
European
Commission

Brussels, 10 July 2023
C(2023)4622 final

**ANNEX**

**to the**

**COMMISSION IMPLEMENTING REGULATION (EU) 2023/1441**

**of 10 July 2023**

**on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market**

Table of Contents

[Table of Contents 2](#_Toc147757445)

[1. The purpose of the Form FS-PP 3](#_Toc147757446)

[2. Definitions and instructions for the purposes of this Form FS-PP 3](#_Toc147757447)

[3. Types of information required by the Form FS-PP 3](#_Toc147757448)

[4. Information that is not reasonably available 5](#_Toc147757449)

[5. Information that is not necessary for the Commission’s examination of the case 5](#_Toc147757450)

[6. Pre-notification contacts and waiver requests 5](#_Toc147757451)

[7. The requirement for a correct and complete notification or declaration 6](#_Toc147757452)

[8. How to notify 7](#_Toc147757453)

[9. Confidentiality and Personal Data 8](#_Toc147757454)

[SECTION 1: Description of the public procurement 9](#_Toc147757455)

[SECTION 2: Information about the notifying party(ies) 9](#_Toc147757456)

[SECTION 7: Declaration 9](#_Toc147757457)

[SECTION 8: Attestation 10](#_Toc147757458)

ANNEX II
FORM FS-PP RELATING TO THE NOTIFICATION OF FINANCIAL CONTRIBUTIONS IN THE CONTEXT OF PUBLIC PROCUREMENT PROCEDURES PURSUANT TO REGULATION 2022/2560

INTRODUCTION

# The purpose of the Form FS-PP

1. This Form FS-PP specifies the information that must be provided by the notifying party(ies) when submitting a notification or declaration to the Commission of foreign financial contributions in the context of a public procurement procedure covered by the foreign subsidies control system of the Union. The foreign subsidies control system of the Union is laid down in Regulation (EU) 2022/2560 of the European Parliament and of the Council[[1]](#footnote-2) and in Commission Implementing Regulation (EU) [number] on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market (the ‘Implementing Regulation’)[[2]](#footnote-3), to which this Form FS-PP is annexed.

# Definitions and instructions for the purposes of this Form FS-PP

1. For the purposes of this Annex, the following definitions apply:
	* + 1. ‘Notifying party(ies)’ mean(s), in accordance with Article 29(5) of Regulation (EU) 2022/2560, all the economic operators, groups of economic operators, main subcontractors and main suppliers covered by the notification obligation in line with Article 29(1) of Regulation (EU) 2022/2560;
			2. ‘Main contractor’, within the meaning of Directives 2014/24/EU and 2014/25/EU, or ‘main concessionaire’, within the meaning of Directive 2014/23/EU, is the economic operator ensuring the submission of the notification or declaration on behalf of all notifying parties;
2. Unless otherwise specified, the term ‘notifying party(ies)’ includes all its subsidiary companies without commercial autonomy and all its holding companies within the meaning of Article 28(1)(b) of Regulation (EU) 2022/2560.
3. Any financial data requested must be provided in euro at the average exchange rates prevailing for the years or other periods in question.

# Types of information required by the Form FS-PP

1. Where at least one of the notifying parties has received a notifiable foreign financial contribution in line with Articles 28(1) and (2) and Article 29(1) of Regulation (EU) 2022/2560, the notifying party(ies) shall, and shall only, submit a notification. The notification is submitted in one form, based on the elements outlined below.
2. Conversely, where none of the notifying parties have received a notifiable foreign financial contribution in line with Articles 28(1) and (2) and Article 29(1) of Regulation (EU) 2022/2560, the notifying party(ies) shall, and shall only, submit a declaration. The declaration is submitted in one form, based on the elements outlined below.
3. The Commission may, on a case-by-case basis, request more detailed information on any of the types of financial contributions included in response to the questions in Section 3 and in Table 1, or on any other foreign financial contributions received by the notifying party(ies). In any case, all foreign financial contribution granted to the notifying party(ies) in the three years prior to the notification must be taken into account for the purposes of determining whether the notification threshold under Article 28(1)(b) of Regulation (EU) 2022/2560 is met, regardless of whether any information is requested about them under Section 3.
4. The Form FS-PP requires the following information:
	* + 1. NOTIFICATIONS OF FOREIGN FINANCIAL CONTRIBUTIONS

i. In the case of a notification of foreign financial contributions under Chapter 4 of Regulation (EU) 2022/2560, all sections and their respective fields normally need to be filled in, with the exception of Section 7 (Declaration).

ii. Section 1 must contain a summary description of the public procurement procedure.

iii. Section 2 must contain information about the notifying party(ies).

iv. Section 3 must contain detailed information on the foreign financial contribution(s). In particular, pursuant to Section 3, detailed information is requested on each of the foreign financial contributions equal to or in excess of EUR 1 million granted to the notifying parties in the three years prior to the notification that may fall into any of the categories of Article 5(1), points (a) to (c) and (e) of Regulation (EU) 2022/2560. In relation to other foreign financial contributions, the Form FS-PP requires the notifying party(ies) to provide an overview of the various types of financial contributions granted to the notifying party(ies) in accordance with the instructions provided in Table 1.

v. Section 4 may contain an explanation of how the tender is not unduly advantageous.

vi. Section 5 may, if applicable, list and substantiate any possible positive effects of the subsidies on the development of the relevant subsidised economic activity as well as other positive effects in relation to the relevant policy objectives.

vii. Section 6 lists the included supporting documents.

viii. Section 8 must contain a signed attestation that the provided information is true,correct, and complete, and that the notifying party(ies) is/are aware of the provisions on fines.

* + - 1. DECLARATION OF NO NOTIFIABLE FOREIGN FINANCIAL CONTRIBUTIONS:

i. If no notifiable foreign financial contributions have been granted to the notifying party(ies) in the last three years, only Sections 1, 2, and 8 of the Form FS-PP must be filled in, as well as the specific Section 7, while the remaining sections must be left blank.

ii. All of the information requested in the Form FS-PP is without prejudice of the possibility for the Commission to ask for further information in a request for information.

# Information that is not reasonably available

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

# Information that is not necessary for the Commission’s examination of the case

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

# Pre-notification contacts and waiver requests

1. The notifying party(ies) is/are encouraged to engage in pre-notification discussions in sufficient time prior to the notification, preferably on the basis of a draft Form FS-PP. The possibility to engage in pre-notification contacts is a service offered by the Commission to the notifying party(ies) on a voluntary basis, in order to prepare the preliminary review of foreign subsidies in the context of a published public procurement. As such, while not mandatory, pre-notification contacts can be valuable to both the notifying party(ies) and the Commission in determining, among other things, the precise amount of information required in a notification, in particular as regards the information to be provided under Section 3 and in Table 1, and to ensure that the notification is complete. Moreover, pre-notification contacts may result in a significant reduction of the information required. Where there is more than one notifying party (as a single economic operator) or group of notifying parties (as members of the same consortium), with each notifying party or group aiming to submit a different tender in the same public procurement procedure, the pre-notification discussions must be held with each notifying party or groups thereof separately and in full confidentiality, to ensure fair competition in the public procurement procedure at stake.
2. In the course of pre-notification contacts, the notifying party(ies) may request waivers to submit certain information required by this form. The Commission will consider waiver requests, provided that one of the following conditions is fulfilled:
	* + 1. The notifying party(ies) give(s) adequate reasons why the relevant information is not reasonably available. Where appropriate and to the extent possible, the notifying party(ies) should provide best estimates for the missing data, identifying the sources for these estimates or indicate where any of the requested information that is unavailable to the notifying party(ies) could be obtained from by the Commission.
			2. The notifying party(ies) give(s) adequate reasons why the relevant information is not necessary for the examination of the case.
3. Waiver requests should be made during pre-notification in writing, preferably in the draft Notification itself (at the beginning of the relevant section or sub-section). The Commission will deal with waiver requests during pre-notification in the context of the review of the draft notification.
4. The fact that the Commission may have accepted that any particular information requested by this Form FS-PP may be omitted from a notification, does not in any way prevent the Commission from requesting that information at any time during the proceedings, in particular through a request for information pursuant to Article 13 of Regulation (EU) 2022/2560.

# The requirement for a correct and complete notification or declaration

1. The information requested in Sections 1-3, 6 and 8 must be provided in the case of a notification of foreign financial contributions and is therefore a requirement for a complete notification. All the required information must be supplied in the appropriate sections of the Form FS-PP and it must be correct and complete.
2. In the case of a declaration that no notifiable foreign financial contributions were received, the information requested in Sections 1, 2, 7 and 8 must be provided, and is therefore a requirement for a complete declaration. All the required information must be supplied in the appropriate section of the Form FS-PP and it must be correct and complete.
3. In particular it should be noted that:
	* + 1. The time period of 20 working days laid down in Article 30, paragraphs (2) and (6) of Regulation (EU) 2022/2560 shall begin on the working day following that of the receipt of the complete notification. This is to ensure that the Commission is able to assess the notified foreign financial contributions within the strict time limits laid down in Regulation (EU) 2022/2560.
			2. The notifying party(ies) must verify, in the course of preparing their notification, that contact names and numbers, and in particular e-mail addresses, provided to the Commission are accurate, relevant and up-to-date.
			3. A declaration may be submitted only where all of the notifying partyies are declaring that no notifiable foreign financial contributions in the last three years have been granted to them. Where at least one of the notifying partyies has been granted notifiable foreign financial contributions, the submission shall be considered a notification for the purposes of this Implementing Regulation.
			4. Requested contact details of the notifying parties must be provided in the format prescribed by the Commission's Directorate General for Internal market, industry, entrepreneurship and SMEs (DG GROW) on its website[[3]](#footnote-4). For a proper review process, it is essential that the contact details are accurate. To this end, email addresses provided should not be personalised and attributed to specific contact persons, rather functional company mailboxes of the team in charge of notification should be used. The Commission may declare the notification incomplete on the basis of inappropriate contact details.
			5. Supporting documentation under Section 6 must be provided together with a summary table following the format prescribed by DG GROW on its website.
			6. In accordance with Article 7(4) of the Implementing Regulation, incorrect or misleading information in, or provided together with, the notification will be considered as rendering the notification incomplete for the purposes of determining the effective date of notification.
			7. Under Article 29(4) of Regulation (EU) 2022/2560, where a notification accompanying a tender or request to participate remains incomplete despite a request made by the Commission to complete it, the Commission should adopt a decision requesting the contracting authority or contracting entity to adopt a decision rejecting such an irregular tender or request to participate.
			8. Under Article 33(2) of Regulation (EU) 2022/2560, the economic operators concerned who, either intentionally or negligently, provides incorrect or misleading information, may be liable to fines of up to 1 % of their aggregate turnover. In addition, pursuant to Article 18(1)(b) of Regulation (EU) 2022/2560, the Commission may revoke its decision where it was based on incomplete, incorrect or misleading information.

# How to notify

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

# Confidentiality and Personal Data

1. Article 339 of the Treaty on the Functioning of the European Union and Article (‘TFEU’) 43(2) of Regulation (EU) 2022/2560 require that the Commission, its officials and other servants do not disclose information covered by the obligation of professional secrecy that they have acquired through the application of the Regulation. The same principle must also apply to protect confidentiality between notifying parties.
2. If the notifying party(ies) believe(s) that their interests would be harmed if any of the information they are asked to supply were to be published or otherwise disclosed to other parties, including the other economic operators they submit the notification with and the relevant contracting authority or contracting entity, they should submit this information to the relevant contracting authority or contracting entity separately with each page clearly marked ‘Confidential’. For this purpose, a separate encrypted archive of documents may be submitted and the key provided to the Commission separately. The notifying parties should also give reasons why this information should not be disclosed or published.
3. In cases where the notification is completed by more than one notifying party, business secrets may be submitted under separate cover, and referred to in the notification as an annex. In order for a notification to be considered complete, all such annexes must be included in the notification.
4. Any personal data submitted in or with a notification will be processed in compliance with Regulation (EU) 2018/1725 of the European Parliament and of the Council.[[4]](#footnote-5)

# SECTION 1: Description of the public procurement

This information shall be provided in the online Declaration Form by the notifying party submitting the tender

# SECTION 2: Information about the notifying party(ies)

This information shall be provided in full in the online Declaration Form by each notifying party and in a simplified format in this form

|  |  |  |  |
| --- | --- | --- | --- |
| Organisation: | Name: | Street and Number: | City: |
| Country: | Postcode: | Contact person(s): | E-mail: |
| Phone number: | Internet Address: | VAT number: |  |

# SECTION 7: Declaration

☐ This information is provided in the online Declaration Form

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

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

* 1. In accordance with the obligation in Article 29(1) of Regulation (EU) 2022/2560, the notifying party(ies) must list all foreign financial contributions received. This obligation covers all foreign financial contributions non-notifiable in accordance with Article 28(1), point (b), of Regulation (EU) 2022/2560 received in the last three years preceding the declaration.

|  |  |
| --- | --- |
| Third counrty | List of the foreign financial contributions received and the granting entities |
|  |  |

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

# SECTION 8: Attestation

This information shall be provided in the online Declaration Form by each notifying party

**Table 2**

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

|  |  |
| --- | --- |
| **Third-country**  | **Brief description of the financial contributions**  |
| Country A |  |
| Country B |  |
| Country C |  |
| … |  |
|  |  |

1. OJ L 330, 23.12.2022, p. 1.  [↑](#footnote-ref-2)
2. OJ L 177, 12.7.2023, p. 1. [↑](#footnote-ref-3)
3. Please see: <https://single-market-economy.ec.europa.eu/single-market/public-procurement/foreign-subsidies-regulation> and follow the instructions there. [↑](#footnote-ref-4)
4. OJ L 295, 21.11.2018, p. 39. See also a privacy statement relating to competition investigations at <https://ec.europa.eu/competition-policy/index/privacy-policy-competition-investigations_en>. [↑](#footnote-ref-5)