relation to another economic activity.
2. A financial contribution assessed in the context of an *ex officio* procedure in relation to a specific economic activity under Article 10 or Article 11 may be relevant to and assessed under this Regulation in relation to another economic activity.

*Article 35***Communication of information**

1. Where a Member State considers that a foreign subsidy may exist and may distort the internal market, it shall transfer information thereon to the Commission. The Commission may on the basis of that information decide to start a preliminary review pursuant to Article 10, or request a notification pursuant to Article 21(5) or Article 29(8).
2. A natural or legal person or association may communicate to the Commission any information it may have about foreign subsidies that may distort the internal market. The Commission may on the basis of that information decide to start a preliminary review pursuant to Article 10, or request a notification pursuant to Article 21(5) or Article 29(8).
3. The Commission shall make accessible to Member States and the contracting authorities or contracting entities concerned, on a dedicated electronic database, the non-confidential versions of all decisions adopted under this Regulation.

*Article 36***Market investigation**

1. Where the information available to the Commission substantiates a reasonable suspicion that foreign subsidies in a particular sector, for a particular type of economic activity or based on a particular subsidy instrument may distort the internal market, the Commission may conduct a market investigation into the particular sector, the particular type of economic activity or into the use of the subsidy instrument concerned. In the course of that market investigation, the Commission may require the undertakings or associations of undertakings concerned to supply the necessary information and may carry out the necessary inspections. The Commission may also request Member States or the third country concerned to supply information.
2. The Commission shall, where relevant, publish a report on the results of its market investigation into particular sectors, particular types of economic activity or particular subsidy instruments and seek comments.
3. The Commission may use the information obtained from such market investigations in the framework of procedures under this Regulation.
4. Articles 13, 14, 15 and 17 shall apply to market investigations.

*Article 37***Third-country dialogue**

1. Where, following a market investigation pursuant to Article 36, the Commission suspects the existence of repeated foreign subsidies distorting the internal market, or where several enforcement actions under this Regulation identify foreign subsidies distorting the internal market granted by the same third country, the Commission may engage in a dialogue with the third country concerned, to explore options aimed at obtaining the cessation or modification of such subsidies with a view to eliminating their distortive effects on the internal market. The Commission shall inform the European Parliament and the Council of any relevant developments.
2. That third-country dialogue shall not prevent the Commission from taking action under this Regulation. Individual measures adopted pursuant to this Regulation shall not be addressed within that dialogue.

*Article 38***Limitation periods**

1. The powers of the Commission under Articles 10 and 11 shall be subject to a limitation period of 10 years, starting on the day on which a foreign subsidy is granted to an undertaking. Any action taken by the Commission under Article 10, 13, 14 or 15 with respect to a foreign subsidy shall interrupt the limitation period. After each interruption, the limitation period of 10 years shall start to run afresh.
2. The powers of the Commission to impose fines or periodic penalty payments under Articles 17, 26 and 33 shall be subject to a limitation period of three years, starting on the day on which the infringement referred to in Article 17, 26 or 33 took place. In the case of continuing or repeated infringements, the limitation period shall start on the day on which the infringement ceases. Any action taken by the Commission with respect to an infringement referred to in Articles 17, 26 or 33 shall interrupt the limitation period for the imposition of fines or periodic penalty payments. After each interruption, the limitation period of three years shall start to run afresh.
3. The powers of the Commission to enforce decisions imposing fines or periodic penalty payments under Articles 17, 26 and 33 shall be subject to a limitation period of five years, starting on the day on which the Commission decision imposing fines or periodic penalty payments is taken. Any action taken by the Commission, or by a Member State acting upon request of the Commission, intended to enforce payment of the fine or periodic penalty payment shall interrupt that limitation period. After each interruption, the limitation period of five years shall start to run afresh.
4. The limitation period shall expire at the latest on the day on which twice the amount of time of that limitation period has elapsed provided that the Commission has not:
  - (a) taken a decision pursuant to Article 10 or 11 in the instances set out in paragraph 1 of this Article; or
  - (b) imposed a fine or a periodic penalty payment in the situation set out in paragraph 2 of this Article.
5. The limitation period shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.

*Article 39***Anti-circumvention**

1. An undertaking shall not arrange financial operations or contracts to circumvent the notification requirements laid down in Article 21(1) and (5) and Article 29(1), (5) and (8).
2. Where the Commission suspects that an undertaking has engaged or is engaging in a practice referred to in paragraph 1, it may require that undertaking to provide any information that the Commission deems necessary to determine whether the undertaking has engaged in or is engaging in the practices referred to in paragraph 1, and may initiate a review pursuant to Article 21(4), or Article 30(4).

*Article 40***Publication of decisions**

1. The Commission shall make public a summary notice of the decisions adopted pursuant to Article 10(3), point (a), allowing any natural or legal person, Member States or the third country that granted the foreign subsidy, to express their views.

2. The Commission shall publish the decisions adopted pursuant to Article 11(2), (3) and (4), Article 25(3) and (6), and Article 31(1), (2) and (3) in the *Official Journal of the European Union*.

3. When making public summary notices and decisions, the Commission shall take due account of the legitimate interests of undertakings in the protection of their business secrets and other confidential information.

#### Article 41

##### **Addressees of decisions**

1. The Commission shall notify a decision addressed to an undertaking or to an association of undertakings without delay and shall give that undertaking or association of undertakings the opportunity to indicate to the Commission which information in the decision it considers to be confidential.

2. The Commission shall inform the contracting authority or contracting entity concerned about a decision adopted pursuant to Article 31(1) and (3) addressed to an economic operator participating in a public procurement procedure.

3. Decisions adopted pursuant to Article 29(4) and Article 31(2) shall be addressed to the contracting authority or contracting entity concerned. The Commission shall provide the economic operator to which the award of the contract is prohibited with a copy of that decision.

#### Article 42

##### **Disclosure and rights of defence**

1. The Commission shall, before adopting a decision pursuant to Articles 11, 12, 17, 18, 25(3), 26, 31 or 33 give the undertaking under investigation the opportunity to submit observations on the grounds on which the Commission intends to adopt its decision.

2. By way of derogation from paragraph 1, a decision pursuant to Article 12 may be taken provisionally, without the undertaking under investigation being given the opportunity to submit its observations beforehand, provided that the Commission gives it that opportunity as soon as possible after having taken its decision.

3. The Commission shall base its decision only on grounds on which the undertakings concerned have been given the opportunity to submit their observations.

4. In order to be able to exercise its right pursuant to paragraph 1, the undertaking under investigation shall be entitled to have access to the file of the Commission. The right of access to the file shall not extend to confidential information or internal documents of the Commission or the Member States or, in particular, to correspondence between the Commission and the Member States.

The right of access to the file shall be subject to the legitimate interest of undertakings or associations of undertakings in the protection of their business secrets and other confidential information. The Commission may ask the undertaking under investigation and the undertakings or associations of undertakings that provided information to the Commission to agree on terms to disclose that information. If the undertakings or associations of undertakings disagree on those terms, the Commission shall have the power to impose the terms on which the information is to be disclosed.

Nothing in this paragraph shall prevent the Commission from using and disclosing, to the extent necessary, information that demonstrates the existence of a foreign subsidy distorting the internal market.

*Article 43***Professional secrecy and confidentiality**

1. Information acquired under this Regulation shall be used only for the purposes for which it was acquired, unless the provider of the information agrees otherwise.
2. Member States and the Commission, their officials and other persons working under their supervision shall ensure the protection of confidential information acquired in application of this Regulation in accordance with the relevant applicable rules. To that end, they shall not disclose information covered by the obligation of professional secrecy that they have acquired pursuant to this Regulation.
3. Paragraphs 1 and 2 shall not prevent the publication of statistics and reports which do not contain information allowing the identification of specific undertakings or associations of undertakings.
4. The disclosure of any information communicated under this Regulation shall not prejudice the essential security interests of Member States.

## CHAPTER 6

**RELATIONSHIP TO OTHER INSTRUMENTS***Article 44***Relationship to other instruments**

1. This Regulation is without prejudice to the application of Articles 101, 102, 106, 107 and 108 TFEU, Council Regulation (EC) No 1/2003 <sup>(23)</sup> and of Regulation (EC) No 139/2004.
2. This Regulation is without prejudice to the application of Regulation (EU) 2016/1037 of the European Parliament and of the Council <sup>(24)</sup>.
3. This Regulation is without prejudice to the application of Regulation (EU) 2019/452.
4. This Regulation is without prejudice to the application of Regulation (EU) 2022/1031 of the European Parliament and of the Council <sup>(25)</sup>.
5. This Regulation takes precedence over Regulation (EU) 2016/1035 until that Regulation becomes applicable pursuant to its Article 18. Where, after that date, a foreign subsidy falls within the scope of application of both Regulation (EU) 2016/1035 and this Regulation, Regulation (EU) 2016/1035 takes precedence. However, the provisions applicable to public procurement and concentrations of this Regulation take precedence over Regulation (EU) 2016/1035.
6. This Regulation takes precedence over Regulation (EEC) No 4057/86.

<sup>(23)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

<sup>(24)</sup> Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55).

<sup>(25)</sup> Regulation (EU) 2022/1031 of the European Parliament and of the Council of 23 June 2022 on the access of third-country economic operators, goods and services to the Union's public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries (International Procurement Instrument – IPI) (OJ L 173, 30.6.2022, p. 1).

7. This Regulation is without prejudice to the application of Regulation (EU) 2019/712. Concentrations, as defined in Article 20 of this Regulation, involving air carriers shall be subject to the provisions of Chapter 3 of this Regulation. Public procurement procedures involving air carriers shall be subject to the provisions of Chapter 4 of this Regulation.

8. This Regulation shall be interpreted consistently with Directives 2009/81/EC, 2014/23/EU, 2014/24/EU and 2014/25/EU, and Council Directives 89/665/EEC <sup>(26)</sup> and 92/13/EEC <sup>(27)</sup>.

9. This Regulation shall not prevent the Union from exercising its rights or fulfilling its obligations under international agreements. An investigation pursuant to this Regulation shall not be carried out and measures shall not be imposed or maintained where such investigation or measures would be contrary to the Union's obligations emanating from any relevant international agreement it has entered into. In particular, no action shall be taken under this Regulation which would amount to a specific action against a subsidy within the meaning of Article 32.1 of the Agreement on Subsidies and Countervailing Measures and granted by a third country which is a member of the World Trade Organisation.

## CHAPTER 7

### TRANSITIONAL AND FINAL PROVISIONS

#### *Article 45*

#### **Review by the Court of Justice**

In accordance with Article 261 TFEU, the Court of Justice of the European Union shall have unlimited jurisdiction to review decisions by which the Commission has imposed fines or periodic penalty payments. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

#### *Article 46*

#### **Guidelines**

1. The Commission shall publish, at the latest on 12 January 2026, and shall regularly update thereafter, guidelines regarding:

- (a) the application of the criteria for determining the existence of a distortion according to Article 4(1);
- (b) the application of the balancing test in accordance with Article 6;
- (c) the application of its power to request the prior notification of any concentration according to Article 21(5) or foreign financial contributions received by an economic operator in a public procurement procedure according to Article 29(8), and
- (d) the assessment of a distortion in a public procurement procedure according to Article 27.

2. Before issuing the guidelines referred to in paragraph 1, the Commission shall conduct appropriate consultations with stakeholders and Member States. The guidelines shall be built on experience gained in the course of implementing and enforcing this Regulation.

<sup>(26)</sup> Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, p. 33).

<sup>(27)</sup> Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.3.1992, p. 14).

*Article 47***Implementing acts**

1. The Commission is empowered to adopt implementing acts concerning:
  - (a) the form, content and procedural details of notifications of concentrations pursuant to Article 21, including a possible simplified procedure, taking utmost account of the goal of limiting administrative burden for notifying parties pursuant to Article 21 of this Regulation and Article 4 of Regulation (EC) No 139/2004;
  - (b) the form, content and procedural details of notifications of foreign financial contributions and declaration of no foreign financial contribution in public procurement procedures pursuant to Article 29, including a possible simplified procedure;
  - (c) procedural details for oral statements pursuant to Article 13(7), Article 14(2), point (c) and Article 15;
  - (d) details of the disclosure pursuant to Article 42 and professional secrecy pursuant to Article 43;
  - (e) the form, content and procedural details of transparency requirements;
  - (f) detailed rules on the calculation of time limits;
  - (g) the procedural details and time limits for proposing commitments under Articles 25 and 31;
  - (h) detailed rules on the procedural steps referred to in Articles 29 to 32 concerning investigations regarding public procurement procedures.
2. Implementing acts referred to in paragraph 1 shall be adopted in accordance with the advisory procedure referred to in Article 48(2).
3. Before the adoption of any measures pursuant to paragraph 1, the Commission shall make public a draft thereof and seek comments within the time limit. That time limit shall be set by the Commission and be no less than four weeks.
4. The first implementing acts referred to in paragraph 1 shall be adopted by 12 July 2023.

*Article 48***Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

*Article 49***Delegated acts**

1. The Commission is empowered to adopt a delegated act in accordance with Article 50 for the purposes of amending, where necessary, the threshold for notifications of concentrations as set out in Article 20(3), point (a), by increasing the threshold by up to 20 % or decreasing the threshold by up to 20 %, after having:
  - (a) assessed that threshold in the light of its experience gained in the course of implementing and enforcing this Regulation; and
  - (b) established the necessity of amending that threshold in order to:
    - (i) ensure that the notification procedures set out in Chapter 3 enable the accurate identification of foreign subsidies distorting the internal market;

- (ii) ensure a reasonable administrative burden on the Commission and the undertakings concerned; and
- (iii) enhance the effectiveness of the application of this Regulation.

2. For the purposes of evaluating the necessity of amending the threshold for notifications, pursuant to paragraph 1, the Commission shall conduct its assessment, covering a defined period of time which cannot be shorter than two years, in particular on the basis of the following objective criteria:

- (a) the proportion of notifications pursuant to Article 21(1) which resulted either in the Commission closing the preliminary review pursuant to Article 10(4) or in the Commission adopting a no objection decision pursuant to Article 25(3), point (b);
- (b) the proportion of notifications pursuant to Article 21(1) which resulted either in the Commission adopting a decision prohibiting a concentration pursuant to Article 25(3), point (c), or a decision with commitments pursuant to Article 25(3), point (a);
- (c) the proportion of notifications pursuant to Article 21(5) which resulted in the Commission adopting either a decision prohibiting a concentration pursuant to Article 25(3), point (c), or a decision with commitments pursuant to Article 25(3), point (a);
- (d) the proportion of *ex officio* reviews pursuant to Article 9 in the context of concentrations not notifiable within the meaning of Article 20 which resulted either in a decision with redressive measures pursuant to Article 11(2) or in a decision with commitments pursuant to Article 11(3);
- (e) the comparison between the threshold set out in Article 20(3), point (a), and the average aggregate turnover, above that threshold, in the cases which resulted in either a decision prohibiting a concentration pursuant to Article 25(3), point (c), or a decision with commitments pursuant to Article 25(3), point (a);
- (f) the number of notifications pursuant to Article 21(1) and the evolution of that number.

3. In order to raise the thresholds in Article 20(3), point (a), the assessment referred to in paragraph 2 of this Article shall demonstrate that:

- (a) a large part of decisions prohibiting a concentration pursuant to Article 25(3), point (c), or decisions with commitments pursuant to Article 25(3), point (a), concerned cases where the aggregate turnover, above the threshold referred to in Article 20(3), point (a), was substantially higher than that threshold; or
- (b) a large part of the notifications pursuant to Article 21(1) resulted either in the Commission closing the preliminary review pursuant to Article 10(4) or in the Commission adopting a no objection decision pursuant to Article 25(3), point (b).

4. In order to decrease the thresholds in Article 20(3), point (a), the assessment referred in paragraph 2 of this Article shall demonstrate that:

- (a) a large part of notifications pursuant to Article 21(5) resulted in the Commission adopting either a decision prohibiting a concentration pursuant to Article 25(3), point (c), or a decision with commitments pursuant to Article 25(3), point (a); or
- (b) a large part of *ex officio* reviews of foreign subsidies in the context of concentrations which were not notifiable concentrations within the meaning of Article 20 resulted in the Commission adopting either a decision with redressive measures pursuant to Article 11(2) or a decision with commitments pursuant to Article 11(3).

5. The Commission is empowered to adopt a delegated act in accordance with Article 50 for the purposes of amending, where necessary, the thresholds for notifications as set out in Articles 28(1), point (a), and 28(2) for public procurement by increasing by up to 20 % or decreasing by up to 20 %, after having:

- (a) assessed those thresholds in the light of its experience gained in the course of implementing and enforcing this Regulation; and
- (b) established the necessity of amending those thresholds in order to:
  - (i) ensure that the notification procedures set out in Chapter 4 enable the accurate identification of foreign subsidies distorting the internal market;
  - (ii) ensure a reasonable administrative burden on the Commission and the economic operators concerned; and
  - (iii) enhance the effectiveness of the application of this Regulation.

6. For the purposes of evaluating the necessity of amending the threshold for notifications, pursuant to paragraph 5, the Commission shall conduct its assessment, covering a defined period of time which cannot be shorter than two years, in particular on the basis of the following objective criteria:

- (a) the proportion of notifications pursuant to Article 29(1) which resulted either in the Commission closing the preliminary review pursuant to Article 10(4) or in the Commission adopting a no objection decision pursuant to Article 31(3);
- (b) the proportion of notifications pursuant to Article 29(1) which resulted either in the Commission adopting a decision prohibiting the award of the contract pursuant to Article 31(2) or a decision with commitments pursuant to Article 31(1);
- (c) the proportion of notifications pursuant to Article 29(8) which resulted in the Commission adopting either a decision prohibiting the award of the contract pursuant to Article 31(2) or a decision with commitments pursuant to Article 31(1);
- (d) the number of decisions with redressive measures pursuant to Article 11(2) and of decisions with commitments pursuant to Article 11(3), following an *ex officio* review pursuant to Article 9 in the context of a foreign financial contribution in a public procurement procedure which was not notifiable within the meaning of Article 28(1) or which fell within the scope of Article 30(4), in relation to the overall number of such *ex officio* reviews;
- (e) the comparison between the respective thresholds set out in Articles 28(1), point (a), and 28(2) and the average estimated value of the contracts or the average value of the lots, above the respective threshold, in the cases which resulted with either a decision prohibiting the award of the contract pursuant to Articles 31(2) or a decision with commitments pursuant to Article 31(1);
- (f) the number of notifications pursuant to Article 29(1) and the evolution of that number.

7. In order to increase the thresholds for notifications, the assessment referred to in paragraph 6 shall demonstrate that:

- (a) a large part of the decisions prohibiting the award of the contract pursuant to Article 31(2) and decisions with commitments pursuant to Article 31(1) concerned cases where the estimated value of the contracts, above the threshold referred to in Article 28(1), point (a), or where the value of the lots applied for, above the threshold referred to in Article 28(2), was substantially higher than the respective thresholds set out in Articles 28(1), point (a), and 28(2); or
- (b) a large part of the notifications pursuant to Article 29(1) resulted either in the Commission closing the preliminary review pursuant to Article 10(4) or in the Commission adopting a no objection decision pursuant to Article 31(3).

8. In order to decrease the thresholds, the assessment referred to in paragraph 6 shall demonstrate that:
- (a) a large part of the notifications pursuant to Article 29(8) resulted in the Commission adopting either a decision with commitments pursuant to Article 31(1) or a decision prohibiting the award of the contract pursuant to Article 31(2); or
  - (b) a large part of the *ex officio* reviews of foreign subsidies in the context of foreign financial contributions in a public procurement procedure which were not notifiable within the meaning of Article 28(1) or fell within the scope of Article 30(4) resulted in the Commission adopting either a decision with redressive measures pursuant to Article 11(2) or a decision with commitments pursuant to Article 11(3).
9. The Commission is empowered to adopt delegated acts in accordance with Article 50 for the purposes of reducing the timelines for preliminary review and in-depth investigations as set out in Article 25(2) and (4) for notified concentrations and in Article 30(2), (5) and (6) for notified financial contributions in public procurement procedures. The Commission may adopt such delegated acts to reduce the timelines in Article 25(2) and (4) and Article 30(2), (5) and (6) where its practice in the application of this Regulation demonstrates that the Commission's assessment can be performed within a shorter period of time.

#### Article 50

##### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 49(1) and (5) shall be conferred on the Commission for a period of five years from 12 January 2025.
3. The power to adopt delegated acts referred to in Article 49(9) shall be conferred on the Commission for a period of five years from 12 January 2025. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
4. The delegation of power referred to in Article 49(1), (5) and (9) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
5. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
6. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
7. A delegated act adopted pursuant to Article 49(1) (5) and (9) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

*Article 51***Separate delegated acts for different delegated powers**

The Commission shall adopt a separate delegated act in respect of each power delegated to it pursuant to this Regulation.

*Article 52***Reporting and review**

1. The Commission shall present an annual report on the application and implementation of this Regulation to the European Parliament and to the Council.
2. By 13 July 2026 and every three years thereafter, the Commission shall review its practice of implementing and enforcing this Regulation, in particular with regard to the application of Articles 4, 5, 6 and 9, and the notification thresholds set out in Article 20(3), Article 28(1) and (2), and present a report to the European Parliament and the Council, accompanied, where the Commission considers it appropriate, by relevant legislative proposals. In the context of its review, the Commission shall report on developments in international relations regarding third countries' subsidy control systems.
3. Where the Commission considers it appropriate to combine the report with relevant legislative proposals, such proposals may include:
  - (a) amending the thresholds for notifications as set out in Articles 20 and 28;
  - (b) exempting certain categories of undertakings concerned from the obligation to notify pursuant to Articles 21 and 29, especially where the practice of the Commission enables the identification of economic activities where foreign subsidies are unlikely to distort the internal market;
  - (c) establishing specific thresholds for notifications for certain economic sectors or differentiated thresholds for different types of public procurement contracts, especially where the practice of the Commission enables the identification of economic activities where foreign subsidies are more likely to distort the internal market, including as regards strategic sectors and critical infrastructure;
  - (d) amending the timelines for review and in-depth investigations as set out in Articles 25 and 30;
  - (e) abrogating this Regulation, if the Commission considers that multilateral rules to address foreign subsidies distorting the internal market have rendered this Regulation fully redundant.

*Article 53***Transitional provisions**

1. This Regulation shall apply to foreign subsidies granted in the five years prior to 12 July 2023 where such foreign subsidies distort the internal market after 12 July 2023.
2. By way of derogation to paragraph 1, this Regulation shall apply to foreign financial contributions granted in the three years prior to 12 July 2023 where such foreign financial contributions were granted to an undertaking notifying a concentration or notifying financial contributions in the context of a public procurement procedure pursuant to this Regulation.
3. This Regulation shall not apply to concentrations for which the agreement was concluded, the public bid was announced, or a controlling interest was acquired before 12 July 2023.
4. This Regulation shall not apply to public procurement contracts that have been awarded or procedures initiated before 12 July 2023.

*Article 54***Entry into force and date of application**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from 12 July 2023.
3. By way of derogation from paragraph 2 of this Article, Articles 47 and 48 shall apply from 11 January 2023 and Article 14(5), (6) and (7) shall apply from 12 January 2024.
4. By way of derogation from paragraph 2 of this Article, Articles 21 and 29 shall apply from 12 October 2023.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 14 December 2022.

*For the European Parliament*  
*The President*  
R. METSOLA

*For the Council*  
*The President*  
M. BEK

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Three statements have been made with regard to this act and can be found in OJ C 491 of 23 December 2022.

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### 附件三

## 欧盟《外国补贴条例实施细则》全文

## II

*(Non-legislative acts)*

## REGULATIONS

## 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**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market <sup>(1)</sup>, and in particular Article 47(1) thereof,

After consulting the Foreign Subsidies Advisory Committee,

Whereas:

- (1) Pursuant to Article 1 of Regulation (EU) 2022/2560, that Regulation allows to investigate foreign subsidies that distort the internal market and to remedy such distortions. It is necessary to lay down the specific rules and procedures concerning amongst others the submission of notifications pursuant to Article 21 and Article 29 of Regulation (EU) 2022/2560, the conduct of interviews and provision of oral statements under Article 13, Article 14 and Article 15 of Regulation (EU) 2022/2560, the submission of commitments under Article 25 and Article 31 of Regulation (EU) 2022/2560, and the details of disclosure and rights of defence of the undertaking under investigation under Article 42 of Regulation (EU) 2022/2560.
- (2) Pursuant to Article 20 of Regulation (EU) 2022/2560 persons and undertakings are required to notify certain large concentrations involving substantial foreign financial contributions before the concentration is put into effect. Article 29 of Regulation (EU) 2022/2560 requires the notification of foreign financial contributions in the context of public procurement procedures above certain thresholds before the contract is awarded. Failure to comply with the obligation to notify, among others, renders the person or undertaking liable to fines and periodic penalty payments. It is therefore necessary to precisely define the parties responsible for submitting the notification and the content of the information to be provided in the notification.
- (3) It is for persons or undertakings referred to in Articles 21(3) and 29(5) of Regulation (EU) 2022/2560 to make a full and accurate disclosure to the Commission of the facts and circumstances which are relevant for taking a decision on the notified concentration or foreign financial contributions in the context of a public procurement procedure.
- (4) In order to simplify the notifications and the Commission's assessment, standardised forms should be set out in the Annexes to this Regulation. They may be replaced by electronic forms containing the same information requirements.

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<sup>(1)</sup> OJ L 330, 23.12.2022, p. 1.

- (5) In accordance with Article 10(3) of Regulation (EU) 2022/2560, in cases where, as a result of the preliminary review, the Commission has sufficient indications that an undertaking has been granted a foreign subsidy that distorts the internal market, the Commission should open an in-depth investigation procedure in order to enable it to gather further information to assess the existence of a foreign subsidy and the actual or potential distortive effects of the foreign subsidy. It is necessary to set out the rules on time-limits within which the undertaking under investigation and other persons, including Member States and the third country that granted the foreign subsidy, can submit their comments on the Commission's decision to initiate an in-depth investigation, in accordance with Article 40(1) Regulation (EU) 2022/2560.
- (6) Pursuant to Article 13(7) of Regulation (EU) 2022/2560, the Commission, in conducting investigations, may interview any natural or legal person who agrees to be interviewed for the purpose of collecting information relating to the subject matter of the investigation. In observing the need to ensure legal fairness and transparency, before taking interviews from natural or legal persons who consent to be interviewed, the Commission should inform those persons of the legal basis of the interview. The persons interviewed should also be informed of the purpose of the interview and should be given an opportunity to comment on the documented interview. The Commission should set a time-limit within which the person interviewed may communicate to it any comments on the documented interview.
- (7) Pursuant to Article 14(2), point (c) and Article 15 of Regulation (EU) 2022/2560, the Commission, in conducting inspections within or outside of the Union, may ask any representative or member of staff of an undertaking or association of undertakings for explanations of facts or documents relating to the subject-matter and purpose of the inspection and to document the answers. The documented oral statements should be made available to the authorised representative of the undertaking or association of undertakings. In case of explanations provided by a non-authorised member of staff, the undertaking or association of undertakings should be given an opportunity to comment on the documented explanations.
- (8) Pursuant to Article 13(5) of Regulation (EU) 2022/2560, Member States are obliged to provide the Commission with all the necessary information to carry out investigations under that Regulation. To ensure all such information is available to the Commission in the context of public procurement procedures, this obligation should also apply to contracting authorities or contracting entities in charge of the relevant public procurement procedure.
- (9) In order to enable the Commission to carry out a proper assessment, for the purposes of adopting a decision with commitments offered by the undertaking under investigation with a view to remedying a distortion in the internal market, the procedure for proposing commitments pursuant to Article 11(3) of Regulation (EU) 2022/2560 and time limits for proposing commitments under Articles 25 and 31 of Regulation (EU) 2022/2560 should be laid down.
- (10) In the interest of ensuring transparency, the Commission may, where appropriate, impose reporting and transparency obligations pursuant to Article 7(5) and Article 8 of Regulation (EU) 2022/2560 in acts closing an in-depth investigation pursuant to Article 11 of Regulation (EU) 2022/2560. These obligations should allow the Commission to detect potential distortions on the internal market or to monitor the implementation of its acts adopted under Regulation (EU) 2022/2560. It is therefore necessary that the form, content and procedural details of these obligations are clarified.
- (11) Pursuant to Article 42(1) of Regulation (EU) 2022/2560, in accordance with the principle of respect for the rights of defence, the undertaking under investigation should be given the opportunity, before the Commission adopts a decision pursuant to Articles 11, 12, 17, 18, 25(3), 26, 31 or 33 of Regulation (EU) 2022/2560, to submit its observations on all of the grounds on which the Commission intends to adopt its decision. In accordance with Article 42(4) of Regulation (EU) 2022/2560, it is necessary to lay down rules on the extent to which an undertaking under investigation should be granted access to the file of the Commission. While the undertaking under investigation should always have the right to obtain from the Commission the non-confidential versions of all documents mentioned in the grounds, access to all documents on the Commission's file, without any redactions

should be provided to a limited number of specified external legal or economic counsel or external technical experts, on behalf of the undertaking under investigation, under terms to be set out in a Commission decision. This access should be limited in certain situations, including when the disclosure of certain documents would harm their provider or where other interests prevail.

- (12) Pursuant to Article 42(4) of Regulation (EU) 2022/2560, when granting access to the file, the Commission should ensure the protection of business secrets and other confidential information. It is therefore necessary to set out detailed rules that will enable the Commission to ask persons and undertakings that submit or have submitted information, including documents, to identify business secrets or confidential information in their submissions or with regard to information in a summary notice or a decision, as well as enable the Commission to decide on the treatment of certain information in case of disagreement on confidentiality.
- (13) Since notifications set in motion the legal time limits laid down in Regulation (EU) 2022/2560, the conditions governing such time limits and the time when notifications become effective should also be determined. In particular, the beginning and end of time limits and the circumstances suspending the running of such limits should be determined.
- (14) Transmission of documents to and from the Commission should in principle take place through digital means, considering developments in information and communication technology and the environmental benefit of such transmissions. In particular, this should apply, pursuant to Article 47(1) points (a), (b) and (h) of Regulation (EU) 2022/2560, to notifications, responses to requests for information, observations on the grounds on which the Commission intends to adopt its decision addressed to the undertaking under investigation, as well as commitments offered by the notifying parties.
- (15) In the interest of transparency and legal certainty, this Regulation should enter into force prior to the start of application of Regulation (EU) 2022/2560.

HAS ADOPTED THIS REGULATION:

## CHAPTER I

### SCOPE AND DEFINITIONS

#### *Article 1*

#### **Subject matter and scope**

In accordance with Article 47(1) of Regulation (EU) 2022/2560, this Regulation lays down detailed arrangements in relation to:

- (1) the form, content and procedural details of notifications of concentrations;
- (2) the form, content and procedural details of notifications of foreign financial contributions and declaration of no foreign financial contribution in the context of public procurement procedures;
- (3) procedural details for oral statements pursuant to Article 13(7), Article 14(2), point (c) and Article 15 of Regulation (EU) 2022/2560;
- (4) detailed rules on disclosure, access to file and confidential information pursuant to Article 42 and Article 43 of Regulation (EU) 2022/2560;
- (5) the form, content and procedural details of transparency requirements;
- (6) detailed rules on the calculation of time limits;
- (7) the procedural details and time limits for proposing commitments under Article 25 and 31 of Regulation (EU) 2022/2560.

## Article 2

### Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'Notifying parties' for the purpose of notifications of concentrations means persons or undertakings required to submit a notification pursuant to Article 21(3) of Regulation (EU) 2022/2560.
- (2) 'Other persons involved' for the purpose of notifications of concentrations mean persons involved in the proposed concentration other than the notifying parties, such as the seller and the undertaking or part of the undertaking that is the target of the concentration.
- (3) 'Notifying parties' for the purpose of notifications and declarations regarding foreign financial contributions in public procurement' means all economic operators, groups of economic operators, main subcontractors and main suppliers covered by the notification obligation in accordance with Article 29(5) of Regulation (EU) 2022/2560.
- (4) 'Working days' means all days other than Saturdays, Sundays, and Commission holidays as published in the *Official Journal of the European Union*.

## CHAPTER II

### NOTIFICATIONS

## Article 3

### Persons entitled to submit notifications and declarations

1. Notifications of concentrations pursuant to Article 21 of Regulation (EU) 2022/2560 shall be submitted by the notifying parties as referred in Article 2, point (1). Each notifying party shall be responsible for the correctness of the information provided by it.
2. Notifications and declarations in public procurement procedures shall be submitted to the contracting authority or contracting entity by the economic operator, or, in the case of groups of economic operators, main subcontractors and main suppliers, the main contractor or main concessionaire, referred to in Article 29(6) of Regulation (EU) 2022/2560 on its behalf and on behalf of any and all notifying parties as referred to in Article 2, point (3). Each notifying party shall only be responsible for the correctness of information linked to the foreign financial contributions that have been granted to it.
3. Where notifications or declarations are signed by authorised external representatives of persons or of undertakings, such representatives shall produce written proof that they are authorised to act.

## Article 4

### Prior notification of concentrations

1. Notifications of concentrations pursuant to Article 21 of Regulation (EU) 2022/2560 shall be submitted using the form for notifying concentrations set out in Annex I. Joint notifications pursuant to Article 21(3) of Regulation (EU) 2022/2560 shall be submitted on a single form.
2. The form for notifying concentrations and all relevant supporting documents shall be submitted to the Commission in accordance with Article 25.
3. Notifications shall be submitted in one of the official languages of the Union. Unless the Commission and the notifying parties agree otherwise, the language of the notification shall also be the language of the proceedings, as well as that of any subsequent administrative proceedings before the Commission under Regulation (EU) 2022/2560 relating to the same concentration. Supporting documents shall be submitted in their original language. Where the original language of a document is not one of the official languages of the Union, a translation into the language of the proceedings shall be attached.

4. The Commission may, upon written request, dispense a requesting notifying party with the obligation to provide any information in the notification form set out in Annex I, including documents, or with any other requirement in the notification form related to this information.
5. The Commission shall without delay acknowledge in writing to the notifying parties receipt of the notification and of any reply to a letter sent by the Commission pursuant to Article 6(2) and (3).

#### Article 5

### **Notifications and declarations of foreign financial contributions in the context of public procurement procedures**

1. Notifications of foreign financial contributions in the context of public procurement procedures shall be submitted using the form set out in Annex II on one form containing information regarding all of the notifying parties related to one tender or request to participate, to the contracting authority or contracting entity in charge of the relevant public procurement procedure in line with Article 29(1) of Regulation (EU) 2022/2560.
2. Where, in public procurement procedures meeting the thresholds in Articles 28(1)(a) and 28(2) of Regulation (EU) 2022/2560, no notifiable foreign financial contributions in the last 3 years have been granted by a third country to the notifying parties, those parties must submit, instead of a notification, a declaration. The declaration must be submitted in the manner prescribed by heading 7 of the Introduction and Section 7 of Annex II on one form, to the contracting authority or contracting entity in charge of the relevant public procurement procedure. In accordance with Articles 4(3) and 29(1) of Regulation (EU) 2022/2560, foreign financial contributions the total amount of which per third country is lower than the amount of *de minimis* aid as defined in Article 3(2), first subparagraph, of Regulation (EU) No 1407/2013 over the consecutive period of three years preceding the declaration do not have to be reported in the declaration.
3. The notification, including all relevant supporting documents, or the declaration shall be transferred by the contracting authority or contracting entity to the Commission in accordance with Article 26.
4. Notifications and declarations shall be submitted to the contracting authority or contracting entity in one of the official languages of the Union. Unless the Commission and the notifying parties agree otherwise, the language of the notification or declaration shall also be the language of the proceeding, as well as that of any subsequent administrative proceedings before the Commission under Regulation (EU) 2022/2560 relating to the same public procurement procedure. Supporting documents shall be submitted in their original language. Where the original language of any document is not one of the official languages of the Union, a translation into the language of the proceedings shall be attached.
5. The Commission may, upon written request by the notifying parties, and informing the contracting authority or contracting entity in charge of the public procurement procedure, dispense a requesting notifying party with the obligation to provide any information in the notification form set out in Annex II, including documents, or with any other requirement in the notification form related to that information.
6. The Commission shall without delay acknowledge the receipt of the notification or declaration and of any reply to a letter sent by the Commission pursuant to Article 7(1) and (3), in writing to the contracting authority or contracting entity in charge of the public procurement procedure, with a copy of the acknowledgment sent to the notifying parties or their authorised external representatives.

#### Article 6

### **Effective date of notification in concentrations**

1. Pursuant to Article 24(1) of Regulation (EU) 2022/2560, the effective date of a notification shall be the date on which the Commission receives a complete notification.

2. Where the Commission finds that the information, including documents, contained in the notification is incomplete, the Commission shall inform the notifying parties or their authorised external representatives in writing without delay. In such cases, the notification shall become effective on the date on which the complete information is received by the Commission.

3. After notification, the notifying parties shall communicate to the Commission without delay any relevant information, including material changes in the facts, which the notifying parties would have had to notify if they had known or ought to have known that information at the time of notification. Where that information could have a significant effect on the Commission's assessment of the notified concentration, the Commission may consider the notification to become effective only on the date on which it receives the information concerned. The Commission shall inform the notifying parties or their representatives of this in writing without delay.

4. For the purposes of this Article, the provision of incorrect or misleading information shall be considered as rendering the notification incomplete.

#### *Article 7*

### **Effective date of notifications and declarations of foreign financial contributions in the context of public procurement procedures**

1. In open public procurement procedures within the meaning of Article 27 of Directive 2014/24/EU of the European Parliament and of the Council <sup>(2)</sup>, notifications and declarations shall become effective on the date on which they are received by the Commission. In multi-stage public procurement procedures, a notification or declaration submitted at the stage of the submission of the request to participate as well as the updated notification or updated declaration submitted at the stage of the submission of the final tender according to Article 29(1), last sentence, of Regulation (EU) 2022/2560, shall become effective on the date on which they are received by the Commission. However, where the Commission finds that the information, including documents, contained in the received notification or declaration is incomplete, the Commission shall inform the notifying parties or their authorised external representatives in writing without delay. In such cases, the notification or declaration shall become effective on the date on which the complete information pursuant to Article 29(4) of Regulation (EU) 2022/2560 is received by the Commission.

2. Where the relevant contracting authority or contracting entity exercises its rights pursuant to Article 56(3) of Directive 2014/24/EU or Article 76(4) of Directive 2014/25/EU of the European Parliament and of the Council <sup>(3)</sup>, to ask for clarifications of the notification, declaration, updated notification or updated declaration according to Article 29(1), last sentence, and Article 29(3) of Regulation (EU) 2022/2560, and decides to reject the tender or request to participate for lack of clarifications where not duly provided, the notification or declaration shall be considered not to have been made nor transferred to the Commission.

3. After the submission of a notification, declaration, updated notification or updated declaration, the notifying parties shall communicate to the Commission without delay any relevant new information, including changes in the facts, which the notifying parties would have had to notify if they had known or ought to have known that information at the time of the submission of the complete notification or declaration or updated notification or updated declaration. Where that information could have a significant effect on the Commission's assessment, the Commission may consider the notification, declaration, updated notification or updated declaration to become effective only on the date on which it receives the relevant information. The Commission shall inform the notifying parties of notifications in the context of public procurement procedures or their external representatives, as well as the relevant contracting authority or contracting entity of the date of effectiveness in writing and without delay.

<sup>(2)</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

<sup>(3)</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

4. For the purposes of this Article, and without prejudice to Articles 17, 29 and 33 of Regulation (EU) 2022/2560, the provision of incorrect or misleading information shall be considered as rendering the notification incomplete.

### CHAPTER III

## INVESTIGATION BY THE COMMISSION

### *Article 8*

#### **Time limit for submission of comments following an opening of an in-depth investigation**

1. When the Commission opens an in-depth investigation pursuant to Article 10(3) of Regulation (EU) 2022/2560, the time limit within which the undertaking under investigation, any other natural or legal person, Member States and the third country that granted the foreign subsidy may submit their comments in writing shall be fixed by the Commission and shall normally not exceed one month from the date on which the undertaking under investigation has been informed about the decision, or from the date of publication of the summary notice of the decision in the *Official Journal of the European Union* in all other cases. Comments shall be submitted in accordance with Articles 25 and 26.
2. In duly justified cases, the Commission may extend the limit set out in paragraph 1.
3. Where the submission includes confidential information, the submitting person shall provide a non-confidential version of the submission at the same time as the confidential version.

### *Article 9*

#### **Interviews**

1. Where the Commission interviews a person in accordance with Article 13(7) of Regulation (EU) 2022/2560, the Commission shall, at the beginning of the interview, state the legal basis and the purpose of the interview, and inform the person interviewed that it will document the interview.
2. An interview conducted pursuant to Article 13(7) of Regulation (EU) 2022/2560 may be documented in any form.
3. A copy of the documented form of the interview shall be made available to the person interviewed for comments within a time limit set by the Commission.

### *Article 10*

#### **Oral statements during inspections**

1. Where officials or other accompanying persons authorised by the Commission ask authorised external representatives or members of staff of an undertaking or association of undertakings for explanations pursuant to Article 14(2), point (c) or Article 15 of Regulation (EU) 2022/2560, those explanations may be documented in any form.
2. A copy of any documentation made pursuant to paragraph 1 shall be made available to the undertaking or association of undertakings concerned after the inspection.
3. Where a member of staff of an undertaking or association of undertakings who is not or was not authorised by the undertaking or by the association of undertakings to provide explanations on behalf of the undertaking or association of undertakings has provided explanations to the Commission, the Commission shall set a time limit within which the undertaking or the association of undertakings may communicate to the Commission any change to the explanations provided by such member of staff. The changes shall be added to the explanations as documented pursuant to paragraph 1.

## Article 11

### **Information from the contracting authorities and contracting entities in charge of public procurement procedures**

1. The obligation of the Member States pursuant to Article 13(5) of Regulation (EU) 2022/2560 to provide the Commission, upon its request with all necessary information to carry out investigations under Regulation (EU) 2022/2560 extends, in particular, to the contracting authorities and contracting entities in charge of the relevant public procurement procedures that have information relevant to the investigation.
2. The relevant contracting authority or contracting entity shall transfer to the Commission with the notification the copies of the documents used in the preparation of the procurement documents, including, if available, any research and the internal budget for the procurement, as well as the copies of any other documents the relevant contracting authority or contracting entity may consider crucial for the investigation. Where the notifying parties submit information under Section 4 of Annex II, the relevant contracting authority or contracting entity shall also forward the copies of all of the submitted tenders relating to the public procurement procedure in question. Where the tenders have not yet been submitted or are not available at the time of the notification, the copies shall be transferred to the Commission as soon as they become available. Where the relevant contracting authority or contracting entity does not or is not able to transfer to the Commission the copies of all the documents relevant for the investigation, the Commission shall request it to transfer the copies of the specific documents relevant to the Commission's investigation.

## Article 12

### ***Submission of information on unduly advantageous tender***

1. To the extent not already provided by the notifying parties in their notification submitted pursuant to Article 29 of Regulation (EU) 2022/2560, justifications and related supporting documents listed in the form set out in Annex II, related to the assessment of the unduly advantageous nature of a tender, shall be submitted to the Commission according to the time limits and format specified in Article 8 and may be submitted during the preliminary review.
2. Where the notifying parties decide to make use of the possibility to submit justifications, they shall accompany this submission with all the related supporting documents listed in the form set out in Annex II in order to substantiate their claim.
3. When providing supporting documents, the undertaking under investigation shall identify any information that it considers to be confidential, shall duly justify such confidentiality claim, and shall provide a separate non-confidential version.

## CHAPTER IV

### **COMMITMENTS, TRANSPARENCY AND REPORTING**

## Article 13

### **Time limits for the submission of commitments under notified concentrations**

1. With respect to concentrations notified to the Commission pursuant to Article 21 of Regulation (EU) 2022/2560, commitments offered for the purposes of a decision to be adopted pursuant to Article 25(3), point (a) of Regulation (EU) 2022/2560 shall be submitted to the Commission at the latest 65 working days from the date on which the in-depth investigation was initiated pursuant to Article 25(2) of Regulation (EU) 2022/2560.
2. Where, pursuant to Article 24(4) of Regulation (EU) 2022/2560 the time limit for the adoption of a decision pursuant to Article 25(3) of Regulation (EU) 2022/2560 is extended, the time limit of 65 working days for the submission of commitments shall automatically be extended by the same number of working days.

3. In exceptional circumstances, the Commission may consider commitments even though they have been offered after the expiry of the relevant time limit for their submission set out in this Article. In deciding whether to consider commitments offered in such circumstances, the Commission shall have particular regard to the need to comply with the committee procedure referred to in Article 48(2) of Regulation (EU) 2022/2560.

#### *Article 14*

### **Time limits for the submission of commitments in investigations in the context of public procurement procedures**

1. With respect to foreign financial contributions notified to the Commission in the context of public procurement procedures pursuant to Article 29(1) of Regulation (EU) 2022/2560, commitments offered by the economic operators concerned pursuant to Article 31(1) of Regulation (EU) 2022/2560 shall be submitted to the Commission within not more than 50 working days from the date on which the in-depth investigation was initiated. Depending on their scope, and after consultation with the contracting authority or contracting entity, the commitments received by the Commission may be considered to constitute a duly justified exceptional case for extending the time limit for adopting a decision to close the in-depth investigation within the meaning of Article 30(5) of Regulation (EU) 2022/2560.

2. In exceptional circumstances, the Commission may consider commitments offered after the expiry of the time limit laid down in paragraph 1. In deciding whether to consider commitments offered in such circumstances, the Commission shall have particular regard to the need to comply with the committee procedure referred to in Article 48(2) of Regulation (EU) 2022/2560.

#### *Article 15*

### **Procedure for the submission of commitments**

1. The commitments offered by the undertaking under investigation shall be submitted to the Commission in accordance with Article 25 for a decision under Article 25(3), point (a) of Regulation (EU) 2022/2560 or Article 26 for a decision under Article 31(1) of Regulation (EU) 2022/2560.

2. When offering commitments, the undertaking under investigation shall at the same time identify any information which it considers to be confidential, shall duly justify such confidentiality claim, and shall provide a separate non-confidential version of the commitments.

3. In proceedings under Chapters 3 and 4 of Regulation (EU) 2022/2560, commitments shall be signed by the notifying parties, as well as by any other persons involved on whom the commitments impose obligations.

#### *Article 16*

### **Transparency and reporting**

Where appropriate, the Commission may, by decision made following an in-depth investigation pursuant to Article 11 of Regulation (EU) 2022/2560, impose transparency and reporting obligations on an undertaking pursuant to Article 7(5) and Article 8 of Regulation (EU) 2022/2560. Such obligations may concern the provision of information relating to any of the following situations:

- (a) foreign financial contributions received during a specified period of time starting on the day following the date of adoption of the decision imposing that obligation;
- (b) the participation in concentrations or public procurement procedures (where the undertaking under investigation submits a tender in an open procedure or a request to participate in a multi-stage public procurement procedure) during a specified period of time starting on the day following the date of adoption of the decision imposing that obligation;

- (c) the implementation of a decision with commitments adopted pursuant to Article 11(3), Article 25(3), point (a) or Article 31(1) of Regulation (EU) 2022/2560, of a decision with redressive measures adopted pursuant to Article 11(2) of Regulation (EU) 2022/2560, of a decision prohibiting a concentration adopted pursuant to Article 25(3), point (c) of Regulation (EU) 2022/2560, or of a decision prohibiting the award of the contract adopted pursuant to Article 31(2) of Regulation (EU) 2022/2560.

## CHAPTER V

### SUBMISSION OF OBSERVATIONS

#### *Article 17*

##### **Submission of observations**

1. When the Commission, pursuant to Article 42(1) of Regulation (EU) 2022/2560, informs the undertaking under investigation of the grounds on which it intends to adopt its decision, the Commission shall set a time limit of no less than 10 working days within which that undertaking may submit its observations in writing. The Commission shall not be obliged to take account of written submissions received after the expiry of that time limit.
2. The undertaking under investigation shall submit any observations in writing as well as any relevant documents attesting to the facts set out in those observations to the Commission in accordance with Article 25 and Article 26.
3. Where the Commission, pursuant to Article 42(2) of Regulation (EU) 2022/2560, adopts a provisional decision on interim measures, the Commission shall set a time limit within which the undertaking under investigation may submit its observations on that decision in writing. Once the undertaking under investigation has submitted its observations, the Commission shall take a final decision on the interim measures repealing, amending or confirming the provisional decision. Where the undertaking under investigation has not submitted observations in writing within the time limit set by the Commission, the provisional decision shall become final with the expiry of that time limit.
4. Where appropriate and upon reasoned request made by the undertaking under investigation before the expiry of the original time limit, the Commission may, extend time limits set in accordance with paragraphs 1 and 3.

## CHAPTER VI

### USE OF INFORMATION AND TREATMENT OF CONFIDENTIAL INFORMATION

#### *Article 18*

##### **Use of information by the Commission**

1. Pursuant to Article 43(1) of Regulation (EU) 2022/2560 a provider of information may agree that the Commission be entitled to use information acquired pursuant to that Regulation for purposes other than those for which the information was originally acquired by the Commission.
2. If the information provider provides a waiver to the Commission pursuant to Article 43(1) Regulation (EU) 2022/2560, the information provider shall indicate which specific information it allows being used for purposes other than those for which the information was acquired and provide reasons why that information would be relevant for those other purposes, including in the application of other Union acts.

3. If the Commission requests the information provider to provide a waiver pursuant to Article 43(1) Regulation (EU) 2022/2560 the Commission shall specify the information covered by that request and the purposes for which it intends to use that information. The use of that information by the Commission shall not go beyond the purposes indicated by the Commission and agreed by the provider.

#### Article 19

### Identification and protection of confidential information

1. Unless otherwise provided for in Article 20 of this Regulation and Article 42 of Regulation (EU) 2022/2560 and without prejudice to paragraph 6, the Commission shall not disclose nor give access to information, including documents, in so far as it contains business secrets or other confidential information.

2. When requesting information pursuant to Article 13 of Regulation (EU) 2022/2560, interviewing a person pursuant to Article 13(7) of Regulation (EU) 2022/2560, or asking for oral explanations during inspections in accordance with Article 14 and Article 15 of Regulation (EU) 2022/2560, the Commission shall inform such persons, undertakings or associations of undertakings that by providing information to the Commission, they agree that access to that information may be granted pursuant to Article 20. Where the Commission otherwise receives information from information providers, it shall inform these information providers that access to the information they provide may be granted pursuant to Article 20.

3. Without prejudice to Article 8 and Article 15, the Commission may require, within a specified time limit, information providers that provide documents or other information pursuant to Regulation (EU) 2022/2560:

- (a) to identify the documents or parts of documents, or other information, which they consider to contain business secrets or other confidential information;
- (b) to identify the persons in relation to which these documents or other information are considered to be confidential;
- (c) to substantiate their claims for business secrets and other confidential information for each document or part of document, or other information;
- (d) to provide the Commission with a non-confidential version of the documents or parts of documents, or other information, in which the business secrets and other confidential information are redacted in a clear and intelligible manner;
- (e) to provide a concise, non-confidential and clear description of each piece of redacted information.

4. The Commission shall require an undertaking under investigation to identify, within a specified time limit, the parts of a summary notice pursuant to Article 40 of Regulation (EU) 2022/2560 or of a decision pursuant to Article 11, Article 25 and Article 31 of Regulation (EU) 2022/2560, that it considers to contain business secrets or other confidential information before the summary notice or the decision is published. Where business secrets or other confidential information are identified, the undertaking under investigation shall justify that identification within the time limit set by the Commission.

5. Where an information provider or undertaking under investigation fails to identify the information that it considers to be confidential in accordance with the requirements laid down in paragraphs 3 and 4, the Commission may assume that the information concerned does not contain confidential information.

6. If the Commission considers that certain information that is claimed confidential by an information provider or by the undertaking under investigation may be disclosed, either because this information does not constitute a business secret or other confidential information, or because there is an overriding interest in its disclosure, it shall inform the information provider or the undertaking under investigation of its intention to disclose such information. Should the information provider or the undertaking under investigation object within 5 working days after it has been informed of the Commission's intentions, the Commission may adopt a decision specifying the date after which the information will be disclosed or, in the case of paragraph 4, published in the summary notice or decision. This date shall not be less than 5 working days from the date of notification of the Commission's decision. The decision shall be notified to the natural or legal person concerned.

7. This Article shall not prevent the Commission from using and disclosing to the extent necessary information showing the existence of a distortive foreign subsidy.

## CHAPTER VII

### ACCESS TO FILE

#### *Article 20*

#### **Access to the file of the Commission and use of documents**

1. After the Commission informs the undertaking under investigation of the grounds on which the Commission intends to adopt a decision, the undertaking under investigation may request access to the Commission's file pursuant to Article 42(4) of Regulation (EU) 2022/2560.
2. The right of access to the file of the Commission shall not extend to:
  - (a) internal documents of the Commission;
  - (b) internal documents of the authorities of Member States or third countries, including competition authorities and contracting authorities or contracting entities;
  - (c) correspondence between the Commission and the authorities of Member States or third countries, including competition authorities and contracting authorities or contracting entities;
  - (d) correspondence between the authorities of Member States and between Member States and third countries.
3. When providing access to the file, the Commission shall provide the undertaking under investigation with a non-confidential version of all documents mentioned in the grounds on which the Commission intends to adopt a decision.
4. Without prejudice to paragraphs 2 and 5 the Commission shall also provide access to all documents on its file, without any redactions for confidentiality, under terms of disclosure to be set out in a Commission's decision. The terms of disclosure shall be determined in accordance with the following:
  - (a) Access to documents under this paragraph shall only be granted to a limited number of specified external legal and economic counsel and external technical experts engaged by the undertaking under investigation and whose names have been communicated to the Commission in advance.
  - (b) Specified external legal and economic counsel and external technical experts must be undertakings, employees of undertakings or in a situation comparable to that of employees of undertakings. All of them shall be bound by the terms of disclosure.
  - (c) Persons listed as specified external legal and economic counsel and external technical experts shall not at the date of the Commission's decision setting out the terms of disclosure be in an employment relationship with or as part of the management of the undertaking under investigation or in a situation comparable to that of an employee or a manager of the undertaking under investigation. Should the specified external legal or economic counsel, or external technical expert subsequently enter into such a relationship with the undertaking under investigation, either during the investigation or during the 3 years following the end of the Commission's investigation, the specified external legal or economic counsel or external technical expert and the undertaking under investigation shall without delay inform the Commission about the terms of such relationship. The specified external legal or economic counsel or external

technical expert shall also provide the Commission with an assurance that they no longer have access to information or documents on the file accessed pursuant to this paragraph, which were not made available to the undertaking under investigation by the Commission. They shall also provide assurances to the Commission that they will continue to comply with the requirements referred to in points (d) and (e) of this paragraph.

- (d) Specified external legal and economic counsel and external technical experts shall not disclose any of the documents provided or their content to any natural or legal person that is not bound by the terms of disclosure
- (e) Specified external legal and economic counsel and external technical experts shall not use any of the documents provided or their content other than for the purposes referred to in paragraph 10 below.

5. The Commission shall specify, in the terms of disclosure, the technical means of the disclosure and its duration. Disclosure may be made by electronic means to the specified legal and economic counsel and technical experts or (for some or all documents) only at the Commission's premises. In exceptional circumstances, the Commission may decide not to grant access under the terms of disclosure referred to in paragraph 4 to certain documents or to grant access to partly redacted documents if it determines that the harm that the information provider would likely suffer from disclosure under the terms of disclosure would, on balance, outweigh the importance of the disclosure for the exercise of the rights of defence. Without prejudice to paragraph 2, the Commission will perform a similar assessment on the importance of disclosure when it considers whether it needs to disclose or partly disclose correspondence between the Commission and public authorities of the Member States or of third countries and other types of sensitive documents provided by the public authorities of Member States or of third countries. Prior to the disclosure of such correspondence or documents, the Commission shall consult the authorities of the Member State or of the third country.

6. The specified external legal and economic counsel and external technical experts referred to in paragraph 4, letter (a) may, within one week of receiving access to the file under the terms of disclosure, make a reasoned request to the Commission for access to a non-confidential version of any document on the Commission's file not already provided to the undertaking under investigation under paragraph 3, with a view of making that document available to the undertaking under investigation. Or they may make a reasoned request for an extension of the terms of disclosure to additional specified external legal and economic counsel or external technical experts. Such additional access to non-confidential version of documents or extension to additional individuals may only be granted exceptionally, and provided that it is shown that it is essential for the proper exercise of the rights of defence of the undertaking under investigation.

7. For the purposes of applying paragraphs 5 or 6, the Commission may request that the information provider that submitted the relevant documents provide a non-confidential version of the documents pursuant to Article 19(3).

8. If the Commission considers that any of the requests under paragraph 6 is well-founded in view of the need to ensure that the undertaking under investigation is in a position to exercise its rights of defence effectively, the Commission shall either make a non-confidential version of the document available to the undertaking under investigation or adopt a decision extending the terms of disclosure for the documents in question.

9. At any time during the procedure, the Commission may instead of – or in combination with – the method of granting access to file pursuant to paragraph 4 above, give access to some or all documents redacted pursuant to Article 19(3) in order to avoid a disproportionate delay or administrative burden.

10. Information obtained through access to the file shall only be used for the purposes of the relevant proceedings for the application of Regulation (EU) 2022/2560.

## CHAPTER VIII

## TIME LIMITS

## Article 21

**Time limits**

1. Time limits provided for in, or set by the Commission pursuant to, Regulation (EU) 2022/2560 or this Regulation shall be calculated in accordance with Regulation (EEC, Euratom) No 1182/71 of the Council <sup>(\*)</sup>, and the specific rules set out in paragraph 2 of this Article and Article 22. In case of conflict, the provisions of this Regulation shall prevail.
2. Time limits shall begin on the working day following the event to which the relevant provision of Regulation (EU) 2022/2560 or this Regulation refers.

## Article 22

**Expiry of time limits**

1. A time limit calculated in working days shall expire at the end of its last working day.
2. A time limit set by the Commission in terms of a calendar date shall expire at the end of that day.

## Article 23

**Suspension of time limits in concentrations**

1. The Commission may suspend the time limits referred to in Article 24(1), points (a) and (b) of Regulation (EU) 2022/2560, pursuant to Article 24(5) of Regulation (EU) 2022/2560, or, on any of the following grounds:
  - (a) information which the Commission has requested pursuant to Article 13(2) Regulation (EU) 2022/2560 from the notifying parties or any other persons involved is not provided or not provided in full within the time limit fixed by the Commission;
  - (b) information which the Commission has requested pursuant to Article 13(3) Regulation (EU) 2022/2560 from other undertakings or associations of undertakings is not provided or not provided in full within the time limit fixed by the Commission owing to circumstances for which one of the notifying parties or any other persons involved is responsible;
  - (c) one of the notifying parties or any other persons involved has refused to submit to an inspection to be conducted by the Commission on the basis of Article 14(1) and ordered by decision pursuant to Article 14(3) of Regulation (EU) 2022/2560 or to cooperate in the carrying out of such an inspection in accordance with Article 14(2) of Regulation (EU) 2022/2560;
  - (d) the notifying parties have failed to inform the Commission of relevant information, including changes in the facts of the kind referred to in Article 6(3).
2. Where the Commission, pursuant to paragraph 1, suspends a time limit referred to in Article 24(1), points (a) and (b) of Regulation (EU) 2022/2560, the time limit shall be suspended in the cases referred to in:
  - (a) points (a) and (b) of paragraph 1, for the period between the expiry of the time limit set in the request for information, and the receipt of the complete and correct information required, or the moment when the Commission informs the notifying parties or any other persons involved that, in light of the results of its ongoing review or market developments, the information requested is no longer necessary;

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<sup>(\*)</sup> Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

- (b) point (c) of paragraph 1, for the period between the unsuccessful attempt to carry out the inspection and the actual completion of the inspection ordered by decision, or the moment when the Commission informs the notifying parties or any other persons involved that, in light of the results of its ongoing investigation or market developments, the inspection ordered is no longer necessary;
  - (c) point (d) of paragraph 1, for the period between the time the Commission should have been informed of relevant information, including changes in the facts, and the receipt of the complete and correct information, or the moment when the Commission informs the notifying parties that, in light of the results of its ongoing investigation or market developments, the information is no longer necessary.
3. The suspension of the time limit shall begin on the working day following the date on which the event causing the suspension occurred. It shall expire at the end of the day on which the reason for suspension is removed. Where such a day is not a working day, the suspension of the time limit shall expire at the end of the next working day.
4. The Commission shall process within a reasonable time all the data it has received in the framework of its investigation that could allow it to deem that information requested or an inspection ordered is no longer necessary, within the meaning of paragraph 2, points (a), (b) and (c).

#### Article 24

### **Suspension of time limits during preliminary reviews in the context of public procurement procedures**

Where the Commission suspends the time limit for the preliminary review pursuant to Article 30(6) of Regulation (EU) 2022/2560, that suspension shall begin on the working day following the expiry of the time limit of 20 working days. It shall expire at the end of the day on which the complete updated notification has been submitted to the Commission. Where such a day is not a working day, the suspension of the time limit shall expire at the end of the next working day.

#### CHAPTER IX

### **TRANSMISSION AND SIGNATURE OF DOCUMENTS**

#### Article 25

### **Transmission and signature of documents in concentrations**

1. Transmission of documents to and from the Commission pursuant to Regulation (EU) 2022/2560 and this Regulation shall take place through digital means, except where the Commission exceptionally allows for the use of the means identified in paragraphs (6) and (7).
2. Where a signature is required, documents submitted to the Commission through digital means shall be signed using at least one Qualified Electronic Signature (QES) complying with the requirements set out in Regulation (EU) No 910/2014 of the European Parliament and of the Council <sup>(<sup>5</sup>)</sup>.
3. Technical specifications regarding the means of transmission and signature may be published in the *Official Journal of the European Union* and made available on the website of the Commission's Directorate-General for Competition.

<sup>(5)</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

4. With the exception of the form included in Annex I, all documents transmitted through digital means to the Commission on a working day shall be deemed to have been received on the day they were sent, provided that an acknowledgement of receipt shows in its timestamp that they were received that day. The form included in Annex I transmitted through digital means to the Commission on a working day shall be deemed to have been received on the day it were sent, provided that an acknowledgement of receipt shows in its timestamp that it were received that day before or during the opening hours indicated on DG Competition's website. The form included in Annex I transmitted through digital means to the Commission on a working day after the opening hours indicated on DG Competition's website shall be deemed to have been received on the next working day. All documents transmitted electronically to the Commission outside a working day shall be deemed to have been received on the next working day.

5. Documents transmitted electronically to the Commission shall not be deemed to have been received if the documents or parts thereof:

- (a) are inoperable or unusable (corrupted);
- (b) contain viruses, malware or other threats;
- (c) contain electronic signatures the validity of which cannot be verified by the Commission.

The Commission shall inform the sender without delay if one of the circumstances referred to in (a), (b) or (c) occurs.

6. Documents transmitted to the Commission by registered post shall be deemed to have been received on the day of their arrival at the address indicated on the website of the Commission's Directorate-General for Competition.

7. Documents transmitted to the Commission by means of hand delivery shall be deemed to have been received on the day of their arrival at the address published on the website of the Commission's Directorate-General for Competition, as long as this is confirmed in an acknowledgment of receipt by the Commission.

#### Article 26

#### **Transmission and signature of documents in the context of public procurement procedures (notifications and ex officio)**

1. Transmission of documents in the context of public procurement procedures to and from the Commission pursuant to Regulation (EU) 2022/2560 and this Regulation shall take place through digital means, except where the Commission exceptionally allows for the use of the means identified in paragraphs (5) and (6).

2. In proceedings on foreign subsidies in the context of public procurement procedures, the use of a Qualified Electronic Signature (QES) complying with the requirements set out in Regulation (EU) No 910/2014 shall not be mandatory. The notification or declaration shall be signed by all notifying parties under obligation to notify in the context of notifications in public procurement.

3. Technical specifications regarding the means of transmission and signature may be published in the *Official Journal of the European Union* and made available on the website of the Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs.

4. When signing the documents and transmitting them to the Commission in the context of public procurement procedures, Article 25(4) and (5) shall apply by analogy.

5. Documents transmitted to the Commission by registered post shall be deemed to have been received on the day of their arrival at the address indicated on the website of the Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs.

6. Documents transmitted to the Commission by means of hand delivery shall be deemed to have been received on the day of their arrival at the address published on the website of the Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, as long as this is confirmed in an acknowledgment of receipt by the Commission.

## CHAPTER X

**FINAL PROVISIONS***Article 27***Entry into force**

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 July 2023.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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## ANNEX I

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## INTRODUCTION

**1. The purpose of the Form FS-CO**

- (1) This Form FS-CO specifies the information that must be provided by the notifying party(ies) when submitting a notification to the Commission of a proposed concentration in the context of the foreign subsidies control system of the Union. The foreign subsidies control system of the Union is laid down in Regulation (EU) 2022/2560 of the European Parliament and of the Council <sup>(1)</sup> and in Commission Implementing Regulation (EU) 2023/1441 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 (the 'Implementing Regulation') <sup>(2)</sup>, to which this Form FS-CO is annexed.

**2. Types of information required by the Form FS-CO**

- (2) The Form FS-CO requires the following information:

- (a) Basic information which is in principle necessary for the assessment of all concentrations (Sections 1 to 4).

<sup>(1)</sup> OJ L 330, 23.12.2022, p. 1.

<sup>(2)</sup> OJ L 177, 12.7.2023, p. 1.

- (b) Information on foreign financial contributions received by the parties pursuant to Article 20(3), point (b) of Regulation (EU) 2022/2560 (Section 5). In particular, pursuant to Section 5 of the Form FS-CO, detailed information is requested on each of the foreign financial contributions equal to or in excess of EUR 1 million granted to the parties to the concentration in the three years prior to the conclusion of the agreement, the announcement of the public bid or the acquisition of a controlling interest that may fall into *any of the categories of Article 5(1), points (a) to (d)* of Regulation (EU) 2022/2560. In relation to other foreign financial contributions, the Form FS-CO requires an overview of the various types of financial contributions equal to or in excess of EUR 1 million granted to the notifying party(ies) in the three years prior to the conclusion of the agreement, the announcement of the public bid or the acquisition of a controlling interest in accordance with the instructions provided in Table 1. The Commission may on a case-by-case basis request more detailed information on any of the types of financial contributions included in response to the questions in Section 5 and in Table 1, or on any other foreign financial contributions received by the party(ies) to the concentration. In any case, all foreign financial contributions granted to the parties to the concentration in the three years prior to the conclusion of the agreement, the announcement of the public bid or the acquisition of a controlling interest must be taken into account for the purposes of determining whether the notification threshold under Article 20(3)(b) of Regulation (EU) 2022/2560 is met, regardless of whether any information is requested about them under Section 5.
  - (c) Information necessary for assessing whether the foreign financial contributions in the concentration may distort the internal market within the meaning of Articles 4 or 5 of Regulation (EU) 2022/2560 (both in relation to the acquisition process as well as the activities that the parties to the concentration will carry out) (Section 6).
  - (d) Information on possible positive effects of the foreign subsidies (Section 7).
  - (e) Supporting documentation (Section 8).
- (3) The information required in Sections 1 to 6 and Section 8 must in principle be provided in order for a notification to be considered complete. By contrast, it is for the notifying party(ies) to decide whether to provide the information required under Section 7, which deals with information on possible positive effects of the foreign subsidies on the development of the relevant subsidised economic activity on the internal market as well as other positive effects in relation to the relevant policy objectives.
- (4) All of the information requested in the Form FS-CO is without prejudice to the possibility for the Commission to request further information in a request for information.

### 3. Information that is not reasonably available

- (5) Where specific pieces of information required by this Form FS-CO are not reasonably available to the notifying party(ies) in part or in whole, the notifying party(ies) may request that the Commission dispenses with the obligation to provide the relevant information or with any other requirement in the Form FS-CO related to that information. The request should be submitted in accordance with the instructions in recitals (9)–(11) of this Introduction.

### 4. Information that is not necessary for the Commission's examination of the case

- (6) Pursuant to Article 4(4) of the Implementing Regulation, the Commission may dispense with the obligation to provide particular information in the notification, including documents, or with any other requirements in the Form FS-CO related to this information, where the Commission considers that compliance with those obligations or requirements is not necessary for its examination of the case.
- (7) The notifying party(ies) may request that the Commission dispenses with the obligation to provide the relevant information or with any other requirement in the Form FS-CO related to this information. This request should be submitted in accordance with the instructions for waiver requests laid down in recitals (9)–(11) of this Introduction.

## 5. Pre-notification contacts and waiver requests

- (8) The notifying party(ies) is encouraged to engage in pre-notification discussions in sufficient time prior to the notification, preferably on the basis of a draft notification. The possibility to engage in pre-notification contacts is a service offered by the Commission to the notifying party(ies) on a voluntary basis in order to prepare the preliminary review of a foreign subsidy in the context of a concentration. As such, while not mandatory, pre-notification contacts can be extremely valuable to both the notifying party(ies) and the Commission in determining, among other things, the precise amount of information required in a notification, in particular as regards the information to be provided under Section 5 and in Table 1, and to ensure that the notification is complete. Moreover, pre-notification contacts may result in a reduction in the information required.
- (9) In the course of pre-notification contacts, the notifying party(ies) may request waivers to submit certain information required by this form. The Commission will consider waiver requests, provided that one of the following conditions is fulfilled:
- (a) The notifying party(ies) gives adequate reasons why the relevant information is not reasonably available. Where appropriate and to the extent possible, the notifying party(ies) should provide best estimates for the missing data, identifying the sources for these estimates or indicate where any of the requested information that is unavailable could be obtained by the Commission.
  - (b) The notifying party(ies) gives adequate reasons why the relevant information is not necessary for the examination of the case.
- (10) Waiver requests should be made during pre-notification in writing, preferably in the draft notification itself (at the beginning of the relevant Section or sub-Section). The Commission will deal with waiver requests during pre-notification in the context of the review of the draft notification.
- (11) The fact that the Commission may have accepted that particular information requested by this Form FS-CO may be omitted from a notification does not in any way prevent the Commission from requesting that information at any time during the proceedings, in particular through a request for information pursuant to Article 13 of Regulation (EU) 2022/2560.

## 6. The requirement for a correct and complete notification

- (12) As explained in recitals (2)–(4) of this Introduction, the information requested in Sections 1 to 6 and Section 8 must in principle be provided in all cases for the notification to be considered complete. All the required information must be provided in the appropriate sections and must be correct and complete.
- (13) In particular, the following should be noted:
- (a) The time period of 25 working days laid down in Article 24(1), points (a) and (b) of Regulation (EU) 2022/2560 shall begin on the working day following that of the receipt of the complete notification. This is to ensure that the Commission is able to assess the notified concentration within the strict time limits laid down in Regulation (EU) 2022/2560.
  - (b) The notifying party(ies) should verify, in the course of preparing the notification, that contact names and numbers, and in particular email addresses, provided to the Commission are accurate, relevant and up-to-date.
  - (c) Requested contact details must be provided in the format prescribed by the Commission's Directorate-General for Competition ('DG Competition') on its website. For a proper investigatory process, it is essential that the contact details are accurate. To this end, email addresses provided must be personalised and attributed to specific contact persons and consequently, general company mailboxes (e.g., info@, hello@) must be avoided. The Commission may declare the notification incomplete on the basis of inappropriate contact details.
  - (d) Supporting documentation under Section 8 must be provided together with a summary table following the format prescribed by DG Competition on its website.

- (e) In accordance with Article 6(4) of the Implementing Regulation, incorrect or misleading information in, or provided together with, the notification will be considered as rendering the notification incomplete for the purposes of determining the effective date of notification.
- (f) Under Article 26(2) of Regulation (EU) 2022/2560, the undertaking who, either intentionally or negligently, provides incorrect or misleading information, may be liable to fines of up to 1 % of their aggregate turnover. In addition, pursuant to Article 18(1)(b) of Regulation (EU) 2022/2560 the Commission may revoke its decision on a concentration where it was based on incomplete, incorrect or misleading information.

## 7. How to notify

- (14) Notifications shall be submitted in one of the official languages of the Union. The names of the notifying parties shall also be submitted in their original language. The information required by this Form FS-CO must be set out using the sections and sub-sections and, where relevant, annexing supporting documentation. The notification submitted must include a signed attestation as provided in Section 9. Where information provided in two different sections partly (or wholly) overlaps, cross-references may be used.
- (15) The notification must be signed by persons authorised by law to act on behalf of each notifying party or by one or more of the notifying party's(ies) authorised representatives. The corresponding power(s) of attorney (or written proof that they are authorised to act) must be attached to the notification. Technical specifications and instructions regarding notifications (including signatures) can be found on DG Competition's website.
- (16) In completing Sections 5, 6 and 7 of this Form FS-CO, the notifying party(ies) is invited to consider whether, in the interest of clarity, those sections are best presented in numerical order, or whether they can be grouped together for each individual foreign financial contribution (or group of foreign financial contributions).
- (17) For the sake of clarity, certain information may be put in annexes. However, it is essential that all key substantive pieces of information are presented in the body of the notification. Any annexes submitted must only be used to supplement the information supplied in the main body of the notification itself, and it must be clearly indicated in the body where supplemental information is provided in an annex.
- (18) Supporting documents are to be submitted in their original language; where this is not an official language of the Union, a translation into the language of the proceeding shall be attached (Article 4(3) of the Implementing Regulation).

## 8. Confidentiality and Personal Data

- (19) Article 339 of the Treaty on the Functioning of the European Union ("TFEU") and Article 43(2) of Regulation (EU) 2022/2560 require that the Commission, its officials and other servants do not disclose information covered by the obligation of professional secrecy that they have acquired through the application of Regulation (EU) 2022/2560. The same principle must also apply to protect confidentiality between notifying parties.
- (20) If the notifying party(ies) believe that their interests would be harmed if any of the information they are asked to supply were to be published or otherwise disclosed to other parties, they should submit this information separately with each page clearly marked 'Confidential'. The notifying party(ies) should also give reasons why this information should not be disclosed or published.
- (21) In the case of mergers or acquisitions of joint control, or in other cases where the notification is completed by more than one party, business secrets may be submitted under separate cover, and referred to in the notification as an annex. In order for a notification to be considered complete, all such annexes must be included in the notification.

- (22) Any personal data submitted in or with a notification will be processed in compliance with Regulation (EU) 2018/1725 of the European Parliament and of the Council <sup>(3)</sup>.

## 9. Definitions and instructions for the purposes of this Form FS-CO

- (23) For the purposes of this Annex, the following definitions apply:

- (a) 'Notifying party(ies)': in accordance with Article 21(3) of Regulation (EU) 2022/2560, in the case of a merger, this term refers to all the parties to the merger or, in the case of an acquisition of control, to all the undertakings or persons acquiring sole or joint control of the whole or parts of one or more undertakings.
- (b) 'Target(s)': refers to all undertakings or parts of an undertaking in which a controlling interest is being acquired (including a joint venture) or which is the subject of a public bid. This term does not include the seller(s).
- (c) 'Party/parties to the concentration': the notifying party(ies) as defined in (a) and the target as defined in (b).

- (24) Unless otherwise specified:

- (a) The term 'notifying party(ies)' includes, (i) all the undertakings that are solely or jointly, directly or indirectly, controlled by the 'notifying party(ies)' in accordance with Article 20(5) and 20(6) of Regulation (EU) 2022/2560, (ii) all the undertakings or persons that solely or jointly, directly or indirectly, control the 'notifying party(ies)', and (iii) the undertakings controlled by the undertakings referred in point (ii).
- (b) The term 'target(s)' includes all the undertakings that are solely or jointly, directly or indirectly controlled by the 'target(s)' in accordance with Article 20(5) and 20(6) of Regulation (EU) 2022/2560. Conversely, this term does not include undertakings and persons that will no longer control, solely or jointly, directly or indirectly, the 'target(s)' once the concentration has been implemented (e.g. the sellers in the case of an acquisition of control).

- (25) Any financial data requested must be provided in euro at the average exchange rates prevailing for the years or other periods in question.

## SECTION 1

### *Description of the concentration*

- 1.1. Provide an executive summary of the concentration, specifying the parties to the concentration, the acquisition process (e.g. whether the notifying party(ies) was (were) selected following a competitive process), the nature of the concentration (e.g. merger, acquisition of joint or sole control, or creation of a joint venture), the strategic and economic rationale of the concentration, and the activities of the parties to the concentration.

## SECTION 2

### *Information about the parties*

- 2.1. Information on the parties to the concentration.

For each party to the concentration provide:

- 2.1.1. the name of the undertaking (the name of the undertaking shall also be submitted in its original language);
- 2.1.2. its role in the concentration (merging party/acquiring party/target/newly created joint venture);

---

<sup>(3)</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39). See also a privacy statement relating to competition investigations at [https://ec.europa.eu/competition-policy/index/privacy-policy-competition-investigations\\_en](https://ec.europa.eu/competition-policy/index/privacy-policy-competition-investigations_en).

- 2.1.3. the name, address, telephone number and email address of, and position held by, the appropriate contact person; the address given must be an address for service to which documents and, in particular, Commission decisions and other procedural documents may be notified, and the contact person given must be deemed to be authorised to accept service;
- 2.1.4. if one or more authorised external representatives of the undertaking are appointed, the representative or representatives to which documents and, in particular, Commission decisions and other procedural documents may be notified:
  - 2.1.4.1. the name, address, telephone number and email address of, and position held by, each representative; and
  - 2.1.4.2. the written proof that each representative is authorised to act for the party to the concentration in question (based on the model Power of Attorney available on DG Competition's website).
- 2.2. Nature of each party's business.

For each party to the concentration, describe the nature of the undertaking's business.

### SECTION 3

#### ***Details of the concentration, ownership and control***

The information sought in this section may be illustrated by the use of organisation charts or diagrams to show the structure of ownership and control of the parties to the concentration before and after completion of the concentration.

- 3.1. Describe the nature of the concentration being notified by reference to the relevant criteria of Regulation (EU) 2022/2560:
  - 3.1.1. Identify the undertakings or persons that ultimately solely or jointly control the notifying party(ies), directly or indirectly, and describe the structure of ownership and control of the parties to the concentration before the completion of the concentration.
  - 3.1.2. Explain whether the proposed concentration is:
    - (i) a merger within the meaning of Article 20(1), point (a) of Regulation (EU) 2022/2560;
    - (ii) an acquisition of sole or joint control within the meaning of Article 20(1), point (b) of Regulation (EU) 2022/2560; or
    - (iii) the creation of a joint venture within the meaning of Article 20(2) of Regulation (EU) 2022/2560.
  - 3.1.3. Explain how the concentration will be implemented (for example by conclusion of an agreement, by the launch of a public bid, etc.).
  - 3.1.4. By reference to Article 21 of Regulation (EU) 2022/2560 explain which of the following have taken place at the time of notification:
    - (i) An agreement has been concluded.
    - (ii) A controlling interest has been acquired.
    - (iii) A public bid or the intention to launch a public bid has been announced; or
    - (iv) The notifying party(ies) and the sellers (as the case may be) have demonstrated a good faith intention to conclude an agreement.
  - 3.1.5. Indicate the expected date of any major events designed to bring about the completion of the concentration.
  - 3.1.6. Explain the structure of ownership and control of the target or the undertaking resulting from the concentration.

- 3.2. Describe the economic rationale of the concentration.
- 3.3. State the value of the transaction (the purchase price or the value of all the assets involved, as applicable); specify whether this is paid in the form of equity, cash, or other assets. Also indicate the enterprise value of the target and explain how this enterprise value has been calculated <sup>(4)</sup>.
- 3.4. List all the sources of finance (debt, equity, cash, assets, etc.) used to fund the transaction.
- 3.5. If all or part of the acquisition is financed through debt:
- 3.5.1. indicate the lender for each debt instrument;
- 3.5.2. indicate all guarantees and collateral associated to each debt instrument.
- 3.6. If all or part of the acquisition is financed through equity:
- 3.6.1. indicate the identity of the undertakings subscribing/purchasing the shares;
- 3.6.2. indicate any conditions attached to the equity financing.
- 3.7. Confirm whether the notifying party(ies) has made any acquisitions of control during the last three years which have been notified to the European Commission under Regulation (EU) 2022/2560 or under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings <sup>(5)</sup>.
- 3.8. Provide a list of acquisitions of control made during the last three years by the notifying party(ies) which have been notified under merger control rules to a national competition authority in the Union.

#### SECTION 4

##### **Notification thresholds**

- 4.1. Provide the turnover in the Union for the preceding financial year <sup>(6)</sup> for each of the undertakings identified in Article 20(3), point (a) of Regulation (EU) 2022/2560 as relevant <sup>(7)</sup>:
- 4.1.1. In the case of a merger: for each of the merging undertakings;
- 4.1.2. In the case of an acquisition of control: the target, including the joint venture in cases of acquisition of joint control.

Turnover data must be provided by filling in the Commission's template table available on DG Competition's website.

This turnover data should be calculated in accordance with Article 22(1) of Regulation (EU) 2022/2560. In accordance with Article 22(2) of Regulation (EU) 2022/2560, where the concentration consists of the acquisition of parts, whether or not constituted as legal entities, of one or more undertakings, out of the seller's turnover, only the turnover relating to the parts which are the object of the concentration shall be taken into account.

<sup>(4)</sup> For the purposes of this Form FS-CO, enterprise value measures a company's total value, and should include in its calculation the market capitalization of the target but also short-term and long-term debt and any cash or cash equivalents on the target's balance sheet.

<sup>(5)</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).

<sup>(6)</sup> On the calculation of turnover, see Article 22 of Regulation (EU) 2022/2560.

<sup>(7)</sup> According to Article 20(3), point (a) of Regulation (EU) 2022/2560, it is necessary that at least one of the merging undertakings, the acquired undertaking or the joint venture is 'established in the Union'. 'Established in the Union' must be understood in accordance with the case law of the Court of Justice and includes the incorporation of a subsidiary in the Union, as well as a permanent business establishment in the Union (see judgments in cases C-230/14 Weltimmo, paragraphs 29, 30; C-39/13, C-40/13 and C-41/13 SCA Group Holding and Others, paragraphs 24, 25, 26, 27; and C-196/87 Steymann, paragraph 16).

- 4.2. Have the undertakings identified in Article 20(3)(b) of Regulation (EU) 2022/2560 been granted combined aggregate financial contributions of more than EUR 50 million from third countries in the three years prior to the conclusion of the agreement <sup>(8)</sup>, the announcement of the public bid, or the acquisition of a controlling interest?

☐ yes

☐ no

## SECTION 5

### **Foreign financial contributions**

- 5.1. Indicate whether each of the notifying party(ies) or the target have been individually granted in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest, any foreign financial contributions equal to or in excess of EUR 1 million that may fall into *any of the categories of Article 5(1), points (a) to (d) of Regulation (EU) 2022/2560*:

- 5.1.1. In order to determine whether a foreign financial contribution has been granted to an undertaking that was ailing within the meaning of Article 5(1)(a) of Regulation (EU) 2022/2560, please indicate whether any of the following conditions were met at any point of time in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest:

- 5.1.1.1. Is the undertaking a limited liability company, where more than half of its subscribed share capital has disappeared as a result of accumulated losses?

Notifying party(ies)

☐ yes

☐ no

Target

☐ yes

☐ no

- 5.1.1.2. Is the undertaking a company where at least some members have unlimited liability for the debt of the company, and where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses?

Notifying party(ies)

☐ yes

☐ no

Target

☐ yes

☐ no

- 5.1.1.3. Is the undertaking subject to collective insolvency proceedings or does it fulfil the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors?

Notifying party(ies)

☐ yes

☐ no

Target

☐ yes

☐ no

- 5.1.1.4. In case the undertaking in question is not an SME <sup>(9)</sup>:

- 5.1.1.4.1. has the undertaking's book debt to equity ratio been greater than 7.5 for the past two years?

and

<sup>(8)</sup> A foreign financial contribution should be considered granted from the moment the beneficiary obtains an entitlement to receive the foreign financial contribution. The actual disbursement of the foreign financial contribution is not a necessary condition for a foreign financial contribution to fall within the scope of Regulation (EU) 2022/2560.

<sup>(9)</sup> Small and medium-sized enterprises or SMEs are defined in Annex I of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

5.1.1.4.2. has the undertaking's EBITDA <sup>(10)</sup> interest coverage ratio been below 1.0 for the past two years?

Notifying party(ies)	<input type="checkbox"/> yes	<input type="checkbox"/> no
Target	<input type="checkbox"/> yes	<input type="checkbox"/> no

5.1.1.5. If the reply to any of the questions in sections 5.1.1.1 to 5.1.1.4 was 'yes' in relation to any of the parties to the concentration, please indicate whether during the period in which the undertaking in question was ailing, it received any foreign financial contributions that may have contributed to restore its long-term viability (including any temporary liquidity assistance designed to support that restoration of viability) or to keep that party afloat for the short time needed to work out a restructuring or liquidation plan.

Notifying party(ies)	<input type="checkbox"/> yes	<input type="checkbox"/> no
Target	<input type="checkbox"/> yes	<input type="checkbox"/> no

5.1.1.6. If the reply to any of the questions in sections 5.1.1.1 to 5.1.1.4 was 'yes' in relation to any of the parties to the concentration, indicate if there is a restructuring plan capable of leading to the long-term viability of that party and if this restructuring plan includes a significant own contribution by the notifying party, the target or any other party to the concentration and provide details of that plan.

5.1.1.7. If the reply to any of the questions in sections 5.1.1.1 to 5.1.1.4 was 'yes', please substantiate the answer, including references in the answer to the supporting documents that are to be provided in annexes (such documents may include, but are not limited to, the notifying party's or target's latest profit and loss account statements with balance sheets, or court decisions opening collective insolvency proceedings on the company, or documents providing evidence that the criteria for being placed under insolvency proceedings at the request of creditors under national company law are met, etc.).

5.1.2. A foreign financial contribution in the form of an unlimited guarantee for the debts or liabilities of the undertaking, namely without any limitation as to the amount or the duration of such guarantee (Article 5(1)(b)).

Notifying party(ies)	<input type="checkbox"/> yes	<input type="checkbox"/> no
Target	<input type="checkbox"/> yes	<input type="checkbox"/> no

5.1.3. An export financing measure that is not in line with the OECD Arrangement on officially supported export credits (Article 5(1)(c)).

Notifying party(ies)	<input type="checkbox"/> yes	<input type="checkbox"/> no
Target	<input type="checkbox"/> yes	<input type="checkbox"/> no

5.1.4. A foreign financial contribution directly facilitating a concentration (Article 5(1)(d)).

Notifying party(ies)	<input type="checkbox"/> yes	<input type="checkbox"/> no
Target	<input type="checkbox"/> yes	<input type="checkbox"/> no

<sup>(10)</sup> Earnings before interest, tax, depreciation and amortisation.

- 5.2. For each foreign financial contribution equal to or in excess of EUR 1 million individually granted to each of the parties to the concentration in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest that may fall into *any of the categories of Article 5(1), points (a) to (d) of Regulation (EU) 2022/2560*, provide the following information and provide supporting documents:
- 5.2.1. Form of the financial contribution (e.g. loan, tax exemption, capital injection, fiscal incentive, contributions in kind, etc.).
- 5.2.2. Third country granting the financial contribution. Specify also the granting public authority or entity.
- 5.2.3. Amount of each financial contribution.
- 5.2.4. Purpose and economic rationale for granting the financial contribution to the party.
- 5.2.5. Whether there are any conditions attached to the financial contributions as well as its use.
- 5.2.6. Describe the main elements and characteristics of those financial contributions (e.g. interest rates and duration in the case of a loan).
- 5.2.7. Explain whether the financial contribution confers a benefit within the meaning of Article 3 of Regulation (EU) 2022/2560 to the undertaking to which the foreign financial contribution has been granted or to any other party to the concentration <sup>(11)</sup>. Please explain why, with reference to the supporting documents provided under Section 8.
- 5.2.8. Explain whether the financial contribution is limited in law or in fact, within the meaning of Article 3 of Regulation (EU) 2022/2560, to certain undertakings or industries <sup>(12)</sup>. Please explain why, with reference to the supporting documents provided under Section 8.
- 5.3. Provide an overview of the foreign financial contributions equal to or in excess of EUR 1 million granted to the notifying party(ies) in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest and that do *not* fall into *any of the categories of Article 5(1), points (a) to (e) of Regulation (EU) 2022/2560* following the template and instructions provided in Table 1.

## SECTION 6

### ***Impact on the internal market of the foreign financial contributions in the concentration***

- 6.1. Does the concentration occur in the context of a structured bidding process? If so:
- 6.1.1. Provide a detailed description of the bidding process.
- 6.1.2. Provide a description of the profile of each of the other candidates of which you are aware (e.g. whether these are private equity companies or industrial undertakings).
- 6.2. Please explain what are the different business lines or activities of the target, explaining categories of products and/or services offered in each of them and to what customers. Explain whether the notifying party(ies) are active in the same or related activities or business lines and describe them.
- 6.3. For each of the business lines or activities described under Section 6.2 for the target and the notifying party(ies), please indicate:

<sup>(11)</sup> A financial contribution should be considered to confer a benefit on an undertaking if it could not have been obtained under normal market conditions. For more details on how to assess the existence of a benefit, see recital (13) of Regulation (EU) 2022/2560.

<sup>(12)</sup> The benefit should be conferred on one or more undertakings or industries. The specificity of the foreign subsidy could be established by law or in fact.

- 6.3.1. the turnover achieved at worldwide level and Union level for that business line or activity;
- 6.3.2. the percentage that the turnover achieved in the Union represents in relation to the overall turnover of the undertaking for that business line or activity.
- 6.4. For each of the financial contributions for which additional information has been provided pursuant to Section 5.2 above, please explain whether and how the financial contribution may improve the competitive position in the internal market of the parties to the concentration. When replying to this section, please make reference to the nature, amount and use or purpose of the financial contribution.
- 6.5. Indicate if the concentration triggered merger control notifications in the Union (at Union or national level) and, if so, indicate the status of each of these proceedings at the time of this notification.
- 6.6. Indicate if the concentration triggered other regulatory filings in the Union (such as foreign direct investment screening filings at national level) and, if so, please indicate the status of these proceedings at the time of the notification.

#### **Contact details**

- 6.7. Provide the contact details of the five largest competitors of the target active in the Union.
- 6.8. If the concentration triggered merger control filings in the Union (at Union level or national level), provide all the contact details of the competitors provided in the context of this/these merger control filing(s).

#### **SECTION 7**

##### ***Possible positive effects***

- 7.1. If applicable, list and substantiate any possible positive effects on the development of the relevant subsidised economic activity on the internal market. Please also list and substantiate any other positive effects of the foreign subsidy such as broader positive effects in relation to the relevant policy objectives, in particular those of the Union, and specify when and where those effects have or are expected to take place. Please provide a description of each of those positive effects.

#### **SECTION 8**

##### ***Supporting documentation***

Please provide the following for each party to the concentration:

- 8.1. Copies of all the supporting documents relating to the financial contributions that may fall into any of the categories of Article 5(1), points (a) to (d) of Regulation (EU) 2022/2560 pursuant to Section 5.1.
- 8.2. Copies of the following documents prepared by or for or received by any member of the board of management, the board of directors or the supervisory board:
  - (a) Analyses, reports, studies, surveys, presentations and any comparable documents discussing the purpose, use and economic rationale of the foreign financial contributions that may fall into any of the categories of Article 5(1), points (a) to (d) of Regulation (EU) 2022/2560. Provide the same documents prepared by or for or received by the entity granting the foreign financial contribution to the extent that they are in your possession or that they are publicly available.
  - (b) Analyses, reports, studies, surveys, presentations and any comparable documents for the purpose of assessing or analysing the concentration with respect to its rationale (including documents where the transaction is discussed in relation to potential alternative acquisitions).

- (c) In case any external advisors assisted the notifying party in a due diligence carried out on the target for the purposes of the concentration, provide summaries, conclusions or reports prepared by those advisors as part of that due diligence, as well as any documents where the value of the transaction is assessed or discussed.
- 8.3. An indication of the internet address, if any, at which the most recent annual accounts or reports of the parties to the concentration are available, or if no such internet address exists, copies of the most recent annual accounts and reports of the parties to the concentration.

## SECTION 9

**Attestation**

The notification must conclude with the following attestation which is to be signed by or on behalf of all the notifying parties:

*'The notifying party or parties confirm that, to the best of their knowledge and belief, the information given in this notification is true, correct, and complete, that true and complete copies of documents required by the Form FS-CO have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.'*

*'They are aware of the provisions of Article 26 of Regulation (EU) 2022/2560 concerning fines and periodic penalty payments.'*

Date:

[signatory 1] Name: Organisation: Position: Address: Phone number: Email: (‘e-signed’/signature]	[signatory 2 if applicable] Name: Organisation: Position: Address: Phone number: Email: (‘e-signed’/signature]
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Table 1

**Instructions to provide information concerning foreign financial contributions that do not fall into any of the categories of Article 5(1), points (a) to (e) (Section 5.3)**

- Provide an overview of the foreign financial contributions equal to or in excess of EUR 1 million granted by each third country to the notifying party(ies) in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest and that do **not** fall into any of the categories of Article 5(1), points (a) to (e) of Regulation (EU) 2022/2560 following the template and instructions below.

A. *Information to be included in the Table*

- Group the different financial contributions **per third country and per type**, such as direct grant, loan/financing instrument/repayable advances, tax advantage, guarantee, risk capital instrument, equity intervention, debt write-off, contributions provided for the non-economic activities of an undertaking (see recital 16 of Regulation (EU) 2022/2560), or other.
- Include only those countries where the estimated aggregate amount of all financial contributions granted in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest (calculated according to point (5)) is EUR 45 million or more.

4. For each type of financial contribution, provide a brief description of the purpose of the financial contributions and the granting entities.
5. Quantify the estimated aggregate amount of financial contributions granted **by each third country** in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest in the form of **ranges**, as specified in the notes to the Table below. **For the calculation of this amount**, the following considerations are relevant:
  - (a) Take into account foreign financial contributions falling into the categories of Article 5(1) of Regulation (EU) 2022/2560, and on which information has been provided under Sections 5.1 and 5.2.
  - (b) Do **not** take into account foreign financial contributions excluded according to points 6 and 7 below.
- B. *Exceptions*
6. You do **not** need to include in the Table information on the following foreign financial contributions:
  - (a) Deferrals of payment of taxes or of social security contributions, tax amnesties and tax holidays as well as normal depreciation and loss-carry forward rules that are of general application. If these measures are limited, for example, to certain sectors, regions or (types of) undertakings, they have to be included.
  - (b) Application of tax reliefs for avoidance of double taxation in line with the provisions of bilateral or multilateral agreements for avoidance of double taxation, as well as unilateral tax reliefs for avoidance of double taxation applied under national tax legislation to the extent they follow the same logic and conditions as the provisions of bilateral or multilateral agreements.
  - (c) Provision/purchase of goods/services (except financial services) at market terms in the ordinary course of business, for example the provision/purchase of goods or services carried out following a competitive, transparent and non-discriminatory tender procedure.
  - (d) Foreign financial contributions below the individual amount of EUR 1 million.
7. In the case of acquisitions of control or creations of joint ventures by an investment fund or by a legal entity controlled by or via an investment fund, you do not need to include foreign financial contributions granted to other investment funds managed by the same investment company but with a majority of different investors measured according to their entitlement to profit (or granted to portfolio companies controlled by these other funds) provided you can demonstrate that the following conditions are cumulatively met:
  - (a) The fund which controls the acquiring entity must be subject to Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers <sup>(13)</sup> or to an equivalent third country legislation in terms of prudential, organisational and conduct rules, including requirements aimed to protect investors; and
  - (b) The economic and commercial transactions between the fund which controls the acquiring entity and other investment funds (and the companies controlled by these funds) managed by the same investment company are non-existent or limited. In this regard, you must provide the Commission with evidence of any of such economic and commercial transactions which may have taken place in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest. Economic and commercial transactions include but are not limited to the sale of assets (including ownership in companies), loans, credit lines, or guarantees.

<sup>(13)</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

Party X		
Third-country	Type of financial contribution (*)	Brief description of the purpose of the financial contribution and the granting entity (**)
Country A	Type 1	
	Type 2	
	Type 3	
	Type 4	
	...	
Estimated aggregate financial contributions granted by A: EUR [...] (***)		
Country B	Type 1	
	Type 2	
	Type 3	
	Type 4	
	...	
Estimated aggregate financial contributions granted by B: EUR [...] (***)		
Country C		
...		

Note: please provide a separate table for each of the notifying parties. Third countries and, where possible, types of contributions, should be ordered by total amount of foreign financial contribution, from the highest to the lowest.

(\*) Identify the financial contributions grouping them by type: such as direct grant, loan/financing instrument/repayable advances, tax advantage, guarantee, risk capital instrument, equity intervention, debt write-off, contributions provided for the non-economic activities of an undertaking (see recital 16 of Regulation 2022/2560), or other.

(\*\*) General description of the purpose of the financial contributions included in each type and of the granting entity(ies). For instance, 'tax exemption for the production of product A and R & D activities', 'several loans with State-owned banks for purpose X', 'several financing measures with State investment agencies to cover operating expenses/for R & D activities', 'public capital injection in Company X'.

(\*\*\*) Use the following ranges: 'EUR 45-100 million', 'EUR > 100-500 million', 'EUR > 500-1 000 million', 'more than EUR 1 000 million'.

### C. Further information

- The foreign financial contributions that may be relevant for the assessment of each concentration may depend on a number of factors such as the sectors or activities involved, the type of financial contributions or other specificities of the case. In light of these specificities, the Commission may request additional information where it considers such information necessary for its assessment.

## ANNEX II

**Form FS-PP relating to the notification of financial contributions in the context of public procurement procedures pursuant to Regulation (EU) 2022/2560**

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**INTRODUCTION**

**1. The purpose of the Form FS-PP**

- (1) This Form FS-PP specifies the information that must be provided by the notifying party(ies) when submitting a notification or declaration to the Commission of foreign financial contributions in the context of a public procurement procedure covered by the foreign subsidies control system of the Union. The foreign subsidies control system of the Union is laid down in Regulation (EU) 2022/2560 of the European Parliament and of the Council <sup>(1)</sup> and in Commission Implementing Regulation (EU) 2023/1441 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 (the 'Implementing Regulation') <sup>(2)</sup>, to which this Form FS-PP is annexed.

**2. Definitions and instructions for the purposes of this Form FS-PP**

- (2) For the purposes of this Annex, the following definitions apply:

- (a) 'Notifying party(ies)' mean(s), in accordance with Article 29(5) of Regulation (EU) 2022/2560, all the economic operators, groups of economic operators, main subcontractors and main suppliers covered by the notification obligation in line with Article 29(1) of Regulation (EU) 2022/2560;

<sup>(1)</sup> OJ L 330, 23.12.2022, p. 1.

<sup>(2)</sup> OJ L 177, 12.7.2023, p. 1.

(b) 'Main contractor', within the meaning of Directives 2014/24/EU <sup>(3)</sup> and 2014/25/EU <sup>(4)</sup> of the European Parliament and of the Council, or 'main concessionaire', within the meaning of Directive 2014/23/EU of the European Parliament and of the Council <sup>(5)</sup>, is the economic operator ensuring the submission of the notification or declaration on behalf of all notifying parties.

- (3) Unless otherwise specified, the term 'notifying party(ies)' includes all its subsidiary companies without commercial autonomy and all its holding companies within the meaning of Article 28(1)(b) of Regulation (EU) 2022/2560.
- (4) Any financial data requested must be provided in euro at the average exchange rates prevailing for the years or other periods in question.

### 3. Types of information required by the Form FS-PP

- (5) Where at least one of the notifying parties has received a notifiable foreign financial contribution in line with Articles 28(1) and (2) and Article 29(1) of Regulation (EU) 2022/2560, the notifying party(ies) shall, and shall only, submit a notification. The notification is submitted in one form, based on the elements outlined below.
- (6) Conversely, where none of the notifying parties have received a notifiable foreign financial contribution in line with Articles 28(1) and (2) and Article 29(1) of Regulation (EU) 2022/2560, the notifying party(ies) shall, and shall only, submit a declaration. The declaration is submitted in one form, based on the elements outlined below.
- (7) The Commission may, on a case-by-case basis, request more detailed information on any of the types of financial contributions included in response to the questions in Section 3 and in Table 1, or on any other foreign financial contributions received by the notifying party(ies). In any case, all foreign financial contribution granted to the notifying party(ies) in the three years prior to the notification must be taken into account for the purposes of determining whether the notification threshold under Article 28(1)(b) of Regulation (EU) 2022/2560 is met, regardless of whether any information is requested about them under Section 3.
- (8) The Form FS-PP requires the following information:
- (a) NOTIFICATIONS OF FOREIGN FINANCIAL CONTRIBUTIONS
- (i) In the case of a notification of foreign financial contributions under Chapter 4 of Regulation (EU) 2022/2560, all sections and their respective fields normally need to be filled in, with the exception of Section 7 (Declaration).
- (ii) Section 1 must contain a summary description of the public procurement procedure.
- (iii) Section 2 must contain information about the notifying party(ies).
- (iv) Section 3 must contain detailed information on the foreign financial contribution(s). In particular, pursuant to Section 3, detailed information is requested on each of the foreign financial contributions equal to or in excess of EUR 1 million granted to the notifying parties in the three years prior to the notification that may fall into *any of the categories of Article 5(1), points (a) to (c) and (e)* of Regulation (EU) 2022/2560. In relation to other foreign financial contributions, the Form FS-PP requires the notifying party(ies) to provide an overview of the various types of financial contributions granted to the notifying party(ies) in accordance with the instructions provided in Table 1.

<sup>(3)</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

<sup>(4)</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

<sup>(5)</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts Text with EEA relevance (OJ L 94, 28.3.2014, p. 1).

- (v) Section 4 may contain an explanation of how the tender is not unduly advantageous.
  - (vi) Section 5 may, if applicable, list and substantiate any possible positive effects of the subsidies on the development of the relevant subsidised economic activity as well as other positive effects in relation to the relevant policy objectives.
  - (vii) Section 6 lists the included supporting documents.
  - (viii) Section 8 must contain a signed attestation that the provided information is true, correct, and complete, and that the notifying party(ies) is/are aware of the provisions on fines.
- (b) DECLARATION OF NO NOTIFIABLE FOREIGN FINANCIAL CONTRIBUTIONS:
- (i) If no notifiable foreign financial contributions have been granted to the notifying party(ies) in the last three years, only Sections 1, 2, and 8 of the Form FS-PP must be filled in, as well as the specific Section 7, while the remaining sections must be left blank.
  - (ii) All of the information requested in the Form FS-PP is without prejudice of the possibility for the Commission to ask for further information in a request for information.

#### 4. Information that is not reasonably available

- (9) Where specific pieces of information required by this Form FS-PP are not reasonably available to the notifying party(ies) in part or in whole, the notifying party(ies) may request that the Commission dispenses with the obligation to provide the relevant information or with any other requirement in the Form FS-PP related to that information. The request should be submitted in accordance with the instructions in recitals (13)-(15) of this Introduction.

#### 5. Information that is not necessary for the Commission's examination of the case

- (10) Pursuant to Article 5(5) of the Implementing Regulation, the Commission may dispense with the obligation to provide particular information in the notification, including documents, or with any other requirements in the Form FS-PP related to this information, where the Commission considers that compliance with those obligations or requirements is not necessary for its examination of the case.
- (11) The notifying party(ies) may request that the Commission dispenses with the obligation to provide the relevant information or with any other requirement in the Form FS-PP related to this information. This request should be submitted in accordance with the instructions for waiver requests laid down under recitals (13)-(15) of the Introduction of this Form FS-PP.

#### 6. Pre-notification contacts and waiver requests

- (12) The notifying party(ies) is/are encouraged to engage in pre-notification discussions in sufficient time prior to the notification, preferably on the basis of a draft Form FS-PP. The possibility to engage in pre-notification contacts is a service offered by the Commission to the notifying party(ies) on a voluntary basis, in order to prepare the preliminary review of foreign subsidies in the context of a published public procurement. As such, while not mandatory, pre-notification contacts can be valuable to both the notifying party(ies) and the Commission in determining, among other things, the precise amount of information required in a notification, in particular as regards the information to be provided under Section 3 and in Table 1, and to ensure that the notification is complete. Moreover, pre-notification contacts may result in a significant reduction of the information required. Where there is more than one notifying party (as a single economic operator) or group of notifying parties (as members of the same consortium), with each notifying party or group aiming to submit a different tender in the same public procurement procedure, the pre-notification discussions must be held with each notifying party or groups thereof separately and in full confidentiality, to ensure fair competition in the public procurement procedure at stake.

- (13) In the course of pre-notification contacts, the notifying party(ies) may request waivers to submit certain information required by this form. The Commission will consider waiver requests, provided that one of the following conditions is fulfilled:
- (a) The notifying party(ies) give(s) adequate reasons why the relevant information is not reasonably available. Where appropriate and to the extent possible, the notifying party(ies) should provide best estimates for the missing data, identifying the sources for these estimates or indicate where any of the requested information that is unavailable to the notifying party(ies) could be obtained from by the Commission.
  - (b) The notifying party(ies) give(s) adequate reasons why the relevant information is not necessary for the examination of the case.
- (14) Waiver requests should be made during pre-notification in writing, preferably in the draft Notification itself (at the beginning of the relevant section or sub-section). The Commission will deal with waiver requests during pre-notification in the context of the review of the draft notification.
- (15) The fact that the Commission may have accepted that any particular information requested by this Form FS-PP may be omitted from a notification, does not in any way prevent the Commission from requesting that information at any time during the proceedings, in particular through a request for information pursuant to Article 13 of Regulation (EU) 2022/2560.

## **7. The requirement for a correct and complete notification or declaration**

- (16) The information requested in Sections 1 to 3, 6 and 8 must be provided in the case of a notification of foreign financial contributions and is therefore a requirement for a complete notification. All the required information must be supplied in the appropriate sections of the Form FS-PP and it must be correct and complete.
- (17) In the case of a declaration that no notifiable foreign financial contributions were received, the information requested in Sections 1, 2, 7 and 8 must be provided, and is therefore a requirement for a complete declaration. All the required information must be supplied in the appropriate section of the Form FS-PP and it must be correct and complete.
- (18) In particular it should be noted that:
- (a) The time period of 20 working days laid down in Article 30, paragraphs (2) and (6) of Regulation (EU) 2022/2560 shall begin on the working day following that of the receipt of the complete notification. This is to ensure that the Commission is able to assess the notified foreign financial contributions within the strict time limits laid down in Regulation (EU) 2022/2560.
  - (b) The notifying party(ies) must verify, in the course of preparing their notification, that contact names and numbers, and in particular email addresses, provided to the Commission are accurate, relevant and up-to-date.
  - (c) A declaration may be submitted only where all of the notifying parties are declaring that no notifiable foreign financial contributions in the last three years have been granted to them. Where at least one of the notifying parties has been granted notifiable foreign financial contributions, the submission shall be considered a notification for the purposes of this Implementing Regulation.
  - (d) Requested contact details of the notifying parties must be provided in the format prescribed by the Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) on its website <sup>(9)</sup>. For a proper review process, it is essential that the contact details are accurate. To this end, email addresses provided should not be personalised and attributed to specific contact persons, rather functional company mailboxes of the team in charge of notification should be used. The Commission may declare the notification incomplete on the basis of inappropriate contact details.

<sup>(9)</sup> Please see: <https://single-market-economy.ec.europa.eu/single-market/public-procurement/foreign-subsidies-regulation> and follow the instructions there.

- (e) Supporting documentation under Section 6 must be provided together with a summary table following the format prescribed by DG GROW on its website.
- (f) In accordance with Article 7(4) of the Implementing Regulation, incorrect or misleading information in, or provided together with, the notification will be considered as rendering the notification incomplete for the purposes of determining the effective date of notification.
- (g) Under Article 29(4) of Regulation (EU) 2022/2560, where a notification accompanying a tender or request to participate remains incomplete despite a request made by the Commission to complete it, the Commission should adopt a decision requesting the contracting authority or contracting entity to adopt a decision rejecting such an irregular tender or request to participate.
- (h) Under Article 33(2) of Regulation (EU) 2022/2560, the economic operators concerned who, either intentionally or negligently, provides incorrect or misleading information, may be liable to fines of up to 1 % of their aggregate turnover. In addition, pursuant to Article 18(1)(b) of Regulation (EU) 2022/2560, the Commission may revoke its decision where it was based on incomplete, incorrect or misleading information.

## 8. How to notify?

- (19) Notifications shall be submitted in one of the official languages of the Union. The names of the notifying parties shall also be submitted in their original language. The information required by this Form FS-PP must be set out using the sections and sub-sections and, where relevant, annexing supporting documentation. The notification submitted must include an attestation as provided in Section 8. Where information provided in two different sections partly (or wholly) overlaps, cross-references may be used.
- (20) The notification must be signed by persons authorised by law to act on behalf of each notifying party or by one or more of the notifying party's(ies) authorised representatives. The corresponding power(s) of attorney (or written proof that they are authorised to act) must be attached to the notification. Technical specifications and instructions regarding notifications can be found on the website of the Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs.
- (21) In completing Section 3 of this Form FS-PP, the notifying party(ies) is/are invited to consider whether, for purposes of clarity, the information in that section is best presented in numerical order, or whether the information can be grouped together for each individual foreign financial contribution (or group of foreign financial contributions).
- (22) For the sake of clarity, certain information may be put in annexes. However, it is essential that all key substantive pieces of information are presented in the body of the notification. Any annexes submitted must only be used to supplement the information supplied in the main body of the notification itself and it must be clearly indicated in the body where supplemental information is provided in an annex.
- (23) Supporting documents are to be submitted in their original language; where this is not an official language of the Union, a translation into the language of the proceeding shall be attached (Article 5(4) of the Implementing Regulation).

## 9. Confidentiality and Personal Data

- (24) Article 339 of the Treaty on the Functioning of the European Union and Article ("TFEU") 43(2) of Regulation (EU) 2022/2560 require that the Commission, its officials and other servants do not disclose information covered by the obligation of professional secrecy that they have acquired through the application of the Regulation. The same principle must also apply to protect confidentiality between notifying parties.

- (25) If the notifying party(ies) believe(s) that their interests would be harmed if any of the information they are asked to supply were to be published or otherwise disclosed to other parties, including the other economic operators they submit the notification with and the relevant contracting authority or contracting entity, they should submit this information to the relevant contracting authority or contracting entity separately with each page clearly marked 'Confidential'. For this purpose, a separate encrypted archive of documents may be submitted and the key provided to the Commission separately. The notifying parties should also give reasons why this information should not be disclosed or published.
- (26) In cases where the notification is completed by more than one notifying party, business secrets may be submitted under separate cover, and referred to in the notification as an annex. In order for a notification to be considered complete, all such annexes must be included in the notification.
- (27) Any personal data submitted in or with a notification will be processed in compliance with Regulation (EU) 2018/1725 of the European Parliament and of the Council <sup>(7)</sup>.

#### SECTION 1

##### ***Description of the public procurement***

- 1.1. Provide a link to the published document calling for competition in this procedure on Tenders Electronic Daily (TED) as well as any other platforms, and a summary of the public procurement procedure.
- 1.2. Where the European Single Procurement Document (ESPD) is used by the notifying party(ies), the obligation to provide a summary of the public procurement procedure should be fulfilled by a filled-in Part I of Annex 2 of Commission Implementing Regulation (EU) 2016/7 <sup>(8)</sup>.
- 1.3. Where the notifying party(ies) submit(s) their information through the ESPD, Section 1 of this Form FS-PP should be directly imported from the ESPD into the Form FS-PP using a digital service provided by the Commission. In the absence of such a service, the contracting authority or contracting entity should forward to the Commission the notification along with the filled-in Part I of Annex 2 of the ESPD.
- 1.4. Where the notifying party(ies) do(es) not submit their information through the ESPD, this section must be filled in with the information required in Part I of Annex 2 of the ESPD.
- 1.5. Where the notifying party(ies) submit(s) their information through the ESPD only partially, the missing elements from Part I of Annex 2 of the ESPD part must be provided in this section.

#### SECTION 2

##### ***Information about the notifying party(ies)***

- 2.1. Where the ESPD is used by the notifying party(ies), the obligation to provide information about the notifying party(ies) can be fulfilled by providing Part II of Annex 2 of Implementing Regulation (EU) 2016/7 establishing the standard form for the ESPD. The ESPD is filled in for all the economic operators participating in the tender or requests to participate as well as subcontractors whose capacities are relied upon for fulfilling the selection criteria. Subcontractors that are not 'main subcontractors' in the meaning of Article 29(5) of Regulation

<sup>(7)</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39). See also a privacy statement relating to competition investigations at [https://ec.europa.eu/competition-policy/index/privacy-policy-competition-investigations\\_en](https://ec.europa.eu/competition-policy/index/privacy-policy-competition-investigations_en).

<sup>(8)</sup> Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document (OJ L 3, 6.1.2016, p. 16).

(EU) 2022/2560 do not have to fill in this section of the form. Subcontractors that are 'main subcontractors' in the meaning of Article 29(5) of Regulation (EU) 2022/2560, but the capacities of which are not relied on in line with Article 63 of Directive 2014/24/EU or Article 79 of Directive 2014/25/EU, have to fill in this section manually.

- 2.2. Where the notifying party(ies) submit(s) their information through the ESPD, this part of the Form FS-PP shall be directly imported from the ESPD into this Form FS-PP using a digital service provided by the Commission. In the absence of such a service, the contracting authority or contracting entity must forward to the Commission this notification along with the filled-in Part II of Annex 2 of the submitted ESPD.
- 2.3. Where the notifying party(ies) do(es) not submit their information through the ESPD, this section must be filled in with the information required in Part II of Annex 2 of the ESPD.
- 2.4. Where the notifying party(ies) submit(s) their information through the ESPD only partially, the missing elements from Part II of Annex 2 of the ESPD part must be provided in this section.
- 2.5. Please introduce your email address or unique identifier used for the EU Login account which will serve for communication.

### SECTION 3

#### ***Foreign financial contributions***

- 3.1. The assessment of whether there is a distortion caused by foreign subsidies in a public procurement procedure is done by assessing the indicators of distortion <sup>(9)</sup> and whether the tender is unduly advantageous in relation to the works, supplies or services concerned <sup>(10)</sup>. In this Section, the notifying party(ies) should only report foreign financial contributions falling into the scope of of Article 5(1), points (a) to (c) and (e) of Regulation (EU) 2022/2560, which are amongst the most likely to distort the internal market. For foreign financial contributions not falling into these categories, please refer to point 3.3. of this Section and Table 1. For public procurement procedures meeting the thresholds in Articles 28(1)(a) and 28(2) of Regulation (EU) 2022/2560, in which foreign financial contributions notifiable in line with Article 28(1)(b) of Regulation (EU) 2022/2560, have been granted to the notifying party(ies) in the three years prior to the notification, please indicate whether each of the notifying parties have been individually granted <sup>(11)</sup> foreign financial contributions equal to or in excess of EUR 1 million in the three years prior to the notification that may fall into any of the categories of Article 5(1), points (a) to (c) and (e) of Regulation (EU) 2022/2560:
- 3.1.1. In order to allow to determine whether a foreign financial contribution has been granted to an undertaking that was ailing within the meaning of Article 5(1)(a) of Regulation (EU) 2022/2560, please indicate whether any of the following conditions were met at any point of time in the three years prior to the notification.
- 3.1.1.1. Is the notifying party a limited liability company, where more than half of its subscribed share capital has disappeared as a result of accumulated losses?
- ☐ yes ☐ no

<sup>(9)</sup> Article 4 of Regulation (EU) 2022/2560.

<sup>(10)</sup> Article 27 of Regulation (EU) 2022/2560.

<sup>(11)</sup> A financial contribution should be considered granted from the moment the beneficiary obtains a legal entitlement to receive the financial contribution. The actual disbursement of the financial contribution is not a necessary condition for bringing a financial contribution within the scope of Regulation (EU) 2022/2560.

3.1.1.2. Is the notifying party a company where at least some members have unlimited liability for the debt of the company, and where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses?

☐ yes

☐ no

3.1.1.3. Is the notifying party subject to collective insolvency proceedings or does it fulfil the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors?

☐ yes

☐ no

3.1.1.4. In the case the notifying party in question is not an SME <sup>(12)</sup>:

3.1.1.4.1. has the notifying party's book debt to equity ratio been greater than 7,5 for the past two years

and

3.1.1.4.2. has the notifying party's EBITDA interest coverage <sup>(13)</sup> ratio been below 1,0 for the past two years?

☐ yes

☐ no

3.1.1.5. If the reply to any of the questions in sections 3.1.1.1 to 3.1.1.4 was 'yes' in relation to any of the notifying parties, please indicate whether during the period in which the undertaking in question was ailing, it received any foreign financial contributions that may have contributed to restore its long-term viability (including any temporary liquidity assistance designed to support that restoration of viability) or to keep that party afloat for the short time needed to work out a restructuring or liquidation plan.

Notifying party(ies)

☐ yes

☐ no

3.1.1.6. If the reply to any of the questions in sections 3.1.1.1 to 3.1.1.4 was 'yes' in relation to any of the notifying parties, indicate if there is a restructuring plan capable of leading to the long-term viability of that party and if this restructuring plan includes a significant own contribution by the notifying party and provide details of that plan.

3.1.1.7. If the reply to any of the questions in points 3.1.1.1 to 3.1.1.4 was 'yes', please substantiate the answer, including references in the answer to the supporting evidence or documents that are to be provided in annexes (such documents may include, but are not limited to, the notifying party's latest profit and loss account statements with balance sheets, or court decision opening collective insolvency proceedings on the company or documents providing evidence that the criteria for being placed under insolvency proceedings at the request of creditors under national company law are met, etc.).

3.1.2. A foreign financial contribution in the form of an unlimited guarantee for the debts or liabilities of the undertaking, namely without any limitation as to the amount or the duration of such guarantee (Article 5(1)(b)).

☐ yes

☐ no

3.1.3. An export financing measure that is not in line with the OECD Arrangement on officially supported export credits (Article 5(1)(c)).

☐ yes

☐ no

<sup>(12)</sup> Small and medium-sized enterprises or SMEs are defined in Annex I of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187 26.6.2014, p. 1).

<sup>(13)</sup> Earnings before interest, tax, depreciation and amortisation. This ratio is calculated as EBITDA/Interest payments.

- 3.1.4. A foreign financial contribution enabling an undertaking to submit an unduly advantageous tender on the basis of which the undertaking could be awarded the relevant contract (Article 5(1)(e)).

☐ yes

☐ no

- 3.2. For each foreign financial contribution equal to or in excess of EUR 1 million granted to the notifying parties in the three years prior to the notification that may fall into any of the categories of Article 5(1), points (a) to (c) and (e) of Regulation (EU) 2022/2560, provide the following information and provide supporting documents:

- 3.2.1. Form of the financial contribution (e.g. loan, tax exemption, capital injection, fiscal incentive, contributions in kind, etc.).

- 3.2.2. Third country granting the financial contribution. Specify also the granting public authority or entity.

- 3.2.3. Amount of each financial contribution.

- 3.2.4. Purpose and economic rationale for granting the financial contribution to the party

- 3.2.5. Whether there are any conditions attached to the financial contributions as well as its use.

- 3.2.6. Describe the main elements and characteristics of those financial contributions (e.g. interest rates and duration in the case of a loan).

- 3.2.7. Explain whether the financial contribution confers a benefit within the meaning of Article 3 of Regulation (EU) 2022/2560 to the undertaking to which the foreign financial contribution has been granted. Please explain why, with reference to the supporting documents provided under Section 6.

- 3.2.8. Explain whether the financial contribution is limited in law or in fact, within the meaning of Article 3 of Regulation (EU) 2022/2560, to certain undertakings or industries <sup>(14)</sup>. Please explain why, with reference to the supporting documents provided under Section 6.

- 3.2.9. Explain if the financial contribution is granted only for operating costs <sup>(15)</sup> exclusively linked with the public procurement at stake.

- 3.3. Provide an overview of the foreign financial contributions equal to or in excess of EUR 1 million granted to the notifying parties in the three years prior to the notification that do not fall into any of the categories of Article 5(1), points (a) to (e) of Regulation (EU) 2022/2560 following the template and instructions provided in Table 1.

#### SECTION 4

##### ***Justification for absence of unduly advantageous tender***

- 4.1. For any of the foreign financial contributions enabling an undertaking to submit an unduly advantageous tender on the basis of which the undertaking could be awarded the relevant contract (Article 5(1)(e) of Regulation (EU) 2022/2560), are there any elements which can be adduced to demonstrate that the tender is not unduly advantageous directly or indirectly due to the financial contribution(s) received, including the elements referred to in Article 69(2) of Directive 2014/24/EU or Article 84(2) of Directive 2014/25/EU?

- 4.2. The elements may in particular refer to:

- 4.2.1. *the economics of the manufacturing process, of the services provided or of the construction method;*

<sup>(14)</sup> The benefit should be conferred on one or more undertakings or industries. The specificity of the foreign subsidy could be established by law or in fact.

<sup>(15)</sup> For instance personnel costs, materials, energy, maintenance, rent, administration.

- 4.2.2. *the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services or for the execution of the work;*
- 4.2.3. *the originality of the work, supplies or services proposed by the tenderer;*
- 4.2.4. *compliance with applicable obligations in the fields of environmental, social and labour law;*
- 4.2.5. *compliance with obligations regarding subcontracting.*

#### SECTION 5

##### **Possible positive effects**

- 5.1. If applicable, list and substantiate any possible positive effects on the development of the relevant subsidised economic activity on the internal market. Please also list and substantiate any other positive effects of the foreign subsidies, such as broader positive effects in relation to the relevant policy objectives, in particular those of the Union, and specify when and where those effects have or are expected to take place. Please provide a description of each of those positive effects.

#### SECTION 6

##### **Supporting documentation**

Please provide the following for each notifying party:

- 6.1. Copies of all the supporting official documents relating to the financial contributions that may fall into any of the categories of Article 5(1), points (a) to (c) and (e) of Regulation (EU) 2022/2560 pursuant to Section 3.1.
- 6.2. Copies of the following documents prepared by or for or received by any member of the board of management, the board of directors or the supervisory board: analyses, reports, studies surveys, presentations and any comparable documents discussing the purpose, use and economic rationale of the foreign financial contributions that may fall into any of the categories of Article 5(1), points (a) to (c) and (e) of Regulation (EU) 2022/2560. Provide the same documents prepared by or for or received by the entity granting the foreign financial contribution to the extent that they are in your possession or that they are publicly available.
- 6.3. An indication of the internet address, if any, at which the most recent annual accounts or reports of the notifying party(ies) are available, or if no such internet address exists, copies of the most recent annual accounts and reports.
- 6.4. Where the notifying party(ies) provide(s) justifications of the absence of an undue advantage of the tender by filling in Section 4 of this form, they also need to provide documentation for the period covering the three years preceding the notification, substantiating the adduced elements. Such documentation may include, inter alia, as relevant:
  - (a) tax declarations for the period under review, including copies of company tax returns and VAT returns,
  - (b) business plans and market research underlying the decision to participate in the public procurement procedure.

#### SECTION 7

##### **Declaration**

- 7.1. In line with the Introduction, recital 6, for public procurement procedures meeting the thresholds in Articles 28(1)(a) and 28(2) of Regulation (EU) 2022/2560, in which no foreign financial contributions, notifiable in line with Article 28(1)(b) of Regulation (EU) 2022/2560, have been granted to the notifying party(ies) in the last three years, Sections 1, 2 and 8 of this Form must be filled out, as well as this Section, containing the following statement:

***'None of the notifying parties have received foreign financial contributions notifiable under Chapter 4 of Regulation (EU) 2022/2560.'***

- 7.2. In accordance with the obligation in Article 29(1) of Regulation (EU) 2022/2560, the notifying party(ies) must list all foreign financial contributions received. This obligation covers all foreign financial contributions non-notifiable in accordance with Article 28(1), point (b), of Regulation (EU) 2022/2560 received in the last three years preceding the declaration.
- 7.3. However, non-notifiable foreign financial contributions, which are of a value below EUR 1 million but above the value indicated in Section 7.4 below in the last three years preceding the declaration can be declared as aggregate without indicating their values, using Table 2. When requested by the Commission, such foreign financial contributions must be reported individually.
- 7.4. In line with Article 4(3) of Regulation (EU) 2022/2560, foreign financial contributions of which the total amount per third country is lower than the amount of de minimis aid as defined in Article 3(2), first subparagraph, of Commission Regulation (EU) No 1407/2013 <sup>(16)</sup> over the consecutive period of three years preceding the declaration do not have to be reported in the declaration.

## SECTION 8

### Attestation

- 8.1. The notification must conclude with the following attestation which is to be signed by each notifying party:
- 8.2. *‘The notifying party(ies) confirm(s) that, to the best of their knowledge and belief, the information given in this notification or declaration and is true, correct, and complete, that true and complete copies of documents required by this Form FS-PP have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.*
- 8.3. *They are aware of the provisions of Article 33 of Regulation (EU) 2022/2560 concerning fines and periodic penalty payments.’*

Date:

[signatory 1] Name: Organisation: Position: Address: Phone number: Email: ('e-signed'/signature)	[signatory 2 if applicable, repeat as many times as there are notifying parties] Name: Organisation: Position: Address: Phone number: Email: ('e-signed'/signature)
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Table 1

### Instructions to provide information concerning foreign financial contributions that do not fall into any of the categories of Article 5(1), points (a) to (e) (Section 3.3)

1. This Table is used to provide an overview of the foreign financial contributions equal to or in excess of EUR 1 million granted by each third country to the notifying parties in the three years prior to the notification and that do **not** fall into any of the categories of Article 5(1), points (a) to (e) of Regulation (EU) 2022/2560 following the template and instructions below. Point A clarifies which information needs to be included in the table, and Point B clarifies which information is not to be included.

<sup>(16)</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).

A. *Information to be included in the Table*

2. Group the different financial contributions per third country and **per type**, such as direct grant, loan/financing instrument/repayable advances, tax advantage, guarantee, risk capital instrument, equity intervention, debt write-off, contributions provided for the non-economic activities of an undertaking (see recital 16 of Regulation (EU) 2022/2560), or other.
3. Include only those countries where the estimated aggregate amount of all financial contributions per country granted in the three years prior to the notification (calculated according to point (5)) is EUR 4 million or more.
4. For each type of financial contribution, provide a brief description of the purpose of the financial contributions and the granting entities.
5. Quantify the estimated aggregate amount of financial contributions granted **by each third country** in the three years prior to the notification in the form of **ranges**, as specified in the notes to the Table below. For the calculation of this amount, the following considerations are relevant:
  - (a) Take into account foreign financial contributions falling into the categories of Article 5(1) of Regulation (EU) 2022/2560 and on which information has been provided under Sections 3.1 and 3.2.
  - (b) Do **not** take into account foreign financial contributions excluded according to points 6 and 7 below.

B. *Exceptions*

6. You do **not** need to include in the Table a description of the following foreign financial contributions:
  - (a) Deferrals of payment of taxes and/or of social security contributions, tax amnesties and tax holidays as well as normal depreciation and loss-carry forward rules that are of general application. If these measures are limited, for example, to certain sectors, regions or (types of) undertakings, they have to be included.
  - (b) Application of tax reliefs for avoidance of double taxation in line with the provisions of bilateral or multilateral agreements for avoidance of double taxation as well as unilateral tax reliefs for avoidance of double taxation applied under national tax legislation to the extent they follow the same logic as the provisions of bilateral or multilateral agreements.
  - (c) Provision/purchase of goods/services (except financial services) at market terms in the ordinary course of business, for example the provision/purchase of goods or services carried out following a competitive, transparent and non-discriminatory tender procedure.
  - (d) Foreign financial contributions below the individual amount of EUR 1 million.

Third-country	Type of financial contribution (*)	Brief description of the purpose of the financial contribution and the granting entity (**)
Country A	Type 1	
	Type 2	
	Type 3	
	Type 4	
	...	

Total estimated financial contributions granted by A: EUR [...] (\*\*\*)

Country B	Type 1	
	Type 2	
	Type 3	
	Type 4	
	...	

Total estimated financial contributions granted by B: EUR [...] (\*\*\*)

Country C		
...		

Note: please provide a separate table for each of the notifying parties. Third countries and, where possible, types of contributions, should be ordered by total amount of foreign financial contribution, from the highest to the lowest.

- (\*) Identify the financial contributions grouping them by type: such as direct grant, loan/financing instrument/repayable advances, tax advantage, guarantee, risk capital instrument, equity intervention, debt write-off, contributions provided for the non-economic activities of an undertaking (see recital 16 of Regulation 2022/2560), or other.
- (\*\*) General description of the purpose of the financial contributions included in each type and of the granting entity(ies). For instance, 'tax exemption for the production of product A and R & D activities', 'several loans with State-owned banks for purpose X', 'several financing measures with State investment agencies to cover operating expenses for R & D activities', 'public capital injection in Company X'.
- (\*\*\*) Use the following ranges: 'EUR 45-100 million', 'EUR > 100-500 million', 'EUR > 500-1 000 million', 'more than EUR 1 000 million'.

#### C. Further information

7. The foreign financial contributions that may be relevant for the assessment of each public procurement may depend on a number of factors such as the sectors or activities involved, the type of financial contributions or other specificities of the case. In light of these specificities, the Commission may request additional information where it considers such information necessary for its assessment.

Table 2

**For reporting of foreign financial contributions which are of a value below EUR 1 million and above the value indicated in Section 7.4**

Third-country	Brief description of the financial contributions
Country A	
Country B	
Country C	
...	

## 附件四

### 欧盟《外国补贴法实施细则说明》全文

**COMMUNICATION FROM THE COMMISSION****Communication pursuant to Articles 4(2), 8(1), 15, 17(2) and 25 of Implementing Regulation (EU) 2023/1441 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**

(2023/C 246/02)

Pursuant to Article 25(1) of 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 ('Implementing Regulation') <sup>(1)</sup> the transmission of documents to and from the Commission pursuant to Regulation (EU) 2022/2560 and the Implementing Regulation shall take place through digital means, except where the Commission exceptionally allows for the use of the means identified in Article 25(6) and (7) of the Implementing Regulation. Pursuant to Article 25(3) of the Implementing Regulation, the Commission may issue technical specifications regarding the means of transmission and signature of documents to be provided pursuant to Regulation (EU) 2022/2560 and the Implementing Regulation.

This Communication sets out the technical specifications relevant for the transmission and signature of notifications submitted pursuant to Article 20 of Regulation (EU) 2022/2560 and Article 4 of the Implementing Regulation; comments following the opening of an in-depth investigation submitted pursuant to Article 10(3) of Regulation (EU) 2022/2560 and Article 8 of the Implementing Regulation; commitments offered by the undertakings concerned submitted pursuant to Article 25 of Regulation (EU) 2022/2560 and Article 15 of the Implementing Regulation; and observations on the Commission's grounds on which it intends to adopt its decision submitted pursuant to Article 42 Regulation (EU) 2022/2560 and Article 17 of the Implementing Regulation.

**1. METHOD OF TRANSMITTING DOCUMENTS TO THE COMMISSION**

1. Transmissions of documents under 10 gigabytes in size should be sent electronically using EU Send Web ('EU Send') <sup>(2)</sup>, the Commission's online exchange platform for secure transmission of documents. EU Send requires prior registration and prescribes size limitations to documents transmitted through the system that are subject to change. If a transmission is under 10 gigabytes in size but exceeds the size limitations of EU Send, it should be sent in several parts.
2. Transmissions sent using EU Send must be accompanied by a transmittal form, provided by EU Send. The transmittal form must be completed correctly.
3. Transmissions of more than 10 gigabytes in size may be hand-delivered or sent by registered post to the address published on the website of the Commission's Directorate-General for Competition using hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in a USB 2.0 or 3.0 external enclosure.
4. Documents sent by registered post or delivered by hand should be addressed to the Commission's Directorate-General for Competition at the address published on website of the Commission's Directorate-General for Competition. Addressing documents to other Commission departments may result in delays.

**2. SIGNING DOCUMENTS ELECTRONICALLY**

5. This section sets out technical specifications for the signature of documents submitted electronically (where a signature is required). This applies to documents sent using EU Send and to those delivered to the Commission on external storage devices.

<sup>(1)</sup> OJ L 177, 12.7.2023, p. 1.

<sup>(2)</sup> For instructions on how to use EU Send (also called eTrustEx), see [https://competition-policy.ec.europa.eu/index/it-tools/etrustex\\_en](https://competition-policy.ec.europa.eu/index/it-tools/etrustex_en)

6. To be considered valid, documents submitted electronically must be signed using at least one Qualified Electronic Signature (QES) complying with the requirements set out in Regulation (EU) No 910/2014 (the 'eIDAS Regulation')<sup>(3)</sup>. Only QES are explicitly recognised as having legal effect equivalent to that of hand-written signatures in all Member States. Therefore, other types of electronic signatures, such as scanned signatures or Advanced Electronic Signatures as set out in the eIDAS Regulation, that do not meet the requirements of QES, are not accepted.
7. The format of the QES must comply with one of the formats referenced in Commission Implementing Decision (EU) 2015/1506<sup>(4)</sup> or their latest specifications as these are published by the European Telecommunications Standards Institute.
8. Qualified Trust Services<sup>(5)</sup> may be obtained from Qualified Trust Service Providers (QTSPs) as set out in the eIDAS Regulation. QTSPs are commercial service providers and qualified members of the EU's Trust Scheme. QTSPs are listed in the Trusted List Browser<sup>(6)</sup>.
9. The Commission will validate QES-signed documents. To increase confidence that a QES will be successfully validated by the Commission, it is possible to test its validity by involving a QTSP who provides a paid qualified validation service<sup>(7)</sup>. The Commission's Digital Signature Services web application may also be used for demonstration purposes<sup>(8)</sup>. For the avoidance of doubt, this platform must not be used to submit any case-related documents or any confidential or case-specific information.
10. Signed documents must not be encrypted or contain any certificates, other than QES- related certificates.
11. The QES metadata must match the contact details of the signatory. When using one or several QES to sign a document, please provide, for information purposes, the contact details of the signatory with the indication '[e-signed]' at the end of the document. A visual representation of the electronic signature is optional and brings no additional legal value.
12. Modifying a signed document will invalidate any existing electronic signatures. The document therefore should not be modified after introducing one or more QES.
13. Documents electronically signed using a QES must not be locked or password- protected. This will enable the Commission's dedicated software to access the document and verify the validity of the QES.

### 3. TECHNICAL SPECIFICATIONS OF DOCUMENTS SUBMITTED ELECTRONICALLY

14. This section sets out technical specifications for documents submitted electronically, such as transmissions sent using EU Send and those delivered on external storage devices.

<sup>(3)</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

<sup>(4)</sup> Commission Implementing Decision (EU) 2015/1506 of 8 September 2015 laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies pursuant to Articles 27(5) and 37(5) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market (OJ L 235, 9.9.2015, p. 37).

<sup>(5)</sup> A qualified trust service means a trust service that meets the applicable requirements laid down in Regulation (EU) No 910/2014.

<sup>(6)</sup> QTSPs by Member State are listed here: <https://esignature.ec.europa.eu/efda/tl-browser/#/screen/home>. Only QTSPs with the tag 'QCert for ESig' can provide a qualified certificate for electronic signature, which is required for QES.

<sup>(7)</sup> QTSPs by Member State are listed here: <https://esignature.ec.europa.eu/efda/tl-browser/#/screen/home>. QTSPs indicated as 'QVal for QESig' can provide qualified validation service for qualified electronic signature.

<sup>(8)</sup> The Commission's Digital Signature Services web application: <https://ec.europa.eu/cefdigital/DSS/webapp-demo/validation>.

15. All documents submitted in electronic format must be scanned for and be free of viruses before submission. The Commission will delete any infected files and dispose of any infected external storage media. Deleted or disposed of files may make the submission invalid or incomplete.
16. Documents submitted using EU Send must not be encrypted. For documents delivered on external storage devices, encryption is strongly encouraged. Encryption should be implemented only on the storage device. Individual documents stored on the device should not be password-protected. Decryption passwords should be sent separately.
17. All documents (except those documents subject to point 20 below) must be in Portable Document Format (PDF) or spreadsheet (XLSX) format. Documents in PDF must be searchable, either as digitally created PDFs or by having been scanned for optical character recognition (OCR). Documents in XLSX format must be submitted with all underlying data unredacted and all underlying formulas and algorithms intact.
18. The filename of documents should be defined so that the relevant section in the Form FS-CO <sup>(9)</sup> or in other submissions is easily identifiable. Each document filename should also contain the number of the proceeding for which the submission is made. Document filenames must not include special or non-Latin characters, and the complete path must be limited to 250 characters.
19. Every page in a PDF must be marked with corporate identification and consecutive document control numbers (e.g. ABC-00000001).

#### 4. ADDITIONAL SPECIFICATIONS FOR SUPPORTING DOCUMENTS

20. Supporting documents (such as those submitted as part of section 8 of the Form FS-CO) must be submitted in native format (i.e. not converted into PDF).
21. Emails and other files must be submitted as separate files (they should not be in '.pst', '.zip' or '.nsf' formats). Nsf files should be converted into any 'single' email format (such as '.msg' or '.eml').
22. Supporting documents must be transmitted in whole and unredacted. All underlying metadata must be intact. No deduplication or email threading software may be used.

#### 5. ALTERNATIVE METHODS TO SIGN AND SUBMIT DOCUMENTS

23. Where transmission via EU Send is not technically possible and the Commission exceptionally allows other means of transmission to be used, documents under 10 gigabytes in size may be hand-delivered or sent by registered post according to point 4 above. The electronic documents must be digitally signed with a QES and be put on external storage devices, such as USB, CD, or DVD, or hard disk drives formatted in Microsoft Windows-compatible, uncompressed data in a USB 2.0 or 3.0 external enclosure.
24. If signing documents with a QES is not feasible, and the Commission exceptionally allows other means of signature to be used, a hand-signed paper copy of the complete submission may be hand-delivered or sent by registered post according to point 4 above. In this case, the submission must be accompanied by two digital copies of the full submission on external storage devices (such as USB, CD, or DVD, or external hard disk drives formatted in Microsoft Windows-compatible, uncompressed data in a USB 2.0 or 3.0 external enclosure) for information. The submission must also be accompanied by a hand-signed declaration stating that the signed paper copy and digital copies are identical.

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<sup>(9)</sup> Annex I of the Implementing Regulation.

**6. DATE OF APPLICABILITY**

25. The instructions will be applicable as of the day of the entry into force of the Implementing Regulation.
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## **附件五**

**欧盟对保加利亚铁路机车招标项目 FSR 深度调查( 涉  
及中国中车青岛四方机车车辆公司) 相关文件**



**Summary notice concerning the initiation of an in-depth investigation in case FSP.100147 pursuant to Articles 10(3)(d) of Regulation (EU) 2022/2560**

(C/2024/1913)

On 16 February 2024, in accordance with Article 10(3) of Regulation (EU) No 2022/2560 (the 'FSR'), <sup>(1)</sup> the Commission decided to initiate an in-depth investigation in the above-mentioned case after finding, based on a preliminary review, sufficient indications that CRRC Qingdao Sifang Locomotive Co., Ltd. (the 'Notifying Party') 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 4 September 2023, the Ministry of Transport and Communications of Bulgaria (hereinafter: the contracting authority) launched an open public procurement procedure for the project 'Bulgaria-Sofia: Railway and tramway locomotives and rolling stock and associated parts' under reference 2023/S 169-531800 <sup>(2)</sup> with an estimated value of EUR 613 765 903,66 <sup>(3)</sup>. The tender concerns the following project: the provision of 20 single deck zero-emission electric 'push-pull' trains with a maximum speed of 200 km/h and a capacity of at least 300 seats each, the complete maintenance of the rolling stock from the entry of the first trainset into the relevant national registry for a period of 15 years as well as the training of staff. The extended deadline to submit offers was 8 December 2023, until which the contracting authority received two offers.

On 3 January 2024, in its notice with reference 2024/S 002-003259, the contracting authority declared that open procedure unsuccessful as none of the offers received met the requirements relating to the performance of the contract. As a result, the contracting authority decided to launch a negotiated procedure without prior publication and invited the two bidders that had submitted an offer during the open procedure to participate in the negotiated procedure.

The deadline to submit offers in the negotiated procedure without prior publication was 17 January 2024.

On 22 January 2024, the Commission received a notification pursuant to Article 29(1) FSR from CRRC Qingdao Sifang Locomotive Co., Ltd. forwarded by the contracting authority concerning the public procurement procedure for the project 'Bulgaria-Sofia: Railway and tramway locomotives and rolling stock and associated parts' in the context of this negotiated procedure without prior publication.

## **2. The Notifying Party and the foreign financial contributions notified**

The Notifying Party is a majority owned subsidiary of CRRC Sifang Co., Ltd., owned by CRRC Corporation Limited. In parallel, the Notifying Party holds shares in a number of subsidiaries without commercial autonomy active both in China and in Singapore, Argentina, Egypt, Indonesia and Brazil.

The Notifying Party did not report any foreign financial contributions potentially falling under Article 5 FSR, which are most likely to distort the internal market.

The Notifying Party stated it did not receive individually any individual foreign financial contributions equal to or greater than EUR 4 million per third country.

On 24 January 2024, the Commission services sent a request for information to the Notifying Party, with a deadline to respond on 26 January 2024, asking for (i) information on its ownership structure = in line with Article 28(1)(b) FSR, (ii) information on all foreign financial contributions received by the entities identified under the previous point, when the value of individual financial contribution(s) is equal to or greater than EUR 4 million in the three years prior to the notification per third country, (iii) information on whether any individual foreign financial contributions equal to or

<sup>(1)</sup> 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).

<sup>(2)</sup> <https://ted.europa.eu/EN/notice/-/detail/531800-2023>

<sup>(3)</sup> Based on exchange rate of 26 January 2024, where 1 Bulgarian Lev equals to EUR 0,5111.

greater than EUR 4 million per third country have been granted to any direct or indirect subsidiaries of CRRC Corporation Limited in the three years prior to the notification, and (iv) relevant annual reports or financial statements for the three years prior to the notification. The Notifying Party replied to the request for information within the deadline.

### 3. Indications of the presence of foreign subsidies

Based on the information available to it at this stage, <sup>(4)</sup> the Commission considers that there are sufficient indications that the Notifying Party – in accordance with Article 28(1)(b) FSR has received the following foreign subsidies within the meaning of Article 3 FSR:

- Public procurement contracts awarded to the Notifying Party and to entities of the CRRC Corporation Limited of more than EUR 7,5 billion which conferred a benefit to the Notifying Party. Indeed, the Notifying Party failed to provide sufficient evidence that those public procurement contracts were awarded to entities of the CRRC Corporation Limited on competitive market conditions. In addition, those contracts and the related benefit is specific to the Notifying Party.
- Total balance of government grants of EUR 804 million as of 30 June 2023, accounted for as deferred income, which conferred a benefit to the Notifying Party, and which is specific to the Notifying Party.
- Government grants ‘other than grants which are closely related to the company’s business’, made available to CRRC Corporation Limited in amounts of EUR 355 million for 2020, EUR 301 million for 2021, EUR 234 million for 2022, and EUR 51 million for the first half of 2023, which conferred a benefit to the Notifying Party, and which is specific to the Notifying Party.

### 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 Party 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.

The total amount of foreign financial contributions indicated above amounts to approximately EUR 1.745 billion, thus five times larger than the value of the bid of the Notifying Party.

### 5. Conclusion

Considering the total amount of foreign financial contributions and the fact that the offer of the Notifying Party submitted to the public procurement procedure in question is substantially lower than the estimated costs of the contracting authority and the offer of the competitor, the Commission based on its preliminary review of the financial contributions under examination, has sufficient indications that the Notifying Party has 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 Regulation (EU) 2023/1441 (the ‘FSIR’) the Commission invites any natural or legal person, Member States 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.

<sup>(4)</sup> Despite the request of the Commission to the Notifying Party to list all entities falling under Article 28(1)(b) FSR, the Commission notes that not all entities were listed, therefore it cannot be excluded that entities not listed have received additional foreign financial contributions that constitute foreign subsidies.

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](mailto:grow-fsr-pp-notifications@ec.europa.eu), with reference FSP.100147.

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## **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**

Brussels, 26 March 2024

The Commission takes note of the withdrawal by CRRC Qingdao Sifang Locomotive Co., Ltd. from a public procurement tender organised by the Bulgarian Ministry of Transport and Communications. The withdrawal follows the Commission's [announcement](#) of an in-depth investigation under the Foreign Subsidies Regulation. As a result of the withdrawal, the Commission will close its in-depth investigation.

The public procurement tender concerns the purchase of 20 electric “push-pull” trains, as well as their maintenance over 15 years. The estimated value of the contract is around BGN 1.2 billion (€610 million).

CRRC Corporation Limited (known as CRRC) is a Chinese state-owned rolling stock manufacturer. It is the world's largest rolling stock manufacturer in terms of revenue. Rolling stock manufacturers produce the locomotives and carriages used by railway operators, as well as subways, trams and other railway vehicles.

STATEMENT/24/1729

Press contacts:

[Johanna BERNSEL](#) (+32 2 298 66 99)

[Ana MARTINEZ SANJURJO](#) (+32 2 29 63066)

General public inquiries: [Europe Direct](#) by phone [00 800 67 89 10 11](#) or by [email](#)

## **附件六**

**欧盟对罗马尼亚光伏招标项目 FSR 深度调查( 涉及中国隆基绿能、上海电气等公司) 相关文件**



**Statement by Commissioner Breton on withdrawal of LONGi Solar Technologie GmbH and Shanghai Electric from public procurement following the Commission's opening of an investigation under the Foreign Subsidies Regulation**

Brussels, 13 May 2024

The Commission takes note of the withdrawal of two companies for a public procurement procedure concerning the construction of a photovoltaic park in Romania. The two companies involved are ENEVO, which includes LONGi Solar Technologie GmbH, as well as Shanghai Electric UK Co. Ltd. and Shanghai Electric Hong Kong International Engineering Co. Ltd.

The withdrawal follows the European Commission's [announcement on 3 April 2024](#) that it would open an in-depth investigation under the Foreign Subsidies Regulation . As a result of the withdrawal, the Commission will close its in-depth investigation.

These investigations concern a procedure carried out by a Romanian contracting authority (Societatea PARC FOTOVOLTAIC ROVINARI EST S.A.) for the design, construction and operation of a photovoltaic park in Romania with a capacity of 454.97 MW, partly financed by the European Union. The estimated value of this contract is around €375 million.

The first consortium consists of ENEVO Group and LONGi Solar Technologie GmbH. ENEVO Group, the consortium leader, is a Romanian-based engineering and consulting services provider. LONGi Solar Technologie GmbH is a German subsidiary wholly owned and controlled by LONGi Green Energy Technology Co, Ltd, a leading photovoltaic company listed on the Hong Kong Stock Exchange.

The second consortium consists of Shanghai Electric UK Co. Ltd. and Shanghai Electric Hong Kong International Engineering Co. Ltd. Both companies are wholly owned and controlled by Shanghai Electric Group Co. Ltd, a Chinese state-owned enterprise specialising in multinational power generation and electrical equipment manufacturing.

STATEMENT/24/2570



**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 <sup>(1)</sup> (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 <sup>(2)</sup> 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.

<sup>(1)</sup> 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).

<sup>(2)</sup> 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](mailto:grow-fsr-pp-notifications@ec.europa.eu), with reference FSP. 100154.



C/2024/2830

22.4.2024

**Summary notice concerning the initiation of an in-depth investigation in Case FSP. 100151, pursuant to Articles 10(3)(d) of Regulation (EU) 2022/2560**

(C/2024/2830)

On 3 April 2024, in accordance with Article 10(3) of Regulation (EU) No 2022/2560 of the European Parliament and of the Council <sup>(1)</sup> (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 ENEVO Group – LONGi Solar Technologie Consortium, consisting of ENEVO Group SRL and LONGi Solar Technologie GmbH (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**

The consortium leader, ENEVO Group, is a provider of engineering and consulting services. The consortium member LONGi Solar Technologie GmbH is a newly established, fully owned and fully controlled German subsidiary of LONGi Green Energy Technology Co., Ltd., which is a supplier of solar photovoltaic (PV) solutions. The group is active in the manufacturing of solar panels and in the renewable energy industry. The sole main subcontractor of the consortium, Rodina Construction LLC, is a Ukrainian company active in civil construction.

On 22 January 2024, the Contracting Authority forwarded to the Commission a declaration 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 <sup>(2)</sup> declaring the notification incomplete.

On 4 March 2024, the Notifying Parties submitted a complete notification, therefore pursuant to Article 7 of Commission 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 has 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 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.

<sup>(1)</sup> 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).

<sup>(2)</sup> 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.

#### 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 directly to LONGi Green Energy Technology Co., Ltd, in view of the capital rights that it holds in LONGi Solar Technologie GmbH, the evidence that the Commission has in its possession concerning intra-group financing, and no indication that the potential subsidies granted to LONGi Green Energy Technology Co., Ltd 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 export credits provided to LONGi Green Energy Technology Co., Ltd., where they meet the requirements in Article 5(1)(c) FSR, 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 LONGi Green Energy Technology Co., Ltd., resulting from above subsidies 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](mailto:grow-fsr-pp-notifications@ec.europa.eu), with reference FSP. 100151.

**附件七**  
**欧盟对同方威视在欧办公室突袭检查**  
**相关报道**

# 【中国网评】欧盟突击检查中企，释放保护主义错误信号

 [china.com.cn/opinion/2024-05/03/content\\_117164937.html](http://china.com.cn/opinion/2024-05/03/content_117164937.html)



中国网特约评论员 董一凡

4月23日，以所谓“企业接受外国补贴”为由，欧盟委员会与波兰、荷兰执法部门对中国企业同方威视的在欧办公室进行突击检查。欧盟中国商会网站发布的信息显示，欧委会授权的执法机构在未事先通知情况下，于当日上午到同方威视在两国的办公地点，控制了公司信息化设备和员工手机，检查办公室文件并要求获取相关数据。

此次检查是欧盟借助2023年完成立法的《外国补贴条例》进行的又一次针对中国企业的行动。近几个月以来，欧盟以“扭曲市场补贴”为名，已经多次影响中国企业的正常业务经营：2月16日，欧委会对中车集团青岛四方公司就其参与保加利亚交通部的一项招标启动外国补贴审查，最终中车四方宣布退出招标；4月4日，欧委会再次启用《外国补贴条例》展开两项“深度调查”，调查对象分别为罗马尼亚ENEVO公司和“隆基绿能”的德国子公司（LONGi Solar Technologie GmbH）组成的联合体以及“上海电气英国有限公司”和“上海电气香港国际工程有限公司”；4月9日，欧委会宣布在西班牙、希腊、法国、罗马尼亚、保加利亚对中国风力涡轮机供应商展开调查。而此次欧盟委员会粗暴闯入中国企业办公室，则是两个月以来其借《外国补贴条例》实施的第五次所谓“调查”。且此次突击检查更进一步，直接以“莫须有”理由侵犯中国企业办公地点，对中方商业秘密、正常经营、舆论环境都造成较大负面影响。

上述措施，反映了欧盟面对正常市场竞争的扭曲心态，以及其奉行的所谓“去风险”战略的错误导向。近年来，随着中国在光伏、风电等领域市场竞争力的大幅提升，欧盟的心态发生了变化，为了保护自身产业利益，而对中国出口欧盟产品贴上“不公平补贴”“产能过剩”等标签，并以此为借口展开所谓“双反调查”。

近年来，在地缘冲突加剧、全球产业链供应链不确定性增加背景下，欧盟逐渐把对华贸易投资视作“风险”，从而推进对华“去风险”战略和经济安全战略，试图以削弱对华依赖关系谋求所谓“安全”。在此背景下，阻碍中欧正常经贸活动成为欧盟以“安全”为名行“去风险”之实的手段。此外，在欧盟内外危机加剧，民众对经济社会不满情绪高涨的背景下，欧盟委员会以及欧洲传统政党政客亦因“大选年”考虑，而不断向极右民粹以及保守主义靠拢，借贸易保护主义来谋求自身政治私利。

面对近期欧盟的种种不合理举措，中国政府和中国在欧商业团体均给予严肃回应。商务部贸易救济局负责人表示，欧方在近期进行的一系列相关调查中，目标指向明显，滥用规则程序，将调查工具武器化，是以所谓的“公平竞争”之名扭曲公平竞争环境的保护主义行为，而进行现场搜查的举动也使中国业界对此感到十分震惊、强烈不满。欧盟中国商会则表示严正关切，指出欧方对补贴的怀疑可以通过合理的调查手段进行，但欧委会未行事先通知突击检查的做法不仅向中国企业，也向所有在欧运营的非欧盟企业释放了负面信号。

在当前全球经贸和科技领域挑战不断增加的背景下，中欧应当携手应对风险挑战、正确看待市场竞争，这才是中欧经贸关系互利共赢之道。走贸易保护主义道路乃至以“去风险”为名行“去中国化”之实，不利于双方共同利益。中方敦促欧方在保护主义道路上悬崖勒马，为非欧盟企业提供真正公平和非歧视的营商环境。（作者系中国现代国际关系研究院欧洲研究所欧洲经济项目负责人）

编审：高霁宁 蒋新宇 张艳玲

**附件八**  
**机电行业贸易与投资情况的说明**

# 机电行业贸易与投资情况的说明

## 一、贸易情况

2023 年，我国机电产品顶住外需低迷和产能订单转移等多重压力，出口规模保持较高水平，据中国海关统计，2023 年中国机电产品进出口总额为 29066.9 亿美元，占中国货物贸易总额的 49%，其中出口 19786.6 亿美元，占中国货物出口总额的 58.6%，进口 9280.3 亿美元，占中国货物进口总额的 36.3%。2024 年第一季度，中国机电产品进出口额同比增长 4.1%至 6952.3 亿美元，其中，出口 4777.2 亿美元，同比增长 3.3%，进口 2175.1 亿美元，同比增长 6.0%。

欧盟是中国机电产品出口的主要目的地，2023 年中国机电产品对欧盟出口额为 3256.6 亿美元，占对全球出口总额的 16.5%。电工器材、计算机、汽车、家电、光伏、手机等为中国对欧盟出口的主要产品和行业。欧盟也是中国“新三样”产品最大的出口市场，占中国电动载人汽车和太阳能电池出口比重近 50%，占中国锂离子蓄电池出口比重近 40%。

## 二、投资情况

2023 年，我国对外投资合作平稳发展。统计显示，2023 年全行业对外直接投资 10418.5 亿元人民币，较上年增长 5.7%（折合 1478.5 亿美元，增长 0.9%），其中，对外非金融类直接投资 9169.9 亿元人民币，增长 16.7%（折合 1301.3

亿美元，增长 11.4%）。

从投资目的地看，欧洲是中国对外投资的重要区域，截至 2022 年末，中国在欧洲的投资存量为 1410.7 亿美元，占中国对外直接投资存量的 5.1%；中国境内投资者共在全球 190 个国家和地区设立境外企业 4.7 万家，其中有 10.2%分布在欧洲。

从投资领域看，机电产品所涉及的制造业、科学研究和技术服务业、信息传输和软件信息技术服务业等领域对外投资活跃，以制造业为例，截至 2022 年末对外投资存量为 2680 亿美元，占比 9.7%，主要分布在汽车制造、计算机、通信及其他电子设备制造、专用设备制造、其他制造、医药制造等领域，制造业对外投资分布在欧洲的投资存量为 479.1 亿美元，占比 34%。