

## 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.

---

<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 (\*), 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;

---

(\*) 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>(5)</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

---

## ANNEX I

**Form FS-CO relating to the notification of a concentration pursuant to Regulation (EU) 2022/2560****Table of Contents**

1.	The purpose of the Form FS-CO .....	18
2.	Types of information required by the Form FS-CO .....	18
3.	Information that is not reasonably available .....	19
4.	Information that is not necessary for the Commission's examination of the case .....	19
5.	Pre-notification contacts and waiver requests .....	20
6.	The requirement for a correct and complete notification .....	20
7.	How to notify .....	21
8.	Confidentiality and Personal Data .....	21
9.	Definitions and instructions for the purposes of this Form FS-CO .....	22
SECTION 1: Description of the concentration .....		22
SECTION 2: Information about the parties .....		22
SECTION 3: Details of the concentration, ownership and control .....		23
SECTION 4: Notification thresholds .....		24
SECTION 5: Foreign financial contributions .....		25
SECTION 6: Impact on the internal market of the foreign financial contributions in the concentration .....		27
SECTION 7: Possible positive effects .....		28
SECTION 8: Supporting documentation .....		28
SECTION 9: Attestation .....		29

## 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)	<input type="checkbox"/> yes	<input type="checkbox"/> no
Target	<input type="checkbox"/> yes	<input type="checkbox"/> 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)	<input type="checkbox"/> yes	<input type="checkbox"/> no
Target	<input type="checkbox"/> yes	<input type="checkbox"/> 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)	<input type="checkbox"/> yes	<input type="checkbox"/> no
Target	<input type="checkbox"/> yes	<input type="checkbox"/> 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>(1)</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>(2)</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>(1)</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>(2)</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]
---	---

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)**

1. 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*
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 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**

**Table of Contents**

1.	The purpose of the Form FS-PP .....	32
2.	Definitions and instructions for the purposes of this Form FS-PP .....	32
3.	Types of information required by the Form FS-PP .....	33
4.	Information that is not reasonably available .....	34
5.	Information that is not necessary for the Commission's examination of the case .....	34
6.	Pre-notification contacts and waiver requests .....	34
7.	The requirement for a correct and complete notification or declaration .....	35
8.	How to notify? .....	36
9.	Confidentiality and Personal Data .....	36
	SECTION 1: Description of the public procurement .....	37
	SECTION 2: Information about the notifying party(ies) .....	37
	SECTION 3: Foreign financial contributions .....	38
	SECTION 4: Justification for absence of unduly advantageous tender .....	40
	SECTION 5: Possible positive effects .....	41
	SECTION 6: Supporting documentation .....	41
	SECTION 7: Declaration .....	41
	SECTION 8: Attestation .....	42

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 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>(6)</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)
---	--

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>(6)</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	
...	