



Brussels, **XXX**
[...] (2023) **XXX** draft

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

of **XXX**

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

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

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

of XXX

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 on foreign subsidies distorting the internal market¹, and in particular Article 47(1) thereof,

After consulting the Foreign Subsidies Advisory Committee,

Whereas:

- (1) Regulation (EU) 2022/2560 on foreign subsidies distorting the internal market allows the Commission to investigate foreign subsidies that distort the internal market and to remedy such distortions. It is necessary to lay down the 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) Regulation (EU) 2022/2560 requires persons and undertakings to notify certain large concentrations and public procurement procedures above certain thresholds before the concentration is put into effect, or the contract is awarded in the context of public procurement procedures. 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 public procurement procedure.
- (4) In order to simplify the notifications and the Commission's assessment, standardised forms should be used. Those forms are set out in the Annexes to this Regulation. They may be replaced by electronic forms containing the same information requirements.

¹ OJ L [...], [...], p. [...].

- (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 and potential distortive effects of the subsidy, and to allow the undertaking under investigation and other persons to submit their comments.
- (6) Pursuant to Article 13(7) of Regulation (EU) 2022/2560, the Commission, in conducting investigations, may interview any natural or legal person who consents 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 minutes made of that interview. The Commission should set a time-limit within which the person interviewed may communicate to it any comments on the minutes in question.
- (7) Where the Commission conducts interviews in line with Article 13(7) of Regulation (EU) 2022/2560, or asks for explanations pursuant to Article 14(2) point (c) and Article 15 of Regulation (EU) 2022/2560, in the interest of legal certainty, it is recalled that the legal basis for the processing of personal data is the Commission's task to review foreign subsidies under Regulation (EU) 2022/2560.
- (8) Pursuant to Article 14(2), point (c) and Article 15 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.
- (9) Pursuant to Article 13(5) Regulation (EU) 2022/2560, Member States are obliged to provide the Commission with 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 extends to contracting authorities or contracting entities in charge of the relevant public procurement procedure, including their staff and any external consultants.
- (10) 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) Regulation (EU) 2022/2560 and time limits for proposing commitments under Articles 25 and 31 of Regulation (EU) 2022/2560 should be laid down.
- (11) In the interest of ensuring transparency, the Commission may 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 under Regulation (EU) 2022/2560.

- (12) 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 to submit its comments on all of the grounds on which the Commission intends to adopt its decisions. In accordance with Article 42(2) 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 and to set out the conditions under which the undertaking under investigation may be represented or assisted as regards its access to file.
- (13) 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. The Commission should be able to ask persons and undertakings that have submitted information, including documents, to identify confidential information. It should also be able to do so with regard to information in a summary notice or a decision. In order to ensure fair and efficient proceedings, while at the same time respecting the rights of defence of the undertaking under investigation, the Commission should be able to set specific terms of disclosure to properly distinguish between and address the circumstances of providing information that may occur under Regulation EU 2022/2560. The Commission should provide the undertaking under investigation, upon request for access to file, with a non-confidential version of all documents mentioned in the grounds on which the Commission intends to adopt a decision. To further guarantee the rights of defence of the undertaking under investigation, the Commission will organise access to the documents in its file based on disclosure without redactions for confidentiality only to a limited number of specified counsel or technical experts engaged by the undertaking under investigation, on the basis of strict non-disclosure commitments. In cases where the Commission considers that this individualised access may lead to a disproportionate delay or administrative burden for the persons or undertakings involved, the Commission may give access under different terms of disclosure, including by granting access to all documents redacted for confidentiality.
- (14) 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.
- (15) Rules should be laid down for calculating the time limits provided for in Regulation (EU) 2022/2560. In particular, the beginning and end of time limits and the circumstances suspending the running of such limits must be determined, with due regard to the requirements resulting from the time limits provided for in Regulation (EU) 2022/2560.
- (16) 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 impact of such transmissions. In particular, this should apply, pursuant to Article 47(1) point (a) and point (b) and Article 47(1) point (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.
- (17)

HAS ADOPTED THIS REGULATION:

CHAPTER I SCOPE

Article 1

Subject matter and scope

This Regulation lays down rules applicable to proceedings conducted by the European Commission in application 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 means 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 of foreign financial contributions in public procurement refers to 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 persons or undertakings referred to in Article 21(3) of Regulation (EU) 2022/2560.

- (2) Notifications and declarations in public procurement procedures shall be submitted by the main contractor or main concessionaire referred to in Article 29(6) of Regulation (EU) 2022/2560 on its behalf and on behalf of all the notifying parties in the context of notifications in public procurement involved in the tender referred to in Article 29(5) of Regulation (EU) 2022/2560.
- (3) Where notifications 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

Notifications of concentrations

- (1) Notifications of concentrations pursuant to Article 21 of Regulation (EU) 2022/2560 shall be submitted using the form [●] set out in Annex [●]. Joint notifications pursuant to Article 21(3) of Regulation (EU) 2022/2560 shall be submitted on a single form.
- (2) The forms [●] and all relevant supporting documents shall be submitted to the Commission in accordance with Article 26.
- (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, including documents, or with any other requirement specified by the form set out in Annex [●], where the Commission considers that compliance with those obligations or requirements is not necessary for the examination of the notification.
- (5) The Commission shall without undue delay acknowledge in writing to the notifying parties or their representatives 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 in public procurement procedures

- (1) Notifications of foreign financial contributions in public procurement procedures shall be submitted in the manner prescribed by the form [●] set out in Annex [●] on a single form for all of the notifying parties 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, no notifiable foreign financial contributions in the last three years have been granted by a third country to the

notifying parties, those parties must submit a declaration in the manner prescribed by Section 7 of form [●] set out in Annex [●] on a single form to the contracting authority or contracting entity in charge of the relevant public procurement procedure.

- (3) The forms [●] and all relevant supporting documents shall be submitted to the Commission in accordance with Article 29.
- (4) Notifications and declarations shall be submitted in the language of the procurement procedure to which it relates. Unless the Commission and the notifying parties agree otherwise, the language of the notification 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 the procurement procedure or 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 in the context of notifications in public procurement, and in agreement with the contracting authority or contracting entity in charge of the public procurement procedure, exempt the notifying parties from the obligation to provide any information in the notification, including documents, or with any other requirement specified by the form set out in Annex [●], where the Commission and the contracting authority or contracting entity in charge of the public procurement procedure consider that compliance with those obligations or requirements is not necessary for the examination of the case. Such an exemption is without prejudice to a further request for information, including documents or any other requirement specified by the form set out in Annex [●], should the written request by the notifying parties or other elements provided with by the contracting authority or contracting entity contain elements that are false or not correctly stated.
- (6) The Commission shall without undue delay acknowledge the receipt of the notification and of any reply to a letter sent by the Commission pursuant to Article 7(2) 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 Art 24(1) FSR, 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. 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 in public procurement procedures

- (1) In open public procurement procedures, notifications and declarations shall become effective on the date on which they are received by the Commission, after having been completed pursuant to paragraph 3. 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 declarations 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, after having been completed pursuant to Article 29(4) of Regulation (EU) 2022/2560. Where a notification or declaration, updated notification or updated declaration remains incomplete, the Commission shall adopt a decision pursuant to Article 29(4) of Regulation (EU) 2022/2560 declaring the tender or request to participate irregular and request the contracting authority or contracting entity to adopt a decision rejecting the tender or request to participate.
- (2) Where the relevant contracting authority or contracting entity exercises its rights pursuant to Article 56(3) 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, or declaration, or of the updated notification or updated declaration according to Article 29(1), last sentence, of Regulation (EU) 2022/2560, and decides to reject the tender or request to participate for lack of clarifications/information where not duly provided, the notification or declaration shall not be considered 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 a completed notification or declaration or updated notification or updated declaration. Where that information

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).

could have a significant effect on the Commission's assessment, the Commission may consider the complete 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 thereof, in the context of notifications in public procurement or their representatives 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

Timeline for submission of views 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 and other persons may submit their views shall not exceed 1 month from the date of publication of the summary notice of the decision in the Official Journal of the European Union. Views shall be submitted in accordance with Article 26 and Article 27 of this Regulation.
- (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 together with the confidential version.

Article 9

Interviews

- (1) Where the Commission interviews a person with his or her consent 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 take minutes.
- (2) The minutes of an interview conducted pursuant to Article 13(7) of Regulation (EU) 2022/2560 may take any form. A copy of the minutes shall be made available to the person interviewed for their comments. The Commission shall set a time limit within which the person interviewed may communicate any comments on the minutes.

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 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 2022/2560 extends, in particular, to the contracting authorities and contracting entities in charge of the relevant public procurement procedures, its staff and any external experts that have information relevant to the investigation.
- (2) The relevant contracting authority or contracting entity shall forward to the Commission, with the notification, all the documents it considers crucial for the investigation, in particular the documents used in the preparation of the procurement documents, including a possible market research and the internal budget for the procurement, as well as all the submitted tenders where the company submits information under Article 12 of this Regulation. Where the submitted tenders are not available at the time of the notification, they shall be submitted to the Commission as soon as they are available.

Article 12

Submission of information on unduly advantageous tender

- (1) Justifications and related supporting documents listed in the form set out in Annex X related to the assessment of the unduly advantageous nature of a tender submitted by the notifying parties pursuant to Article 27 of Regulation (EU) No 2022/2560 shall be submitted according to the timelines and format specified in Article 8 of this Regulation.
- (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 form set out in Annex X 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, giving reasons, and shall provide a separate non-confidential version.

CHAPTER IV

COMMITMENTS AND REDRESSIVE MEASURES

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 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 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) Commitments offered by the undertakings concerned pursuant to Article 31(1) of Regulation (EU) No 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. The receipt of commitments by the Commission shall 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 in the meaning of Article 29(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 requirements of 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 pursuant to Article 25(3) point (a) or Article 31(1) of Regulation (EU) 2022/2560 shall be submitted to the Commission in accordance with Article 26 and Article 27 of this Regulation .

- (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 chapter Chapter 2 of Regulation (EU) 2022/2560, commitments shall be signed by the undertaking under investigation.
- (4) 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 involved persons on whom the commitments impose obligations.

Article 16

Trustees

- (1) In a decision with redressive measures adopted pursuant to Article 11(2) of Regulation (EU) 2022/2560, or in a decision with commitments pursuant to Article 11(3), Article 25(3) point (a), or Article 31(1) of Regulation (EU) 2022/2560, the Commission may require the appointment of one or more independent trustees. Such independent trustee shall be remunerated at the expense of the undertaking concerned. The trustees assist the Commission in overseeing the undertaking's compliance with redressive measures or commitments, or in implementing redressive measures or commitments. The trustees may be appointed by the undertaking concerned, after the Commission's approval, or directly by the Commission. The trustees shall carry out their tasks under the supervision of the Commission.

Article 17

Transparency and reporting

- (1) 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:
 - 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 during a specified period of time starting on the day following the date of adoption of the decision imposing that obligation; or
 - 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 in a public procurement procedure adopted pursuant to Article 31(2) of Regulation (EU) 2022/2560.
- (2) Regarding the obligations referred to in paragraph 1 point (a), unless otherwise specified in the decision imposing those obligations, the undertaking shall inform the

Commission once a year of all of the financial contributions that were granted by third countries in the sense of Article 3(2) of Regulation (EU) 2022/2560 to the undertaking in the previous year.

- (3) Regarding the obligations referred to in paragraph 1 point (b), unless otherwise specified in the decision imposing those obligations, the undertaking shall inform the Commission of the undertaking's participation in:
 - a) a concentration following the conclusion of an agreement, announcement of the public bid, or acquisition of a controlling interest;
 - b) a public procurement where it submits a tender in an open procedure or a request to participate in a multi-stage public procurement procedure.
- (4) Regarding the obligations referred to in paragraph 1 point (c), in addition to the transparency and reporting obligations set out in the decision concerned, the Commission may send information requests pursuant to Article 13 of Regulation (EU) 2022/2560 and conduct inspections pursuant to Articles 14 and 15 of Regulation (EU) 2022/2560 with a view to verifying whether commitments and redressive measures have been implemented correctly and have achieved their objective.

CHAPTER V

SUBMISSION OF OBSERVATIONS

Article 18

Submission of observations

- (1) Where 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 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 pursuant to paragraph 1 and any relevant documents attesting to the facts set out in those observations to the Commission in accordance with Article 26 and Article 27.
- (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 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, the Commission may, before the expiry of the original time limit, extend time limits set in accordance with paragraphs 1 and 3.

CHAPTER VI

USE OF INFORMATION AND TREATMENT OF CONFIDENTIAL INFORMATION

Article 19

Use of information by the Commission

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.

- (1) 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 other purposes 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.
- (2) 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 20

Identification and protection of confidential information

- (1) Unless otherwise provided for in Article 21 of this Regulation and Article 42 of Regulation (EU) 2022/2560 and without prejudice to paragraph 3, 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 the information provided to the Commission may be disclosed under the terms of disclosure set out in Article 21(4) and the safeguards of Articles 21(5) and 21(7). Where the Commission otherwise receives information from information providers, it shall inform these information providers that the information they provide may be disclosed under the terms of disclosure set out in Article 21(4) and the safeguards of Articles 21(5) and 21(7).
- (3) Without prejudice to Article 8 and Article 16 of this Regulation, the Commission may require, within a specified time limit, natural or legal persons, undertakings or associations and, in the case of public procurement, contracting authorities or contracting entities, 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 and provide a separate non-confidential version within the time limit set by the Commission.
- (5) Where a natural or legal person, undertaking or association or, in the case of public procurement, a contracting authority or contracting entity, or the undertaking under investigations 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, and, in the case of paragraph 4, it may proceed with publication of the summary notice or decision.
- (6) Nothing in this Article shall 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 21

Access to the file 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) Where the undertaking under investigation requests access to file pursuant to Article 42(4) of Regulation (EU) 2022/2560, the Commission shall provide it with a non-confidential version of all documents mentioned in the grounds on which the Commission intends to adopt a decision, as well as a list of all documents in the Commission's file.
- (4) Subject to paragraph 5, the Commission will additionally provide access to all documents on its file submitted by information providers, without any redactions for confidentiality, under terms of disclosure that will appropriately safeguard the protection of business secrets and other confidential information. Specifically:
 - (a) Access to documents under this paragraph shall only be granted to a limited number of specified legal and economic counsel and technical experts engaged by the undertaking under investigation and whose names will have been communicated to the Commission in advance and approved by it.
 - (b) Specified legal and economic counsel and 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 legal and economic counsel and technical experts may not be throughout the duration of the investigation [and for the three years after the end of the Commission's investigation] in a relationship of employment 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.
 - (d) Specified legal and economic counsel and technical experts will not disclose any of the documents provided or their content to any natural or legal person that is not a signatory to the terms of disclosure and will not use any of the documents provided other than for the purpose of representing the undertaking under investigation before the Commission or the Court of Justice of the European Union in the context of these administrative or court proceedings.
 - (e) The Commission will 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 expert or (for some or all documents) only at the Commission's premises.
 - (f) The Commission shall publish the terms that it intends to use as a model for the terms of disclosure.
- (5) In exceptional circumstances, the Commission may decide not to disclose certain documents under the terms of disclosure set out in paragraph 4 or to disclose documents that are partly redacted under the terms of disclosure set out in paragraph 4 if, taking into account the harm that the information provider would likely suffer

from disclosure under the terms of disclosure, the Commission determines that on balance, this harm outweighs the importance of the disclosure for the exercise of the rights of defence.

- (6) For specific documents to which access was provided pursuant to paragraph 4, the specified legal and economic counsel and technical experts may make a reasoned request to the Commission for access to a non-confidential version of the document(s) in question that may be made available to the undertaking under investigation within [one week] of receiving access/from granting access to the document(s) under the terms of disclosure. In addition, the specified legal and economic counsel and technical experts may make a reasoned request for an extension of the terms of disclosure with regards to the specific document(s) to additional specified individuals representing or advising the undertaking under investigation within [one week] of receiving access under the terms of disclosure. Such additional access may only be granted exceptionally, if such extended access to the document(s) requested is indispensable for the proper exercise of the rights of defence of the undertaking under investigation.
- (7) If the Commission determines that the request under paragraph 6 is fully or partly justified, it will request the information provider to provide a version of the document(s), pursuant to the provisions of Article 20(3). If such a version has been provided, but the Commission considers that disclosure should be provided without certain redactions for confidentiality in order to ensure that the undertaking under investigation is in a position to exercise its rights of defence, the Commission will request the information provider to agree to extend the terms of disclosure to specified individual(s) or undertakings for the document(s) in question only. In the event that the information provider does not agree to the extension of the terms of disclosure, the Commission will adopt a decision setting out the terms of disclosure.
- (8) 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 20(3) in order to avoid a disproportionate delay or administrative burden.
- (9) Information obtained through access to the file shall only be used for the purposes for the relevant proceedings for the application of Regulation (EU) 2022/2560.

CHAPTER VIII

TIME LIMITS

Article 22

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

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).

paragraph 2 of this Article and Article 23. 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 23

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 24

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 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 other persons involved is responsible;
 - c) one of the notifying parties or 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 as required by 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) of this Regulation.
- (2) Where the Commission has, pursuant to paragraph 1, suspended 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 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 failure to inform the Commission of relevant information 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 requested 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 limit 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 25

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

- (1) Where the Commission suspended 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 26

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) are used.
- (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 and any amendments thereof.

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).

- (3) Technical specifications regarding the means of transmission and signature may be published on the website of the Commission's Directorate General for Competition
- (4) 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. 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.

In those cases, the Commission shall inform the sender without undue delay if one of the circumstances referred to in (a) to (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. This address shall be also indicated on the website of the Commission's Directorate General for Competition.

Article 29

Transmission and signature of documents in public procurement procedures (notifications and ex officio)

- (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 (5) and (6).
- (2) In 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 shall be published on the website of the Commission's Directorate General for Internal market, industry, entrepreneurship and SMEs.
- (4) Article 26(4) and (5) shall apply also in the context of transmission and signature of documents in public procurement procedures to the Commission.
- (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 published in the Official

Journal of the European Union. This address shall also be 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 in the Official Journal of the European Union, as long as this is confirmed in an acknowledgment of receipt by the Commission. This address shall be also indicated on the website of the Commission's Directorate General for Internal market, industry, entrepreneurship and SMEs.

CHAPTER X FINAL PROVISIONS

Article 30

Entry into force

- (7) This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (8) This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

Done at Brussels,

*For the Commission
The President
Ursula von der Leyen*