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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of 10.7.2023

**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**

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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 market¹, 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.

¹ OJ L 330, 23.12.2022, p. 1.

- (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.
- (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, 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 of the European Parliament and of the Council² or Article 76(4) of Directive 2014/25/EU of the European Parliament and of the Council³, to ask for clarifications of the notification, declaration, updated

² 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).

³ 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).

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.
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 Council⁴, 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;

⁴ 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).

- (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;
 - (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 Council⁵.
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.
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.

⁵ 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).

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, 10.7.2023

For the Commission
The President
Ursula VON DER LEYEN