



Council of the
European Union

Brussels, 11 May 2022
(OR. en)

8993/22

Interinstitutional File:
2021/0114(COD)

CODEC 673
COMPET 322
COMER 64
MI 378
RC 29

COVER NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market

Delegations will find attached the first 4-column table on the “Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market” issued with a view of starting the negotiations with the European Parliament.

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market
2021/0114(COD)
DRAFT

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Formula				
1	2021/0114 (COD)	2021/0114 (COD)	2021/0114 (COD)	
Proposal Title				
2	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on foreign subsidies distorting the internal market	
Formula				
3	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
Citation 1				
4	Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 207 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 207 thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 207 thereof,	
Citation 2				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
5	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	
Citation 3				
6	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	
Citation 4				
7	Having regard to the opinion of the European Economic and Social Committee ¹ , 1. OJ C [...], [...], p. [...].	Having regard to the opinion of the European Economic and Social Committee ¹ , 1. OJ C [...], [...], p. [...].	Having regard to the opinion of the European Economic and Social Committee ¹ , 1. OJ C [...], [...], p. [...].	
Citation 5				
8	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	
Formula				
9	Whereas:	Whereas:	Whereas:	
Recital 1				
10	(1) A strong, open and competitive internal market enables both European and foreign undertakings	(1) A strong, open and competitive internal market enables both European and foreign undertakings	(1) A strong, open and competitive internal market enables both European and foreign undertakings	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	to compete on merits. The Union benefits from a sophisticated and effective system of State aid control, aiming at ensuring fair conditions for all undertakings engaging in an economic activity in the internal market. This State aid control system prevents Member States from granting State aid that unduly distorts competition in the internal market.	to compete on merits. The Union benefits from a sophisticated and effective system of State aid control, aiming at ensuring fair conditions for all undertakings engaging in an economic activity in the internal market. This State aid control system prevents Member States from granting State aid that unduly distorts competition in the internal market.	to compete on merits. The Union benefits from a sophisticated and effective system of State aid control, aiming at ensuring fair conditions for all undertakings engaging in an economic activity in the internal market. This State aid control system prevents Member States from granting State aid that unduly distorts competition in the internal market.	
Recital 2				
11	(2) At the same time, undertakings might receive subsidies from third countries, that provide public funds which are then used, for instance, to finance economic activities in the internal market in any sector of the economy, such as participation in public procurement tenders, or acquisitions of undertakings, including those with strategic assets such as critical infrastructure and innovative technologies. Such subsidies are currently not subject to Union State aid rules.	(2) At the same time, undertakings might receive subsidies from third countries, that provide public funds which are then used, for instance, to finance economic activities in the internal market in any sector of the economy, such as participation in public procurement tenders, or acquisitions of undertakings, including those with strategic assets such as critical infrastructure and innovative technologies. Such subsidies are currently not subject to Union State aid rules. <u>Similar concerns apply in relation to state-owned enterprises.</u>	(2) At the same time, undertakings might receive subsidies from third countries, that provide public funds, which are then used, for instance, to finance economic activities in the internal market in any sector of the economy, such as participation in public procurement tenders procedures , or acquisitions of undertakings, including those with strategic assets such as critical infrastructure and innovative technologies. Such subsidies are currently not subject to Union State aid rules.	
Recital 2a				
11a		<u>(2a) Although this Regulation should cover all economic sectors,</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u><i>the Commission should pay particular attention to sectors that are of strategic interest to the Union and critical infrastructures, such as those mentioned in Article 4(1), point (a), of Regulation (EU) 2019/452 of the European Parliament and of the Council.</i></u>		
Recital 3				
12	(3) Foreign subsidies can distort the internal market and undermine the level playing field for various economic activities in the Union. This could in particular occur in the context of concentrations entailing a change of control over Union undertakings, where such concentrations are fully or partially financed through foreign subsidies, or if undertakings benefiting from foreign subsidies are awarded public contracts in the Union.	(3) Foreign subsidies can distort the internal market and undermine the level playing field for various economic activities in the Union. This could in particular occur in the context of concentrations entailing a change of control over Union undertakings, where such concentrations are fully or partially financed through foreign subsidies, or if undertakings benefiting from foreign subsidies are awarded public contracts in the Union.	(3) Foreign subsidies can distort the internal market and undermine the level playing field for various economic activities in the Union. This could in particular occur in the context of concentrations entailing a change of control over Union undertakings, where such concentrations are fully or partially financed through foreign subsidies, or if undertakings economic operators¹ benefiting from foreign subsidies are awarded public contracts in the Union. 1. For the purpose of this Regulation, when public procurement procedures are concerned, the term undertaking will be understood as the economic operator pursuant to Directives 2009/81/EC, 2014/23/EU, 2014/24/EU and 2014/25/EU	
Recital 4				
13	(4) No existing Union instruments	(4) No existing Union instruments	(4) No existing Union instruments	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	address distortions caused by foreign subsidies. Trade defence instruments enable the Commission to act when subsidised goods are imported into the Union, but not when foreign subsidies take the form of subsidised investments, or when services and financial flows are concerned. Under the WTO Agreement on Subsidies and Countervailing Measures, the Union has the possibility to initiate State-to-State dispute settlement against certain foreign subsidies granted by WTO members and limited to goods.	address distortions caused by foreign subsidies. Trade defence instruments enable the Commission to act when subsidised goods are imported into the Union, but not when foreign subsidies take the form of subsidised investments, or when services and financial flows are concerned. Under the WTO Agreement on Subsidies and Countervailing Measures, the Union has the possibility to initiate State-to-State dispute settlement against certain foreign subsidies granted by WTO members and limited to goods.	address distortions caused by foreign subsidies. Trade defence instruments enable the Commission to act when subsidised goods are imported into the Union, but not when foreign subsidies take the form of subsidised investments, or when services and financial flows are concerned. Under the WTO Agreement on Subsidies and Countervailing Measures, the Union has the possibility to initiate State-to-State dispute settlement against certain foreign subsidies granted by WTO members and limited to goods.	
Recital 5				
14	(5) It is therefore necessary to complement existing Union instruments with a new tool to effectively deal with distortions in the internal market caused by foreign subsidies and ensure a level playing field. In particular, the new tool complements Union State aid rules which deal with distortions in the internal market caused by Member State subsidies.	(5) It is therefore necessary to complement existing Union instruments with a new tool to effectively deal with distortions in the internal market caused by foreign subsidies and ensure a level playing field. In particular, the new tool complements Union State aid rules which deal with distortions in the internal market caused by Member State subsidies.	(5) It is therefore necessary to complement existing Union instruments with a new tool to effectively deal with distortions in the internal market caused by foreign subsidies and in order to ensure a level playing field. In particular, the new tool complements Union State aid rules which deal with distortions in the internal market caused by Member State subsidies.	
Recital 5a				
14a		<u><i>(5a) This Regulation should be coherent and coordinated with</i></u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p><u>existing instruments, such as Council Regulation (EC) No 139/2004¹, Directive 2014/24/EU of the European Parliament and of the Council², Regulation (EU) 2019/452 of the European Parliament and of the Council³ or Regulation (EU) 2022/... of the European Parliament and of the Council⁴. In its application of the different instruments, the Commission should pay attention to ensure an efficient sharing of necessary information to safeguard a comprehensive approach.</u></p> <p><u>1. Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p.1).</u></p> <p><u>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).</u></p> <p><u>3. Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 791, 21.3.2019, p.1).</u></p> <p><u>4. Regulation (EU) 2022/... of the European Parliament and of the Council on the access of third-country economic operators, goods and services to the Union's public procurement market and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement markets of third countries (International Procurement Instrument - IPI) (OJ L ...).</u></p>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 6				
15	<p>(6) Rules and procedures to investigate foreign subsidies that actually or potentially distort the internal market should be laid down and, where relevant, those distortions should be redressed. Foreign subsidies could distort the internal market if the undertaking benefitting from the foreign subsidy engages in an economic activity in the Union. This Regulation should therefore establish rules for all undertakings engaging in an economic activity in the Union. Given the significance of the economic activities pursued by SMEs, and their contribution to the fulfilment of the Union's key policy goals, special attention is given to the impact of this Regulation on them.</p>	<p>(6) Rules and procedures to investigate foreign subsidies that actually or potentially distort the internal market should be laid down and, where relevant, those distortions should be redressed. Foreign subsidies could distort the internal market if the undertaking benefitting from the foreign subsidy engages in an economic activity in the Union. <u>The proper application and enforcement of this Regulation should contribute to the resilience of the internal market against distortions caused by foreign subsidies and thereby strengthen the Union's open strategic autonomy.</u> This Regulation should therefore establish rules for all undertakings engaging in an economic activity in the Union. Given the significance of the economic activities pursued by SMEs, and their contribution to the fulfilment of the Union's key policy goals, special attention is given to the impact of this Regulation on them.</p>	<p>(6) Rules and procedures to investigate foreign subsidies that actually or potentially distort the internal market should be laid down and, where relevant, those distortions should be redressed. Foreign subsidies could distort the internal market if the undertaking benefitting from the foreign subsidy engages in an economic activity in the Union. This Regulation should therefore establish rules for all undertakings engaging in an economic activity in the Union. Given the significance of the economic activities pursued by SMEs, and their contribution to the fulfilment of the Union's key policy goals, special attention is given to the impact of this Regulation on them.</p>	
Recital 7				
16	<p>(7) To ensure a level playing field</p>	<p>(7) To ensure a level playing field</p>	<p>(7) To ensure a level playing field</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	throughout the internal market and consistency in the application of this Regulation, the Commission should be the sole authority competent to apply this Regulation. The Commission should have the power to examine any foreign subsidy to the extent it is in the scope of this Regulation in any sector of the economy on its own initiative relying on information from all available sources. To ensure effective control, in the specific case of large concentrations (mergers and acquisitions) and public procurement procedures above certain thresholds, the Commission should have the power to review foreign subsidies based on a prior notification by the undertaking to the Commission.	throughout the internal market and consistency in the application of this Regulation, the Commission should be the sole authority competent to apply this Regulation. The Commission should have the power to examine any foreign subsidy to the extent it is in the scope of this Regulation in any sector of the economy on its own initiative relying on information from all available sources. To ensure effective control, in the specific case of large concentrations (mergers and acquisitions) and public procurement procedures above certain thresholds, the Commission should have the power to review foreign subsidies based on a prior notification by the undertaking to the Commission.	throughout the internal market and consistency in the application of this Regulation, the Commission should be the sole authority competent to apply this Regulation. The Commission should have the power to examine any foreign subsidy to the extent it is in the scope of this Regulation in any sector of the economy on its own initiative relying on information from all available sources. To ensure effective control, in the specific case of large concentrations (mergers and acquisitions) and public procurement procedures above certain thresholds, the Commission should have the power to review foreign subsidies based on a prior notification by the undertaking to the Commission.	
Recital 7a				
16a		<u>(7a) Given that the relevant Member State authorities are an integral part of the application of this Regulation, Member States should ensure that their authorities cooperate and coordinate effectively with the Commission in the application of this Regulation. For this purpose, the Commission should be able to set up structured cooperation to share information and coordinate.</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 7a				
16b			(7a) This Regulation should be applied and interpreted in light of the relevant Union legislation, including those relating to State aid, mergers and public procurement.	
Recital 8				
17	(8) Foreign subsidy in the context of this Regulation should be understood as an intervention that meets three cumulative conditions.	(8) Foreign subsidy in the context of this Regulation should be understood as an intervention that meets three cumulative conditions.	(8) Foreign subsidy in the context of this Regulation should be understood as an intervention that meets three the following cumulative conditions.	
Recital 9				
18	(9) There should be a financial contribution provided, directly or indirectly, by the public authorities of a third country. The financial contribution may be granted through public or private entities. Whether a public entity provides a financial contribution should be determined on a case-by-case basis with due regard to elements such as the characteristics of the relevant entity and the legal and economic environment prevailing in the country in which the entity operates including the government's role in the economy. Financial contributions	(9) There should be a financial contribution provided, directly or indirectly, by the public authorities of a third country. The financial contribution may be granted through public or private entities. Whether a public entity provides a financial contribution should be determined on a case-by-case basis with due regard to elements such as the characteristics of the relevant entity and the legal and economic environment prevailing in the <u>third</u> country in which the entity operates including the government's role in the economy <u>of that third country</u> .	(9) There should be is a financial contribution provided, directly or indirectly, by the public authorities of a third country. The financial contribution may be granted through public or private entities. Whether a public entity provides provided a financial contribution should be determined on a case-by-case basis with due regard to elements such as the characteristics of the relevant entity and the legal and economic environment prevailing in the country in which the entity operates including the government's role in the economy of that country .	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	may also be granted through a private entity if its actions can be attributed to the third country.	Financial contributions may also be granted through a private entity if its actions can be attributed to the third country. <u>Support measures that are economically equivalent to a financial contribution should also be considered as a financial contribution. Such a financial contribution could include a situation where the beneficiary has privileged access to its domestic market, namely through exclusive or special rights as well as selective de jure or de facto exceptions to applicable rules or equivalent measures, for the provision of goods or services in the third country conferred by national law or the benefit of a domestic captive market due to the prevailing legal and economic conditions. This could lead to an artificial competitive advantage that could be leveraged in the internal market and thereby exacerbate the distortive effect of any subsidy.</u>	Financial contributions may also be granted through a private entity if its actions can be attributed to the third country. Granting special or exclusive rights to an undertaking without receiving adequate remuneration in line with normal market conditions may constitute foregone State revenues, and may confer a benefit to the undertaking.	
Recital 10				
19	(10) Such a financial contribution should confer a benefit to an undertaking engaging in an economic activity in the internal market. A financial contribution that benefits an entity engaging in non-economic activities does not	(10) Such A financial contribution should confer a benefit to an undertaking engaging in an economic activity in the internal market. A financial contribution that benefits an entity engaging in non-economic activities does not	(10) Such A financial contribution should confer a benefit to an undertaking engaging in an economic activity in the internal market. A financial contribution that benefits an entity engaging in non-economic activities does not	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>constitute a foreign subsidy. The existence of a benefit should be determined on the basis of comparative benchmarks, such as the investment practice of private investors, rates for financing obtainable on the market, a comparable tax treatment, or the adequate remuneration for a given good or service.. If no directly comparable benchmarks are available, existing benchmarks could be adjusted or alternative benchmarks could be established based on generally accepted assessment methods.</p>	<p>constitute a foreign subsidy. The existence of a benefit should be determined on the basis of comparative benchmarks, such as the investment practice of private investors, rates for financing obtainable on the market, a comparable tax treatment, or the adequate remuneration for a given good or service. If no directly comparable benchmarks are available, existing benchmarks could be adjusted or alternative benchmarks could be established based on generally accepted assessment methods. <u>Transfer pricing may confer a benefit and be considered as equivalent to a financial contribution if not in line with normal market conditions.</u></p>	<p>constitute a foreign subsidy is considered to confer a benefit to an undertaking if it could not have been obtained under normal market conditions. The existence of a benefit should be determined on the basis of comparative benchmarks, such as the investment practice of private investors, rates for financing obtainable on the market, a comparable tax treatment, or the adequate remuneration for a given good or service-. If no directly comparable benchmarks are available, existing benchmarks could be adjusted or alternative benchmarks could be established based on generally accepted assessment methods. Benefits may notably be conferred in the context of the relationship established between public authorities and public undertakings, if such a relationship, and in particular any financing by the public authorities to public undertakings does not comply with normal market conditions. The provision or purchase of goods or services carried out following a competitive, transparent and non-discriminatory tender procedure, is presumed to be in line with normal market conditions. A financial contribution to an undertaking engaging in an</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			economic activity in the internal market should not be considered as conferring a benefit when the benchmark assessment shows that the undertaking would have obtained that benefit under normal market conditions.	
Recital 11				
20	(11) The benefit should be conferred to an individual undertaking or industry or several undertakings or industries. The benefit could be established by law or in fact.	(11) The benefit should be conferred to an individual undertaking or industry or several undertakings or industries. The benefit could be established by law or in fact.	(11) The benefit should be conferred to an individual undertaking or industry or several one or more undertakings or industries. The benefits specificity of the foreign subsidy could be established by law or in fact. The benefit conferred by a financial contribution may be passed-through to an undertaking engaging in an economic activity in the Union.	
Recital 11a				
20a		<u><i>(11a) A foreign subsidy is considered granted from the moment the beneficiary has an entitlement to receive the subsidy. The actual payment of the subsidy is not a necessary condition for bringing a subsidy within the scope of this Regulation.</i></u>		
Recital 11a				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
20b			(11a) A foreign subsidy should be considered granted from the moment the beneficiary obtains an entitlement to receive the foreign subsidy. The actual disbursement of the foreign subsidy is not a necessary condition for bringing a subsidy within the scope of this Regulation.	
Recital 11b				
20c			(11b) A financial contribution that is provided exclusively to the non-economic activities of an undertaking does not constitute a foreign subsidy. However, if a financial contribution for a non-economic activity is used to cross-subsidise the economic activities of the undertaking, it can amount to a foreign subsidy falling under the scope of this Regulation. If an undertaking uses financial contributions, for instance in the form of special or exclusive rights, or those received to compensate for a burden imposed by public authorities, to cross-subsidise other activities, that could be an indication that the special or exclusive rights are provided without adequate remuneration, or that the burden is overcompensated and thus	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			amounts to a foreign subsidy.	
Recital 12				
21	(12) Once the existence of a foreign subsidy is established, the Commission should assess whether the foreign subsidy distorts the internal market. Unlike State aid granted by a Member State, foreign subsidies are not generally prohibited. Subsidies in the form of export financing may be a cause of particular concern because of their distortive effects. This is not the case if such financing is provided in line with the OECD Arrangement on officially supported export credits. The Commission should assess on a case-by-case basis whether a foreign subsidy distorts the internal market.	(12) Once the existence of a foreign subsidy is established, the Commission should assess whether the foreign subsidy distorts the internal market. Unlike State aid granted by a Member State, foreign subsidies are not generally prohibited. Subsidies in the form of export financing may be a cause of particular concern because of their distortive effects. This is not the case if such financing is provided in line with the OECD Arrangement on officially supported export credits. The Commission should assess on a case-by-case basis whether a foreign subsidy distorts the internal market.	(12) Once the existence of a foreign subsidy is established, the Commission should assess on a case by case basis whether the foreign subsidy distorts the internal market. Unlike State aid granted by a Member State, foreign subsidies are not generally prohibited. Subsidies in the form of export financing may be a cause of particular concern because of their distortive effects. This is not the case if such financing is provided in line with the OECD Arrangement on officially supported export credits. The Commission should assess on a case-by-case basis whether a foreign subsidy distorts the internal market.	
Recital 13				
22	(13) The lack of transparency concerning many foreign subsidies and the complexity of the commercial reality may make it difficult to unequivocally identify or quantify the impact of a given foreign subsidy on the internal market. To determine the distortion, it therefore appears necessary to use a non-exhaustive set of indicators.	(13) The lack of transparency concerning many foreign subsidies and the complexity of the commercial reality may make it difficult to unequivocally identify or quantify the impact of a given foreign subsidy on the internal market. To determine the distortion, it therefore appears necessary to use a non-exhaustive set of indicators.	(13) The lack of transparency concerning many foreign subsidies and the complexity of the commercial reality may make it difficult to unequivocally identify or quantify the impact of a given foreign subsidy on the internal market. To determine the distortion, it therefore appears necessary to use a non-exhaustive set of indicators.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	When assessing the extent to which a foreign subsidy can improve the competitive position of the undertaking concerned and, in doing so, actually or potentially negatively affects competition in the internal market, the Commission could have regard to certain indicators, including but not limited to the amount and nature of the subsidy, the purpose and conditions attached to the foreign subsidy as well as its use in the internal market.	When assessing the extent to which a foreign subsidy can improve the competitive position of the undertaking concerned and, in doing so, actually or potentially negatively affects competition in the internal market, the Commission could have regard to certain indicators, including but not limited to the amount and nature of the subsidy, the purpose and conditions attached to the foreign subsidy as well as its use in the internal market.	When assessing the extent to which a foreign subsidy can improve the competitive position of the ^{an} undertaking concerned and, in doing so, actually or potentially negatively affects competition in the internal market, the Commission could have regard to certain indicators, including but not limited to the amount and nature of the subsidy, the purpose and conditions attached to the foreign subsidy as well as its use in the internal market.	
Recital 14				
23	(14) When applying these indicators, the Commission could take into account different elements such as the size of the subsidy in absolute terms or in relation to the size of the market or to the value of the investment. For instance, a concentration, in the context of which a foreign subsidy covers a substantial part of the purchase price of the target, is likely to be distortive. Similarly, foreign subsidies covering a substantial part of the estimated value of a contract to be awarded in a public procurement procedure are likely to cause distortions. If a foreign subsidy is granted for operating costs, it seems more likely to cause distortions than if it is granted for	(14) When applying these indicators, the Commission could take into account different elements such as the size of the subsidy in absolute terms or in relation to the size of the market or to the value of the investment. For instance, a concentration, in the context of which a foreign subsidy covers a substantial part of the purchase price of the target, is likely to be distortive. Similarly, foreign subsidies covering a substantial part of the estimated value of a contract to be awarded in a public procurement procedure are likely to cause distortions. If a foreign subsidy is granted for operating costs, it seems more likely to cause distortions than if it is granted for	(14) When applying these indicators, the Commission could take into account different elements such as the size of the subsidy in absolute terms or in relation to the size of the market or to the value of the investment. For instance, a concentration, in the context of which a foreign subsidy covers a substantial part of the purchase price of the target, is likely to be distortive. Similarly, foreign subsidies covering a substantial part of the estimated value of a contract to be awarded in a public procurement procedure are likely to cause distortions. If a foreign subsidy is granted for operating costs, it seems more likely to cause distortions than if it is granted for	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>investment costs. Foreign subsidies to small and medium-sized undertakings may be considered less likely to cause distortions than foreign subsidies to large undertakings. Furthermore, the characteristics of the market, and in particular the competitive conditions on the market, such as barriers to entry, should be taken into account. Foreign subsidies leading to overcapacity by sustaining uneconomic assets or by encouraging investment in capacity expansions that would otherwise not have been built are likely to cause distortions. A foreign subsidy to a beneficiary that shows a low degree of activity in the internal market, measured for instance in terms of turnover achieved in the Union, is less likely to cause distortions than a foreign subsidy to a beneficiary that has a more significant level of activity in the internal market. Finally, foreign subsidies not exceeding EUR 5 million should be deemed, as a general rule, unlikely to distort the internal market within the meaning of this Regulation.</p>	<p>investment costs. Foreign subsidies to small and medium-sized undertakings may be considered less likely to cause distortions than foreign subsidies to large undertakings. Furthermore, the characteristics of the market, and in particular the competitive conditions on the market, such as barriers to entry, should be taken into account. Foreign subsidies leading to overcapacity by sustaining uneconomic assets or by encouraging investment in capacity expansions that would otherwise not have been built <u>or bought</u> are likely to cause distortions. A foreign subsidy to a beneficiary that shows a low degree of activity in the internal market, measured for instance in terms of turnover achieved in the Union, is less likely to cause distortions than a foreign subsidy to a beneficiary that has a more significant level of activity in the internal market. Finally, <u>The evolution of the economic activity can also be taken into account to enable the Commission to take action when an undertaking's level of activity is small, but is expected to grow strongly. The Commission should be able to consider in its assessment of a distortion whether a third country has an effective system for the control of subsidies in place which is at least equivalent</u></p>	<p>investment costs. Foreign subsidies to small and medium-sized undertakings may be considered less likely to cause distortions than foreign subsidies to large undertakings. Furthermore, the characteristics of the market, and in particular the competitive conditions on the market, such as barriers to entry, should be taken into account. Foreign subsidies leading to overcapacity by sustaining uneconomic assets or by encouraging investment in capacity expansions that would otherwise not have been built are likely to cause distortions. A foreign subsidy to a beneficiary that shows a low degree of activity in the internal market, measured for instance in terms of turnover achieved in the Union, is less likely to cause distortions than a foreign subsidy to a beneficiary that has a more significant level of activity in the internal market. Finally, foreign subsidies not exceeding EUR 5 million over a consecutive period of three financial years should be deemed, as a general rule, unlikely to distort the internal market within the meaning of this Regulation. Foreign subsidies to a single undertaking not exceeding EUR 200.000 per third country over a consecutive period of three financial years should be considered as not</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p><u>to the system in the Union and which would make subsidies granted by such a third country less likely to distort the internal market within the meaning of this Regulation. The Commission should therefore encourage third countries to develop such systems of subsidy control, including by concluding and enforcing bilateral agreements which include substantive level playing field provisions and by encouraging third countries to comply with international subsidy obligations and align with the Union on initiatives with regard to improving international rules on subsidies and competitive neutrality, notably within the WTO.</u> Foreign subsidies not exceeding EUR 5<u>4</u> million should be deemed, as a general rule, unlikely to distort the internal market within the meaning of this Regulation. <u>The Commission should draft and publish guidelines with further details for assessing the distortive nature of a subsidy in order to provide legal certainty for all market participants. The guidelines should also provide examples and typical cases of distortive and non-distortive subsidies.</u></p>	<p>distorting the internal market within the meaning of this Regulation.</p>	
Recital 15				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
24	(15) Like certain types of State aid, also certain categories of foreign subsidies, such as unlimited guarantees, are likely to create distortions in the internal market because of their nature. Those categories should not require a detailed assessment based on indicators. An undertaking could in any event show that the foreign subsidy in question would not distort the internal market in the specific circumstances of the case.	(15) Like certain types of State aid, also certain categories of foreign subsidies, such as unlimited guarantees, are likely to create distortions in the internal market because of their nature. Those categories should not require a detailed assessment based on indicators. An undertaking could in any event show that the foreign subsidy in question would not distort the internal market in the specific circumstances of the case.	(15) Like certain types of State aid, also certain categories of foreign subsidies, such as unlimited guarantees, that is to say without any limitation as to the amount or the duration of such guarantee , are likely to create distortions in the internal market because of their nature. The same is true for an unduly advantageous bid, the price of which does not reflect normal market conditions because of foreign subsidies. Since those categories should not require of foreign subsidies are most likely to create distortions in the internal market, it is not necessary for the Commission to perform a detailed assessment based on indicators. An undertaking could in any event show that the foreign subsidy in question would not distort the internal market in the specific circumstances of the case.	
Recital 16				
25	(16) The Commission should take into account the positive effects of the foreign subsidy on the development of the relevant subsidised economic activity. The Commission should weigh these positive effects against the negative effects of a foreign subsidy in terms	(16) The Commission should <u>be able to</u> take into account the positive effects of the foreign subsidy on the development of the relevant subsidised economic activity <u>on the internal market and its contribution to the achievement of public policy objectives, including social and</u>	(16) Member States, as well as any natural or legal persons may submit information on potential positive effects of a foreign subsidy. The Commission should take into account the positive effects of the foreign subsidy on if an undertaking under investigation	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>of distortion on the internal market in order to determine, if applicable, the appropriate redressive measure or accept commitments. The balancing may also lead to the conclusion that no redressive measures should be imposed. Categories of foreign subsidies that are deemed most likely to distort the internal market are less likely to have more positive than negative effects.</p>	<p><u><i>environmental objectives</i></u>. The Commission should weigh these positive effects against the negative effects of a foreign subsidy in terms of distortion on the internal market in order to determine, if applicable, the appropriate redressive measure or accept commitments. The balancing <u><i>should take account of both short- and long-term effects and follow the general objective of tackling distortions created by foreign subsidies. In its analysis, the Commission should take into account the general principles applied when assessing the compatibility of state aid with the single market. The balancing</i></u> may also lead to the conclusion that no redressive measures should be imposed. Categories of foreign subsidies that are deemed most likely to distort the internal market are less likely to have more positive than negative effects. <u><i>The Commission should also take into account the positive effects of subsidies granted to remedy serious national or global disturbances of the economy, such as those caused by global health crises. The Commission should develop guidelines on the application of the balancing test, including on the criteria to be used.</i></u></p>	<p>submits evidence of such positive effects. The positive effects should relate to the development of the relevant subsidised economic activity on the internal market including broader positive effects of the foreign subsidy in relation to the relevant policy objectives, in particular those of the Union. These may include, in particular, high level of environmental protection and social standards or the promotion of research and development. The Commission should weigh these positive effects against the negative effects of a foreign subsidy in terms of distortion on the internal market. In carrying out the balancing, the Commission will take utmost account of the relevant information provided by Member States in the context of the investigation. In the context of a public procurement procedure, the Commission should also take into account the availability of alternative sources of supply for the goods and services concerned in order to determine, if applicable, the appropriate redressive measure or accept commitments. The balancing may also lead to the conclusion that no redressive measures should not be imposed if the positive effects of the foreign subsidy on the subsidised economic development including</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>the broader positive effects outweigh its negative effects. In the case of –categories of foreign subsidies that are deemed most likely to distort the internal market, positive effects are less likely to have more positive than outweigh negative effects. If the negative effects prevail, the balancing may inform the appropriate nature and level of the redressive measures or commitments. In any event, as the balancing considers the potential positive effects of a foreign subsidy, applying such balancing should not lead to an outcome for the undertaking that would be worse than without the balancing. Where the Commission carries out a balancing for a foreign subsidy, it should set out its reasoning in the decision closing an in-depth investigation.</p>	
Recital 17				
26	<p>(17) Where the Commission examines a foreign subsidy on its own initiative, it should have the power to impose redressive measures on an undertaking to remedy any distortion caused by a foreign subsidy in the internal market. Redressive measures should be proportionate and suitable to remedy the distortion at stake. They</p>	<p>(17) Where the Commission examines a foreign subsidy on its own initiative, it should have the power to impose redressive measures on an undertaking to remedy any distortion caused by a foreign subsidy in the internal market. Redressive measures should be proportionate and suitable to remedy the distortion at stake. They</p>	<p>(17) Where the Commission examines a foreign subsidy on its own initiative, it should have the power to impose redressive measures on an undertaking to remedy any distortion caused by a foreign subsidy in the internal market. Redressive measures should be proportionate and include structural or non-structural</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	should include behavioural or structural remedies or the repayment of the foreign subsidy.	should include behavioural or structural remedies or the repayment of the foreign subsidy.	remedies or the repayment of the foreign subsidy. They should be suitable to remedy the distortion at stake. They and should include behavioural or structural remedies or the repayment of the foreign subsidy be proportionate. That is, where alternative sets of redressive measures would each fully and effectively remedy the distortion, the Commission will choose the one which is least burdensome for the undertaking under investigation.	
Recital 18				
27	(18) The undertaking concerned should have the possibility to offer commitments in order to remedy the distortion caused by the foreign subsidy. If the Commission considers that the commitments offered fully and effectively remedy the distortion, it could accept them and make them binding by decision.	(18) The undertaking concerned should have the possibility to offer commitments in order to remedy the distortion caused by the foreign subsidy. If the Commission considers that the commitments offered fully and effectively remedy the distortion, it could accept them and make them binding by decision.	(18) The undertaking concerned under investigation should have the possibility to offer commitments in order to remedy the distortion caused by the foreign subsidy. If the Commission considers that the commitments offered fully and effectively remedy the distortion, it could accept them and make them binding by decision. In that case, the Commission will not impose redressive measures.	
Recital 19				
28	(19) The undertaking concerned could offer to repay the subsidy, together with appropriate interest.	(19) The undertaking concerned could offer to repay the subsidy, together with appropriate interest.	(19) The undertaking concerned under investigation could offer to repay the subsidy, together	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	The Commission should accept a repayment offered as a commitment if it can ascertain that the repayment fully remedies the distortion, is executed in a transparent manner and is effective in practice, while taking into account the risk of circumvention of the objectives of this Regulation.	The Commission should accept a repayment offered as a commitment if it can ascertain that the repayment fully remedies the distortion, is executed in a transparent manner and is effective in practice, while taking into account the risk of circumvention of the objectives of this Regulation.	with appropriate interest. The Commission should accept a repayment offered as a commitment if it can ascertain that the repayment fully remedies the distortion, is executed in a transparent manner and is effective in practice, while taking into account the risk of circumvention of the objectives of this Regulation.	
Recital 20				
29	(20) Unless the undertakings concerned offer commitments that would fully and effectively remedy the identified distortion, the Commission should have the power to prohibit a concentration or the award of a public contract before it takes place. Where the concentration has already been implemented, notably in cases where no prior notification was required because the notification thresholds were not reached, the distortion may nonetheless be so substantial that it cannot be remedied by behavioural or structural measures or by the repayment of the subsidy. In such cases, the Commission could decide to remedy the distortion by ordering the undertakings concerned to dissolve the concentration.	(20) Unless the undertakings concerned offer commitments that would fully and effectively remedy the identified distortion, the Commission should have the power to prohibit a concentration or the award of a public contract before it takes place. Where the concentration has already been implemented, notably in cases where no prior notification was required because the notification thresholds were not reached, the distortion may nonetheless be so substantial that it cannot be remedied by behavioural or structural measures or by the repayment of the subsidy. In such cases, the Commission could decide to remedy the distortion by ordering the undertakings concerned to dissolve the concentration.	(20) Unless the undertakings concerned offer undertaking under investigation offers commitments that would fully and effectively remedy the identified distortion, the Commission should have the power to prohibit a concentration or the award of a public contract before it takes place. Where the concentration has already been implemented, notably in cases where no prior notification was required because the notification thresholds were not reached, the distortion may nonetheless be so substantial that it cannot be remedied by behavioural or structural measures or by the repayment of the subsidy. In such cases, the Commission could decide to remedy the distortion by ordering the undertakings concerned to dissolve the concentration.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 20a				
29a		<p><u>(20a) The undertaking under investigation could offer or the Commission could require the undertakings concerned to notify the Commission of their participation in future public procurement procedures in the Union for an appropriate period of time. The submission of such notification, or the response or absence of a response from the Commission cannot give rise to legitimate expectations on the part of the undertaking that the Commission may not later start an investigation of possible foreign subsidies to the undertaking participating in the public procurement procedure.</u></p>		
Recital 21				
30	<p>(21) The Commission should have the power, on its own initiative, to examine any information on foreign subsidies. To this end, it is necessary to establish a procedure consisting of two steps, namely a preliminary review and an in-depth investigation.</p>	<p>(21) The Commission should have the power, on its own initiative, to examine any information on foreign subsidies. To this end, it is necessary to establish a procedure consisting of two steps, namely a preliminary review and an in-depth investigation. <u>The Commission should publish guidance on the criteria for opening such a procedure. The Commission should be able to act upon information received from</u></p>	<p>(21) The Commission should have the power, on its own initiative, to examine any information on foreign subsidies. Member States and any natural or legal person can provide the Commission with information on alleged foreign subsidies distorting the internal market. The Commission may use the information to start an investigation under this Regulation. In any case, the</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>any relevant source, including Member States and undertakings or EU-wide social partners. The Commission should establish a contact point to that end.</u>	Commission should ensure that such submissions providing relevant information on alleged foreign subsidies distorting the internal market receive an answer. To this end, It is necessary to establish a procedure consisting of two steps, namely a preliminary review and an in-depth investigation. An undertaking subject to any of these two steps is considered as an undertaking under investigation.	
Recital 22				
31	(22) The Commission should be given adequate investigative powers to gather all necessary information. It should therefore have the power to request information from any undertaking or association of undertakings throughout the whole procedure. In addition, the Commission should have the power to impose fines and periodic penalty payments for failure to timely supply the requested information or for supplying incomplete, incorrect or misleading information. The Commission could also address questions to Member States or to third countries. Furthermore, the Commission should have the power to make fact-finding visits at the Union premises of the undertaking, or, subject to agreement by the	(22) The Commission should be given adequate <u>appropriate</u> investigative powers <u>and resources</u> to gather all necessary information. It should therefore have the power to request information from any undertaking or association of undertakings throughout the whole procedure. In addition, the Commission should have the power to impose fines and periodic penalty payments for failure to timely supply the requested information or for supplying incomplete, incorrect or misleading information. <u>In order to reinforce the dissuasive character of this Regulation, there should be the possibility to apply redressive measures, commitments, fines and periodic penalty payments simultaneously if necessary.</u> The	(22) The Commission should be given adequate investigative powers to gather all necessary information. It should therefore have the power to request information from any undertaking or association of undertakings throughout the whole procedure. In addition, the Commission should have the power to impose fines and periodic penalty payments for failure to timely supply the requested information or for supplying incomplete, incorrect or misleading information. The Commission could also address questions to Member States or to third countries. Furthermore, the Commission should have the power to make fact-finding visits at the Union premises of thean undertaking or association of	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	undertaking and the third country concerned, at the premises of the undertaking in the third country. The Commission should also have the power to take decisions on the basis of facts available if the undertaking in question does not cooperate.	Commission could also address questions to Member States or to third countries. Furthermore, the Commission should have the power to make fact-finding visits at the Union premises of the undertaking, or, subject to agreement by the undertaking and the third country concerned, at the premises of the undertaking in the third country. The Commission should also have the power to take decisions on the basis of facts available if the undertaking in question does not cooperate.	undertakings , or, subject to agreement by the undertaking or association of undertakings and the third country concerned, at the their premises of the undertaking in the third country . The Commission should also have the power to take decisions on the basis of facts available if the undertaking in question under investigation or third country that granted the subsidy does not cooperate.	
Recital 23				
32	(23) Furthermore, where necessary to restore competition in the internal market immediately and to prevent irreparable harm, the Commission should have the power to adopt interim measures.	(23) Furthermore, where necessary to restore competition in the internal market immediately and to prevent irreparable harm, the Commission should have the power to adopt interim measures.	(23) Furthermore, where necessary to restore prevent irreparable damage to competition in the internal market immediately and to prevent irreparable harm , the Commission should have the power to adopt interim measures. No interim measures should be taken with regard to public procurement procedures.	
Recital 24				
33	(24) In all cases where, as a result of the preliminary review, the Commission has sufficient indications of the existence of a foreign subsidy distorting the	(24) In all cases where, as a result of the preliminary review, the Commission has sufficient indications of the existence of a foreign subsidy distorting the	(24) In all cases where, as a result of the preliminary review, the Commission has sufficient indications of the existence of a foreign subsidy distorting the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	internal market, the Commission should have the power to launch an in-depth investigation to gather additional relevant information to assess the foreign subsidy, and to allow the interested parties to exercise their rights of defence.	internal market, the Commission should have the power to launch an in-depth investigation to gather additional relevant information to assess the foreign subsidy, and to allow the interested parties to exercise their rights of defence.	internal market, the Commission should have the power to launch an in-depth investigation to gather additional relevant information to assess the foreign subsidy, and to allow the interested parties. The undertaking under investigation should be allowed to exercise their its rights of defence.	
Recital 25				
34	(25) The Commission should close the in-depth investigation by adopting a decision.	(25) The Commission should close the in-depth investigation by adopting a decision.	(25) The Commission should close the in-depth investigation by adopting a decision. It should as far as possible endeavour to close the in-depth investigation within 18 months, taking into account, in particular, the complexity of the case as well as the level of cooperation of undertakings and third countries.	
Recital 26				
35	(26) The Commission should have appropriate instruments to ensure the effectiveness of commitments and redressive measures. If the undertaking concerned does not comply with a decision with commitments, a decision imposing redressive measures, or a decision ordering interim measures, the Commission should have the power	(26) The Commission should have appropriate instruments to ensure the effectiveness of commitments and redressive measures. If the undertaking concerned does not comply with a decision with commitments, a decision imposing redressive measures, or a decision ordering interim measures, the Commission should have the power	(26) The Commission should have appropriate instruments to ensure the effectiveness of commitments and redressive measures. If the an undertaking concerned does not comply with a decision with commitments, a decision imposing redressive measures, or a decision ordering interim measures, the Commission should have the power	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	to impose fines and periodic penalty payments.	to impose fines and periodic penalty payments <u>of a sufficiently dissuasive nature. The Commission should take into account cases of repeated non-compliance when imposing such fines and periodic penalty payments. The Commission should review the effectiveness of the measures.</u>	to impose fines and periodic penalty payments.	
Recital 27				
36	(27) In order to ensure the correct and effective application of this Regulation, the Commission should have the power to revoke a decision and adopt a new one, where the decision was based on incomplete, incorrect or misleading information, or where an undertaking acts contrary to its commitments or the redressive measures imposed.	(27) In order to ensure the correct and effective application of this Regulation, the Commission should have the power to revoke a decision and adopt a new one, where the decision was based on incomplete, incorrect or misleading information, or where an undertaking acts contrary to its commitments or the redressive measures imposed.	(27) In order to ensure the correct and effective application of this Regulation, the Commission should have the power to revoke The Commission should have appropriate instruments to ensure the effectiveness of commitments and redressive measures. If an undertaking does not comply with a decision and adopt a new one, where the with commitments, a decision was based on incomplete, incorrect or misleading information, or where an undertaking acts contrary to its commitments or the redressive measures imposed imposing redressive measures, or a decision ordering interim measures, the Commission should have the power to impose fines and periodic penalty payments.	
Recital 28				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
37	(28) Given the potentially significant impact of concentrations on the internal market, the Commission should have the power, upon notification, to examine information on foreign financial contributions in the context of a proposed concentration. Undertakings should not be allowed to implement the concentration prior to the conclusion of the Commission's review.	(28) Given the potentially significant impact of concentrations on the internal market, the Commission should have the power, upon notification, to examine information on foreign financial contributions in the context of a proposed concentration. Undertakings should not be allowed to implement the concentration prior to the conclusion of the Commission's review.	(28) Given the potentially significant impact of concentrations on the internal market, the Commission should have the power, upon notification, to examine information on foreign financial contributions in the context of a proposed concentration. Undertakings should not be allowed to implement the concentration prior to the conclusion of the Commission's review.	
Recital 29				
38	(29) This examination by the Commission should follow the same procedure as the one where a foreign subsidy is reviewed on the Commission's initiative, subject to adjustments to reflect the specificities of concentrations.	(29) This examination by the Commission should follow the same procedure as the one where a foreign subsidy is reviewed on the Commission's initiative, subject to adjustments to reflect the specificities of concentrations.	(29) This examination by the Commission should follow the same procedure as the one where a foreign subsidy is reviewed on the Commission's initiative, subject to adjustments to reflect the specificities of concentrations.	
Recital 30				
39	(30) It is necessary to strike a balance between effective protection of the internal market and the need to limit the administrative burden on undertakings subject to this Regulation. Therefore, only concentrations meeting combined thresholds as defined in this Regulation based on the size of the	(30) It is necessary to strike a balance between effective protection of the internal market and the need to limit the administrative burden on undertakings subject to this Regulation. Therefore, only concentrations meeting combined thresholds as defined in this Regulation based on the size of the	(30) It is necessary to strike a balance between effective protection of the internal market and the need to limit the administrative burden on undertakings subject to this Regulation. Therefore, only concentrations meeting combined thresholds as defined in this Regulation based on the size of the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	turnover in the Union and the size of the subsidy should be subject to mandatory prior notification.	turnover in the Union and the size of the subsidy should be subject to mandatory prior notification.	turnover in the Union and the size of the subsidy financial contribution should be subject to mandatory prior notification.	
Recital 31				
40	(31) Below the notification thresholds, the Commission could require the notification of potentially subsidised concentrations that were not yet implemented or the notification of potentially subsidised bids prior to the award of a public contract, if it considers that the concentration or the bid would merit ex-ante review given their impact in the Union. The Commission should also have the possibility to carry out a review on its own initiative of already implemented concentrations or awarded public contracts.	(31) Below the notification thresholds, the Commission could should require the notification of potentially subsidised concentrations that were not yet implemented or the notification of potentially subsidised bids prior to the award of a public contract, if it considers that the concentration or the bid would merit ex-ante review given their impact in the Union. The Commission should also have the possibility to carry out a review on its own initiative of already implemented concentrations or awarded public contracts.	(31) Below the notification thresholds, the Commission could require the notification of potentially subsidised concentrations that were not yet implemented or the notification of potentially subsidised bids prior to the award of a public contract, if it considers that the concentration or the bid would merit ex-ante review given their impact in the Union. The Commission should also have the possibility to carry out a review on its own initiative of already implemented concentrations or awarded public contracts in an ex officio review .	
Recital 32				
41	(32) When reviewing a concentration, the assessment of whether there is a distortion in the internal market should be limited to the concentration at stake, and only foreign subsidies granted in the three years prior to the concentration should be considered in the assessment.	(32) When reviewing a concentration, the assessment of whether there is a distortion in the internal market should be limited to the concentration at stake, and only foreign subsidies granted in the three years prior to the concentration should be considered in the assessment.	(32) When reviewing a concentration, the assessment of whether there is a distortion in the internal market should be limited to the concentration at stake, and only foreign subsidies granted in the three years prior to the concentration should be considered in the assessment.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 32a				
41a		<u>(32a) In the context of the ex ante review mechanism for concentrations, concerned undertakings should be able to request pre-notification consultations with the Commission based on good faith, with the exclusive aim of receiving guidance on whether or not the formal thresholds for notification are met.</u>		
Recital 32a				
41b			(32a) When a concentration is notified to the Commission pursuant to Article 4 of Regulation (EC) No 139/2004 and Article 19 of this Regulation, the Commission should endeavour to limit the administrative burden for the notifying parties under this Regulation. In particular, undertakings should have the option to provide in the same form information that is relevant to proceedings under both Regulations.	
Recital 33				
42	(33) The need to address distortive	(33) The need to address distortive	(33) The need to address distortive	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>foreign subsidies is especially salient in public procurement, given its economic significance in the internal market and the fact that it is financed by taxpayer funds. The Commission should have the power, upon notification prior to the award of a public contract or concession, to examine information on foreign financial contributions to the participating undertakings in the context of a public procurement procedure. Prior notifications should be mandatory above a threshold set in this Regulation to capture economically significant cases while minimising the administrative burden and not hindering the participation of SMEs in public procurement. That obligation of prior notification above a threshold should also apply to groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU of the European Parliament and of the Council¹, Article 19(2) of Directive 2014/24/EU of the European Parliament and of the Council² and Article 37(2) of Directive 2014/25/EU of the European Parliament and of the Council³. It should also apply to the main subcontractors and the main suppliers of undertaking.</p> <p>¹. Directive 2014/23/EU of the European</p>	<p>foreign subsidies is especially salient in public procurement, given its economic significance in the internal market and the fact that it is financed by taxpayer funds. The Commission should have the power, upon notification prior to the award of a public contract or concession, to examine information on foreign financial contributions to the participating undertakings in the context of a public procurement procedure. Prior notifications should be mandatory above a threshold set in this Regulation to capture economically significant cases while minimising the administrative burden and not hindering the participation of SMEs in public procurement. That obligation of prior notification above a threshold should also apply to groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU of the European Parliament and of the Council¹, Article 19(2) of Directive 2014/24/EU of the European Parliament and of the Council² and Article 37(2) of Directive 2014/25/EU of the European Parliament and of the Council³. It should also apply to the main subcontractors and the main suppliers of undertaking.</p> <p>¹. Directive 2014/23/EU of the European</p>	<p>foreign subsidies is especially salient in public procurement, given its economic significance in the internal market and the fact that it is financed by taxpayer funds. The Commission should have the power, upon notification prior to the award of a public contract or concession, to examine information on foreign financial contributions to the participating undertakings economic operator in the context of a public procurement procedure. Prior notifications should be mandatory above a threshold set in this Regulation to capture economically significant cases while minimising the administrative burden and not hindering the participation of SMEs in public procurement. That obligation of prior notification above a threshold should also apply to groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU of the European Parliament and of the Council¹, Article 19(2) of Directive 2014/24/EU of the European Parliament and of the Council² and Article 37(2) of Directive 2014/25/EU of the European Parliament and of the Council³. It should also apply to the main subcontractors. The Commission may also request the prior notification of a foreign financial contribution during a public</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).</p> <p>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).</p> <p>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).</p>	<p>Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).</p> <p>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).</p> <p>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).</p>	<p>procurement procedure despite its estimated value being below the notification thresholds. In order to limit undue disruptions of public procurement procedures by such a request for prior notification, the Commission should take into account the level of advancement of the procedure and the main suppliers of undertaking proximity to the award of the contract when choosing whether to request such prior notification or to launch an ex officio review.</p> <p>1. Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).</p> <p>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).</p> <p>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).</p>	
Recital 33a				
42a			<p>(33a) The balance between the development of a European defence and security equipment market, which is essential for maintaining a European Defence Technological and Industrial Base,</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>and the protection of the national security of the Member States requires a specific regime for the defence and security contracts covered by Directive 2009/81/EC. Public procurements for the award of such contracts should therefore not be subject to Chapter 4 of this Regulation. However, the examination of foreign subsidies in the context of such contracts should be limited to the ex officio review. Furthermore, public procurement covered by Directive 2009/81/EC and exempted by Member States on that basis to protect such essential security interests in accordance with Article 346 TFEU should not be covered by this Regulation</p>	
Recital 33b				
42b			<p>(33b) The framework agreement is an efficient procurement technique widely used by contracting authorities and contracting entities. The flexibility offered to purchasers after the conclusion of the framework agreement should not be affected by the implementation of this Regulation. Therefore, the obligation to notify foreign financial contributions in public procurement procedures provided</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			for in Chapter 4 of this Regulation should be limited to the procedure preceding the conclusion of a framework agreements and should not apply to contracts based on a framework agreement.	
Recital 33c				
42c			(33c) Taking into account the urgent nature of procurement procedures conducted according to Article 27(3) or 28(6) of Directive 2014/24/EU or Article 45(3) of Directive 2014/25/EU, the Commission should exercise best efforts to prioritize such procedures during a preliminary review and an in-depth investigation to reach any conclusion as soon as meaningfully feasible. This shall apply accordingly to similar procedures conducted according to Directive 2014/23/EU	
Recital 33d				
42d			(33d) Due to the specificities of multi-stage procedures in public procurement, the Commission should start a preliminary review with the relevant information available in a notification when submitting the request to	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			participate. To ensure completeness of information and speed of investigation, an updated notification should be submitted with the final tender. The Commission should also have the right to ask for any supplementary information before the submission of the final tender.	
Recital 33e				
42e			(33e) This Regulation does not address access by third-country economic operators to the Union procurement market. This matter is covered by the relevant Union law and international agreements.	
Recital 34				
43	(34) When a foreign financial contribution is notified in the context of a public procurement procedure, the assessment should be limited to that procedure.	(34) When a foreign financial contribution is notified in the context of a public procurement procedure, the assessment should be limited to that procedure.	(34) When a foreign financial contribution is notified in the context of a public procurement procedure, the assessment should be limited to that procedure.	
Recital 34a				
43a			(34a) Where suitable, the Commission should seek ways to ensure the use of electronic means of communication for facilitating the fulfilment of obligations	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			regarding public procurement under this Regulation. Moreover, the Commission should make accessible to Member States on a dedicated electronic database all the relevant information related to all decisions adopted under this Regulation.	
Recital 35				
44	(35) It should be ensured that the principles governing public procurement, notably proportionality, non-discrimination, equal treatment, and transparency, are respected as regards all undertakings involved in the public procurement procedure, regardless of investigations initiated and pending pursuant to this Regulation.	(35) It should be ensured that the principles governing public procurement, notably proportionality, non-discrimination, equal treatment, and transparency, are respected as regards all undertakings involved in the public procurement procedure, regardless of investigations initiated and pending pursuant to this Regulation. <u><i>This Regulation is without prejudice to Directives 2014/23/EU, 2014/24/EU and 2014/25/EU of the European Parliament and of the Council as regards the applicable obligations in the fields of environmental, social and labour law.</i></u>	(35) It should be ensured that the principles governing public procurement, notably in particular proportionality, non-discrimination, equal treatment, transparency and competition and transparency , are respected as regards all undertakings economic operators involved in the public procurement procedure, regardless of investigations initiated and pending pursuant to this Regulation.	
Recital 35a				
44a			(35a) Contracting authorities or contracting entities may decide to award a contract or a concession	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			in the form of separate lots, in accordance notably with Article 46 of Directive 2014/24/EU and Article 65 of Directive 2014/25/EU and in observance of the prohibition of artificial splitting. Foreign financial contributions must be notified for tenderers applying for lots of a value above an applicable threshold. They can be investigated if they fall below that threshold.	
Recital 35aa				
44b			(35b) This Regulation shall not affect the possibility for economic operators to rely on the capacities of other entities in accordance with Directive 2014/24/EU, Directive 2014/25/EU and Directive 2014/23/EU.	
Recital 35b				
44c			(35c) There is a strong tendency for public purchasers to centralise their purchases to achieve economies of scale and efficiency gains. Such central purchasing bodies are qualified as contracting authorities or contracting entities by Directives 2009/81/EC, 2014/24/EU and 2014/25/EU. It is therefore appropriate that the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			Commission should be able to examine foreign subsidies in the context of contracts awarded by such contracting authorities or contracting entities.	
Recital 36				
45	(36) Foreign subsidies that enable an undertaking to submit a tender which is unduly advantageous in relation to the works, supplies or services concerned should be deemed to actually or potentially create a distortion in a public procurement procedure. Those distortions should therefore be assessed on the basis of the non-exhaustive set of indicators described in recitals 13 and 14 as well as the notion of unduly advantageous tender. The indicators should allow to determine how the foreign subsidy distorts competition by improving the competitive position of an undertaking and enabling it to submit an unduly advantageous tender. The opportunity should be given to undertakings to justify that the tender is not unduly advantageous, including by adducing the elements referred to in Article 69(2) of Directive 2014/24/EU. The prohibition of the award should only apply where the advantageous nature	(36) Foreign subsidies that enable an undertaking to submit a tender which is unduly advantageous in relation to the works, supplies or services concerned should be deemed to actually or potentially create a distortion in a public procurement procedure. Those distortions should therefore be assessed on the basis of the non-exhaustive set of indicators described in recitals 13 and 14 as well as the notion of unduly advantageous tender. The indicators should allow to determine how the foreign subsidy distorts competition by improving the competitive position of an undertaking and enabling it to submit an unduly advantageous tender. The opportunity should be given to undertakings to justify that the tender is not unduly advantageous, including by adducing the elements referred to in Article 69(2) of Directive 2014/24/EU. The prohibition of the award should only apply where the advantageous nature	(36) Foreign subsidies that enable an undertaking economic operator to submit a tender which is unduly advantageous in relation to the works, supplies or services concerned should be deemed to actually or potentially create a distortion in a public procurement procedure. Those distortions should therefore be assessed on the basis of the non-exhaustive set of indicators described in recitals 13 and 14 as well as the notion of unduly advantageous tender. The indicators should allow to determine how the foreign subsidy distorts competition by improving the competitive position of an undertaking and enabling it to submit an unduly advantageous tender. The opportunity should be given to undertakings economic operators to justify that the tender is not unduly advantageous, including by adducing the elements referred to in Article 69(2) of Directive 2014/24/EU or Article 84(2) of Directive 2014/25/EU, regulating	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	of the tender benefiting from foreign subsidies cannot be justified, the tender would be awarded the contract and the undertaking submitting the tender did not offer commitments considered appropriate and sufficient to fully and effectively remove the distortion.	of the tender benefiting from foreign subsidies cannot be justified, the tender would be awarded the contract and the undertaking submitting the tender did not offer commitments considered appropriate and sufficient to fully and effectively remove the distortion. <u><i>The adoption of a decision prohibiting the award of the contract results in the exclusion of the undertaking concerned from participation in the public procurement procedure.</i></u>	abnormally low tenders. The prohibition of the award should only apply where the advantageous nature of the tender benefiting from foreign subsidies cannot be justified by other factors , the tender would be awarded the contract and the undertaking submitting the tender did not offer commitments considered appropriate and sufficient to fully and effectively remove the distortion. Accordingly, the prohibition of the award concerns the specific procedure in which the unduly advantageous tender was submitted. The Commission's finding that an economic operator benefitted from a distortive subsidy enabling it to submit an unduly advantageous tender therefore cannot be considered as an element giving rise to an exclusion pursuant to the facultative grounds for exclusion laid down in Article 57(4) of Directive 2014/24, Article 80 of Directive 2014/25/EU or Article 38(7) of Directive 2014/23/EU in the same or another public procurement procedure conducted in accordance with those Directives.	
Recital 36a				
45a			(36a) An unduly advantageous	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>tender may also result from foreign subsidies granted to a subcontractor or supplier because of its competitive impact on the tender submitted to a contracting authority or contracting entity. However, to limit administrative burden, only main subcontractors or main suppliers, that is those whose products or services relate to key elements of the contract or exceed a certain percentage of the value of the contract should notify foreign financial contributions. These key elements may be based, in particular, on the particular relevance of the element to the quality of the tender including specific know-how, technology, specialised staff, patents and similar advantages available to the subcontractor or supplier, especially where they are relied upon for fulfilling the majority of at least one of the selection criteria in a public procurement procedure. In order to ensure a stable factual basis for review, the preliminary review should take into account those main subcontractors and suppliers already known at the stage of submitting a tender or the request to participate, as well as the final tender in the case of multi-stage procedures. This Regulation should not affect the ability of</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>economic operators to use new subcontractors in the execution of their contracts. As a result, changing subcontractors and suppliers during the execution of a contract should not create additional notification obligations, but the Commission may open an ex officio review if it has information that these subcontractors and suppliers may have benefitted from foreign subsidies.</p>	
Recital 36b				
45b			<p>(36b) In line with the Directives on public procurement, the most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question.</p>	
Recital 37				
46				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>(37) Taking into account the nature of the ex ante review mechanism for concentrations and public procurement awards, and the need for legal certainty regarding these specific transactions, a concentration or public procurement tender notified and assessed under the respective procedures cannot be reviewed again by the Commission on its own initiative. Financial contributions of which the Commission was informed through the notification procedure may however also be relevant outside the concentration or procurement procedure. In order to gather information on foreign subsidies, the Commission should have the possibility to launch investigations regarding specific sectors of the economy, particular types of economic activity or the use of particular foreign subsidy instruments.</p>	<p>(37) Taking into account the nature of the ex ante review mechanism for concentrations and public procurement awards, and the need for legal certainty regarding these specific transactions, a concentration or public procurement tender notified and assessed under the respective procedures cannot be reviewed again by the Commission on its own initiative. Financial contributions of which the Commission was informed through the notification procedure may however also be relevant outside the concentration or procurement procedure. In order to gather information on foreign subsidies, the Commission should have the possibility to launch investigations regarding specific sectors of the economy, particular types of economic activity or the use of particular foreign subsidy instruments. <u><i>The Commission should be able to use the information obtained from such market investigations to review certain transactions in the framework of the procedures under this Regulation.</i></u></p>	<p>(37) Taking into account the nature of the ex ante review mechanism for concentrations and public procurement awards, and the need for legal certainty regarding these specific transactions, a concentration or public procurement tender notified and assessed under the respective procedures cannot be reviewed again by the Commission on its own initiative. Financial contributions of which the Commission was informed through the notification procedure may however also be relevant outside the concentration or procurement procedure. In order to gather information on foreign subsidies, the Commission should have the possibility to launch investigations regarding specific sectors of the economy, particular types of economic activity or the use of particular foreign subsidy instruments.</p>	
Recital 37a				
46a			(37a) In order to gather information on foreign subsidies,	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			the Commission should have the possibility to launch investigations regarding specific sectors of the economy, particular types of economic activity or the use of particular foreign subsidy instruments.	
Recital 37b				
46b			(37b) For reasons of legal certainty, it is appropriate to provide for a limitation period of 10 years from the date of granting of the foreign subsidy with regard to investigating a foreign subsidy.	
Recital 38				
47	(38) For the same reasons, it is appropriate to provide for limitation periods for the imposition and enforcement of fines and periodic penalty payments.	(38) For the same reasons, it is appropriate to provide for limitation periods for the imposition and enforcement of fines and periodic penalty payments.	(38) For the same reasons, it is appropriate to provide for limitation periods for the imposition and enforcement of fines and periodic penalty payments.	
Recital 39				
48	(39) In the interest of transparency and legal certainty, it is appropriate to publish either in full or in a summary form all decisions adopted by the Commission.	(39) In the interest of transparency and legal certainty, it is appropriate to publish either in full or in a summary form all decisions adopted by the Commission.	(39) In the interest of transparency and legal certainty, it is appropriate to that the Commission publish or make public, where applicable either in full or in a summary form all decisions adopted by the Commission.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 40				
49	(40) The Commission, when publishing its decisions, should respect the rules on professional secrecy, including the protection of all confidential information, business secrets and personal data, in accordance with Article 339 of the Treaty.	(40) The Commission, when publishing its decisions, should respect the rules on professional secrecy, including the protection of all confidential information, business secrets and personal data, in accordance with Article 339 of the Treaty.	(40) The Commission, when publishing its decisions, should respect the rules on professional secrecy, including the protection of all confidential information, business secrets and personal data, in accordance with Article 339 of the Treaty. The processing of personal data for the purposes of this Regulation should be carried out in accordance with Regulation (EU) No 2018/1725 and Regulation (EU) 2016/679, whichever is applicable for the processing in question.	
Recital 41				
50	(41) In cases where information marked by the undertaking as confidential or business secret does not seem to be covered by obligations of professional secrecy, it is appropriate to have a mechanism in place according to which the Commission can decide the extent to which such information can be disclosed. Any such decision to reject a claim that information is confidential should indicate a period at the end of which the information will be disclosed, so that the	(41) In cases where information marked by the undertaking as confidential or business secret does not seem to be covered by obligations of professional secrecy, it is appropriate to have a mechanism in place according to which the Commission can decide the extent to which such information can be disclosed. Any such decision to reject a claim that information is confidential should indicate a period at the end of which the information will be disclosed, so that the	(41) In cases where information marked by the undertaking as confidential or business secret does not seem to be covered by obligations of professional secrecy, it is appropriate to have a mechanism in place according to which the Commission can decide the extent to which such information can be disclosed. Any such decision to reject a claim that information is confidential should indicate a period at the end of which the information will be disclosed, so that the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	respondent can make use of any judicial protection available to it, including any interim measure.	respondent can make use of any judicial protection available to it, including any interim measure.	respondent can make use of any judicial protection available to it, including any interim measure.	
Recital 42				
51	(42) The undertakings or associations of undertakings concerned by an investigation under this Regulation should have the opportunity of submitting their observations. While ensuring preservation of the rights of defence of the undertakings concerned, it is essential that business secrets be protected.	(42) The undertakings or associations of undertakings concerned by an investigation under this Regulation should have the opportunity of submitting their observations. While ensuring preservation of the rights of defence of the undertakings concerned, it is essential that business secrets be protected.	(42) The undertakings or associations of undertakings concerned by an investigation under this Regulation should have the opportunity of submitting to submit their observations on the grounds on which the Commission intends to adopt a decision and should therefore be entitled to have access to the file. While ensuring preservation of the rights of defence of the undertakings concerned under investigation , it is essential that business secrets be protected.	
Recital 42a				
51a			(42a) Member States and the Commission should take all necessary measures to ensure the protection of classified information in compliance with, in particular, Commission Decision (EU, Euratom) 2015/443, Commission Decision (EU, Euratom) 2015/444 and the Agreement between the Member States of the European Union,	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union.	
Recital 43				
52	(43) The implementation of this Regulation by the Union should comply with Union law, the WTO Agreement and be consistent with commitments made under other trade and investment agreements to which the Union or the Member States are parties.	(43) The implementation of this Regulation by the Union should comply with Union law, the WTO Agreement and be consistent with commitments made under other trade and investment agreements to which the Union or the Member States are parties. <u><i>This Regulation should be without prejudice to the development of multilateral rules to address distortive subsidies.</i></u>	(43) The implementation of this Regulation by the Union should comply with Union law, the WTO Agreement and be consistent with commitments made under other trade and investment agreements to which the Union or the Member States are parties.	
Recital 43a				
52a		<u><i>(43a) In order to encourage the development of multilateral rules to address distortive subsidies and their root causes, it is necessary to set up a third-country dialogue. When the Commission discovers or suspects the existence of systemic distortive foreign subsidies, it should be able to engage in a dialogue with the third country in question to explore options aimed at obtaining the cessation or modification of the distortive</i></u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>subsidies with a view to eliminating their distortive effects in the internal market. Where a bilateral agreement between the Union and a third country provides for a consultation mechanism that covers systemic distortive foreign subsidies falling within the scope of this Regulation, this mechanism should be used to facilitate the third-country dialogue. The Commission should also be able to endeavour to obtain the cessation or modification of the distortive foreign subsidies by raising the matter in any relevant international forum or through cooperation with any other third country affected by the same systemic distortive subsidies, or with any interested third country. This dialogue should not preclude the Commission from opening or continuing investigations under this Regulation, nor should it constitute an alternative to redressive measures. The Commission should, without undue delay, inform the European Parliament and the Council of relevant developments.</u>		
Recital 44				
53	(44) Restrictions to Articles 34, 49, 56 and 63 of the Treaty can be justified by the need to avoid unfair competition, provided that such	(44) Restrictions to Articles 34, 49, 56 and 63 of the Treaty can be justified by the need to avoid unfair competition, provided that such	(44) Restrictions to upon the freedoms set out in Articles 34, 49, 56 and 63 of the Treaty TFEU can be justified by the need to avoid unfair	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	restrictions, like other restrictions of fundamental freedoms comply with the general principles of Union law, such as proportionality, legal certainty, and with fundamental rights.	restrictions, like other restrictions of fundamental freedoms comply with the general principles of Union law, such as proportionality, legal certainty, and with fundamental rights.	competition, provided that such restrictions, like other restrictions of fundamental freedoms comply with the general principles of Union law, such as proportionality, legal certainty, and with fundamental rights.	
Recital 45				
54	<p>(45) The implementation of this Regulation may overlap with sectoral rules, in particular in the area of maritime and air transport. Therefore, it is necessary to clarify the relationship between this Regulation and sectoral instruments dealing with foreign subsidies, namely Regulation (EU) 2016/1035 of the European Parliament and of the Council¹; Council Regulation (EEC) 4057/86²; and Regulation (EU) 2019/712 of the European Parliament and of the Council³.</p> <p>1. Regulation (EU) 2016/1035 of the European Parliament and of the Council of 8 June 2016 on protection against injurious pricing of vessels (OJ L 176, 30.6.2016, p. 1).</p> <p>2. Council Regulation (EEC) No 4057/86 of 22 December 1986 on unfair pricing practices in maritime transport (OJ L 378, 31.12.1986, p. 14).</p> <p>3. Regulation (EU) 2019/712 of the European Parliament and of the Council of 17 April 2019 on safeguarding competition in air transport, and repealing Regulation (EC) No 868/2004 (OJ L 123, 10.5.2019, p.</p>	<p>(45) The implementation of this Regulation may overlap with sectoral rules, in particular in the area of maritime and air transport. Therefore, it is necessary to clarify the relationship between this Regulation and sectoral instruments dealing with foreign subsidies, namely Regulation (EU) 2016/1035 of the European Parliament and of the Council¹; Council Regulation (EEC) 4057/86²; and Regulation (EU) 2019/712 of the European Parliament and of the Council³.</p> <p>1. Regulation (EU) 2016/1035 of the European Parliament and of the Council of 8 June 2016 on protection against injurious pricing of vessels (OJ L 176, 30.6.2016, p. 1).</p> <p>2. Council Regulation (EEC) No 4057/86 of 22 December 1986 on unfair pricing practices in maritime transport (OJ L 378, 31.12.1986, p. 14).</p> <p>3. Regulation (EU) 2019/712 of the European Parliament and of the Council of 17 April 2019 on safeguarding competition in air transport, and repealing Regulation (EC) No 868/2004 (OJ L 123, 10.5.2019, p.</p>	<p>(45) It is possible that the implementation of this Regulation may overlap with sectoral rules, in particular in the area of maritime and air transport. Therefore, it is necessary to clarify the relationship between this Regulation and sectoral instruments dealing with foreign subsidies, namely Regulation (EU) 2016/1035 of the European Parliament and of the Council¹; Council Regulation (EEC) 4057/86²; and Regulation (EU) 2019/712 of the European Parliament and of the Council³. Moreover, the implementation of this Regulation should be without prejudice to the sole responsibility of Member States for safeguarding their national security, as provided for in Article 4(2) of the Treaty on the European Union. It is also without prejudice to the protection of their essential security interests in accordance with Article 346 of the TFEU, as well as the application of</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	4).	4).	<p>Regulation (EU) 2019/452 of the European Parliament and of the Council⁴</p> <p>1. Regulation (EU) 2016/1035 of the European Parliament and of the Council of 8 June 2016 on protection against injurious pricing of vessels (OJ L 176, 30.6.2016, p. 1).</p> <p>2. Council Regulation (EEC) No 4057/86 of 22 December 1986 on unfair pricing practices in maritime transport (OJ L 378, 31.12.1986, p. 14).</p> <p>3. Regulation (EU) 2019/712 of the European Parliament and of the Council of 17 April 2019 on safeguarding competition in air transport, and repealing Regulation (EC) No 868/2004 (OJ L 123, 10.5.2019, p. 4).</p> <p>4. Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I, 21.3.2019, p. 1).</p>	
Recital 45a				
54a			<p>(45a) Since all decisions adopted by the Commission under this Regulation are subject to review by the Court of Justice in accordance with Article 263 TFEU, the Court of Justice should, in accordance with Article 261 TFEU, be given unlimited jurisdiction in respect of decisions by which the Commission imposes fines or periodic penalty payments.</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Recital 46				
55	<p>(46) Where the Commission adopts a decision at the end of an in-depth investigation, Member States should be adequately involved prior to the decision making in an advisory procedure pursuant to Article 4 of Regulation (EU) No 182/2011 of the European Parliament and of the Council¹. The choice of this procedure is justified taking into account the role of Member States in competition and State aid instruments, which also aim at levelling the playing field in the internal market.</p> <p>¹. Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).</p>	<p>(46) Where the Commission adopts a decision at the end of an in-depth investigation, Member States should be adequately involved prior to the decision making in an advisory procedure pursuant to Article 4 of Regulation (EU) No 182/2011 of the European Parliament and of the Council¹. The choice of this procedure is justified taking into account the role of Member States in competition and State aid instruments, which also aim at levelling the playing field in the internal market.</p> <p>¹. Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).</p>	<p>(46) Where the Commission adopts a decision at the end of an in-depth investigation, Member States should be adequately involved prior to the decision making in an advisory procedure pursuant to Article 4 of Regulation (EU) No 182/2011 of the European Parliament and of the Council¹. The choice of this procedure is justified taking into account the role of Member States in competition and State aid instruments, which also aim at levelling the playing field in the internal market.</p> <p>¹. Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).</p>	
Recital 47				
56	<p>(47) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in accordance with Article 291 of the Treaty. Those powers should be exercised to set</p>	<p>(47) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in accordance with Article 291 of the Treaty. Those powers should be exercised to set</p>	<p>(47) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in accordance with Article 291 of the Treaty. Those powers should be exercised to set</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	out the form and content of notifications of concentrations as well as of financial contributions in the context of public procurement procedures, details of disclosure, form and content of transparency requirements, calculation of time-limits, conditions and time-limits for commitments and detailed rules on the procedural steps concerning investigations regarding public procurement procedures. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.	out the form and content of notifications of concentrations as well as of financial contributions in the context of public procurement procedures, details of disclosure, form and content of transparency requirements, calculation of time-limits, conditions and time-limits for commitments and detailed rules on the procedural steps concerning investigations regarding public procurement procedures. Those powers should be exercised in accordance with Regulation (EU) No 182/2011. <u><i>The Commission should exercise those implementing powers for the first time no later than one year after the entry into force of this Regulation.</i></u>	out the form and content of notifications of concentrations as well as of financial contributions in the context of public procurement procedures, details of disclosure, form and content of transparency requirements, calculation of time-limits, conditions and time-limits for commitments and detailed rules on the procedural steps concerning investigations regarding public procurement procedures. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.	
Recital 47a				
56a		<u><i>(47a) The Commission should have the possibility to establish a simplified procedure under which it treats certain concentrations or public procurement procedures on the basis that they appear less likely to give rise to distortions of competition on the internal market due to foreign subsidies.</i></u>		
Recital 47a				
56b			(47a) The implementing powers	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>relating to the imposition of redressive measures, the imposition of commitments, including in case of foreign subsidies in public procurement procedures, the conclusion to the absence of objection regarding a foreign subsidy, the imposition of interim measures, including when a concentration has been implemented in breach of the notification obligation or in breach of a decision with commitments, the prohibition of a notified concentration and the prohibition of the award of the contract in a public procurement procedure, the decision to declare a tender irregular, as well as the possible revocation of each of the acts adopted pursuant to such implementing powers and the various form, content, procedural details and related items regarding the preliminary review and the in-depth investigation should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹.</p> <p>¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011,</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			p. 13).	
Recital 48				
57	<p>(48) In order to ensure a level playing field on the internal market also in the long term, with a view to ensuring adequate coverage of cases investigated both through notifications as well as ex officio, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of amending the notification thresholds for concentrations and for public procurement procedures, exempting certain categories of undertakings from the notification obligations under this Regulation, as well as amending the time limits for the preliminary review and the in-depth investigations of notified concentrations or notified financial contributions in the context of a public procurement procedure. In relation to financial contributions in the context of a public procurement procedure, the power to adopt such acts should be exercised in a way that takes into account the interests of SMEs. It is of particular importance that the Commission carries out appropriate consultations during the preparations of those acts, including at expert level, and that</p>	<p>(48) In order to ensure a level playing field on the internal market also in the long term, with a view to ensuring adequate coverage of cases investigated both through notifications as well as ex officio, the power to adopt acts in accordance with Article 290 of the Treaty <u>Commission should evaluate the functioning and effectiveness of this Regulation, including of the notification thresholds set out in Articles 18 and 27, at the latest two years after its entry into force, and every three years thereafter, and present that evaluation by means of a report to the European Parliament and the Council. That report should include an assessment of whether this Regulation</u> should be delegated to the Commission <u>amended. Where the report proposes amending the Regulation, it may be accompanied by a legislative proposal, in particular</u> in respect of amending the notification thresholds for concentrations and for public procurement procedures, exempting certain categories of undertakings from the notification obligations under this Regulation, <u>introducing</u></p>	<p>(48) In order to ensure a level playing field on the internal market also in the long term, with a view to ensuring adequate coverage of cases investigated both through notifications as well as ex officio while limiting undue administrative burden, the power to adopt acts in accordance with Article 290 of the Treaty TFEU should be delegated to the Commission in respect of amending raising the notification thresholds for concentrations and for public procurement procedures, exempting certain categories of undertakings from the notification obligations under this Regulation, as well as amending reducing the time limits for the preliminary review and the in-depth investigations of notified concentrations or notified financial contributions in the context of a public procurement procedure. In relation to financial contributions in the context of a public procurement procedure, the power to adopt such acts should be exercised in a way that takes into account the interests of SMEs. It is of particular importance that the Commission carries out appropriate consultations</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	<p>those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p> <p>¹. Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p. 1).</p>	<p><u>lower notification thresholds specific to certain economic sectors or differentiated thresholds for different types of public procurement contracts</u>, as well as amending the time limits for the preliminary review and the in-depth investigations of notified concentrations or notified financial contributions in the context of a public procurement procedure. In relation to financial contributions in the context of a public procurement procedure, the power to adopt such acts<u>evaluation</u> should be exercised<u>conducted</u> in a way that takes into account the interests of SMEs. It is of particular importance that The Commission carries out appropriate consultations during the preparations of those acts, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[†]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council<u>should also make use of quantified cost-benefit analysis and ex-ante analysis on the impact on investments and consumer welfare. During its evaluation, the Commission</u> should receive all documents at the same time as</p>	<p>during the preparations of those acts, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[†]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p> <p>[†]. Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p. 1).</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p><i>Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts</i><u><i>consider to abrogate the present Regulation, if it considers that the development of multilateral rules to address distortive subsidies has rendered this Regulation fully redundant.</i></u></p> <p><i>1. Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p. 1).</i></p>		
Recital 48a				
57a			<p>(48a) In order to facilitate the implementation and foster the predictability of this Regulation, the Commission should publish and update guidance regarding the criteria for determining the existence of a distortion caused by a foreign subsidy on the internal market, the application of the balancing test, and the application of its power to request prior notification of any concentration or foreign financial contributions received by an economic operator in a public procurement procedure. When preparing such guidance, the Commission should</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			involve Member States through appropriate consultations.	
Recital 49				
58	(49) Where a concentration is notifiable pursuant to this Regulation, financial contributions to any of the parties to the concentration granted in the three years prior to the date of application of this Regulation should fall within the scope of this Regulation. In the context of a public procurement procedure, this Regulation should also apply to a financial contribution granted to an undertaking in the three years prior to the date of application of this Regulation,	(49) Where a concentration is notifiable pursuant to this Regulation, financial contributions to any of the parties to the concentration granted in the three years prior to the date of application of this Regulation should fall within the scope of this Regulation. In the context of a public procurement procedure, this Regulation should also apply to a financial contribution granted to an undertaking in the three years prior to the date of application of this Regulation,	(49) Where a concentration is notifiable pursuant to this Regulation, financial contributions to any of the parties to the concentration granted in the three years prior to the date of application of this Regulation should fall within the scope of this Regulation. In the context of a public procurement procedure, this Regulation should also apply to a financial contribution granted to an undertaking economic operator in the three years prior to the date of application of this Regulation,	
Formula				
59	HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION:	
Chapter 1:				
60	Chapter 1: General provisions	Chapter 1: General provisions	Chapter 1: General provisions	
Article 1				
61				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Article 1 Subject matter and scope	Article 1 Subject matter and scope	Article 1 Subject matter and scope	
Article 1(1)				
62	(1) This Regulation lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions. Such distortions may arise with respect to any economic activity, and in particular in concentrations and public procurement procedures.	(1) This Regulation lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions, <u>with a view to ensuring a level-playing field</u> . Such distortions may arise with respect to any economic activity, and in particular in concentrations and public procurement procedures.	(1) The purpose of this Regulation is to contribute to the proper functioning of the internal market by establishing a harmonized framework to address distortions caused, directly or indirectly, by foreign subsidies, with a view to ensuring a level playing field. This Regulation lays down rules and procedures for investigating foreign subsidies that distort the internal market and for redressing such distortions. Such distortions may arise with respect to any economic activity, and in particular notably in concentrations and public procurement procedures.	<i>deleted</i>
Article 1(2)				
63	(2) This Regulation addresses foreign subsidies granted to an undertaking engaging in an economic activity in the internal market. An undertaking acquiring control or merging with an undertaking established in the Union or an undertaking participating in a public procurement procedure is considered to be engaging in an	(2) This Regulation addresses foreign subsidies granted to an undertaking engaging in an economic activity in the internal market. An undertaking acquiring control or merging with an undertaking established in the Union or an undertaking participating in a public procurement procedure is considered to be engaging in an	(2) This Regulation addresses foreign subsidies granted to an undertaking engaging in an economic activity in the internal market. Among others , an undertaking acquiring control or merging with an undertaking established in the Union or an undertaking participating in a public procurement procedure in the Union	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	economic activity in the internal market.	economic activity in the internal market.	is considered to be engaging in an economic activity in the internal market.	
Article 1(2a)				
63a			<p>(2a) This Regulation is without prejudice to each Member State having sole responsibility for its national security, as provided for in Article 4(2) TEU, and to the right of each Member State to protect its essential security interests in accordance with Article 346 TFEU. Procedures for awarding contracts falling under Directive 2009/81/EC of the European Parliament and of the Council¹ and exempted by Member States on that basis to protect such essential security interests pursuant to Article 346 TFEU do not fall under this Regulation.</p> <p>¹ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).</p>	
Article 2				
64				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Article 2 Existence of a foreign subsidy	Article 2 Existence of a foreign subsidy	Article 2 Existence of a foreign subsidy	
Article 2(1)				
65	(1) For the purpose of this Regulation, a foreign subsidy shall be deemed to exist where a third country provides a financial contribution which confers a benefit to an undertaking engaging in an economic activity in the internal market and which is limited, in law or in fact, to an individual undertaking or industry or to several undertakings or industries.	(1) For the purpose of this Regulation, a foreign subsidy shall be deemed to exist where a third country provides a financial contribution which confers a benefit to an undertaking engaging in an economic activity in the internal market and which is limited, in law or in fact, to an individual undertaking or industry or to several undertakings or industries.	(1) For the purpose of this Regulation, a foreign subsidy shall be deemed to exist where a third country provides directly or indirectly a financial contribution which confers a benefit to an undertaking engaging in an economic activity in the internal market– and which is limited, in law or in fact, to an individual undertaking or industry or to several one or more undertakings or industries.	
Article 2(2), introductory part				
66	(2) For the purpose of this Regulation,	(2) For the purpose of this Regulation,	(2) For the purpose of this Regulation,	
Article 2(2), point (a), introductory part				
67	(a) a financial contribution shall include:	(a) a financial contribution shall include, <u><i>inter alia</i></u> :	(a) a financial contribution shall include inter alia :	
Article 2(2), point (a)(i)				
68	(i) the transfer of funds or liabilities, such as capital injections, grants,	(i) the transfer of funds or liabilities, such as capital injections, grants,	(i) the transfer of funds or liabilities, such as capital injections, grants,	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	loans, loan guarantees, fiscal incentives, setting off of operating losses, compensation for financial burdens imposed by public authorities, debt forgiveness, debt to equity swaps or rescheduling;	loans, loan guarantees, fiscal incentives, <u>tax exemptions</u> , setting off of operating losses, compensation for financial burdens imposed by public authorities, debt forgiveness, debt to equity swaps or rescheduling;	loans, loan guarantees, fiscal incentives, setting off of operating losses, compensation for financial burdens imposed by public authorities, debt forgiveness, debt to equity swaps or rescheduling;	
Article 2(2), point (a)(ii)				
69	(ii) the foregoing of revenue that is otherwise due; or	(ii) the foregoing of revenue that is otherwise due; or	(ii) the foregoing of revenue that is otherwise due , such as tax exemptions or the granting of special or exclusive rights without adequate remuneration ; or	
Article 2(2), point (a)(iia)				
69a		<u>(iia) inadequately remunerated special or exclusive rights; or</u>		
Article 2(2), point (a)(iii)				
70	(iii) the provision of goods or services or the purchase of goods and services;	(iii) the provision of goods or services or the purchase of goods <u>or services, unless such provision or purchase is carried out following a competitive, transparent, non-discriminatory and unconditional tender procedure</u> and services ;	(iii) the provision of goods or services or the purchase of goods and or services;	
Article 2(2), point (b), introductory part				
71				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(b) the financial contribution provided by the third country shall include the financial contribution provided by:	(b) the financial contribution provided by the third country shall include the financial contribution provided by:	(b) the financial contribution provided by the third country shall include the financial contribution provided by:	
Article 2(2), point (b)(i)				
72	(i) the central government and government authorities at all other levels;	(i) the central government and government authorities at all other levels;	(i) the central government and government public authorities at all other levels;	
Article 2(2), point (b)(ii)				
73	(ii) foreign public entities, whose actions can be attributed to the third country, taking into account elements such as the characteristics of the entity, the legal and economic environment prevailing in the State in which the entity operates including the government's role in the economy; or	(ii) foreign public entities, whose actions can be attributed to the third country, taking into account elements such as the characteristics of the entity, the legal and economic environment prevailing in the State in which the entity operates including the government's role in the economy; or	(ii) any foreign public entities, whose actions can be attributed to the third country, taking into account elements such as the characteristics of the entity, the legal and economic environment prevailing in the State in which the entity operates including the government's role in the economy; or	
Article 2(2), point (b)(iii)				
74	(iii) any private entity whose actions can be attributed to the third country, taking into account all relevant circumstances.	(iii) any private entity whose actions can be attributed to the third country, taking into account all relevant circumstances.	(iii) any private entity whose actions can be attributed to the third country, taking into account all relevant circumstances including those mentioned in subparagraph (ii).	
Article 3				
75				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Article 3 Distortions on the internal market	Article 3 Distortions on the internal market	Article 3 Distortions on the internal market	
Article 3(1), introductory part				
76	(1) A distortion on the internal market shall be deemed to exist where a foreign subsidy is liable to improve the competitive position of the undertaking concerned in the internal market and where, in doing so, it actually or potentially negatively affects competition on the internal market. Whether there is a distortion on the internal market shall be determined on the basis of indicators, which may include the following:	(1) A distortion on the internal market shall be deemed to exist where a foreign subsidy is liable to improve the competitive position of the undertaking concerned in the internal market and where, in doing so, it actually or potentially negatively affects competition on the internal market. Whether there is a distortion on the internal market shall be determined on the basis of indicators, which may <u>shall</u> include, <u>inter alia</u> , the following:	(1) A distortion on the internal market shall be deemed to exist where a foreign subsidy is liable to improve the competitive position of the <u>an</u> undertaking concerned in the internal market and where, in doing so, it actually or potentially negatively affects competition on the internal market. Whether there is a distortion on the internal market shall be determined on the basis of indicators, which may include, inter alia , the following:	
Article 3(1), point (a)				
77	(a) the amount of the subsidy;	(a) the amount of the subsidy;	(a) the amount of the subsidy;	
Article 3(1), point (b)				
78	(b) the nature of the subsidy;	(b) the nature of the subsidy;	(b) the nature of the subsidy;	
Article 3(1), point (c)				
79	(c) the situation of the undertaking and the markets concerned;	(c) the situation of the undertaking, <u>including its size</u> , and the markets concerned <u>and in particular an assessment whether the</u>	(c) the situation of the undertaking, including its size and the markets or sectors concerned;	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>undertaking concerned operates under the ownership, control or policy supervision or guidance of the authorities of the third country;</u>		
Article 3(1), point (d)				
80	(d) the level of economic activity of the undertaking concerned on the internal market;	(d) the level <u>and evolution</u> of economic activity of the undertaking concerned on the internal <u>market and on its domestic</u> market;	(d) the level of economic activity of the undertaking concerned on the internal market;	
Article 3(1), point (e)				
81	(e) the purpose and conditions attached to the foreign subsidy as well as its use on the internal market.	(e) the purpose and conditions attached to the foreign subsidy as well as its use on the internal market.	(e) the purpose and conditions attached to the foreign subsidy as well as its use on the internal market.	
Article 3(2)				
82	(2) A foreign subsidy is unlikely to distort the internal market if its total amount is below EUR 5 million over any consecutive period of three fiscal years.	(2) A foreign subsidy is unlikely to distort the internal market if its total amount is below EUR 5 <u>4</u> million over any consecutive period of three fiscal years.	(2) A foreign subsidy to an undertaking is unlikely to distort the internal market if its total amount is below does not exceed EUR 5 million over any consecutive period of three fiscal financial years.	
Article 3(2a)				
82a		<u>2a. The Commission may consider whether the third country has a system for the review of subsidies in place, which the Commission has</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u><i>found to provide guarantees, in law and in practice, that the level of protection against undue state intervention into market forces and unfair competition is at least equivalent to the level of protection within the Union, whether the subsidy has been cleared under that system and whether that clearance appears relevant also for the effects on the internal market.</i></u>		
Article 3(2a)				
82b			(2a) A foreign subsidy to an undertaking shall not be considered to distort the internal market if its total amount does not exceed EUR 200.000 per third country over any consecutive period of three financial years	
Article 3(2b)				
82c		<u><i>2b. In order to ensure efficiency and transparency, the Commission shall publish guidelines on the application of this Article at the latest 24 months after the entry into force of this Regulation, including explanations and examples of how each indicator shall be applied. The Commission shall, in close cooperation with Member States, regularly update those guidelines</i></u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>and keep the European Parliament and the Council informed.</u>		
Article 3(2aa)				
82d			(2b) The Commission shall publish guidance on the application of this Article at the latest at [the date of application of this Regulation] and shall update it in light of its enforcement practice.	
Article 4				
83	Article 4 Categories of foreign subsidies most likely to distort the internal market	Article 4 Categories of foreign subsidies most likely to distort the internal market	Article 4 Categories of foreign subsidies most likely to distort the internal market	
Article 4(1), first paragraph, introductory part				
84	A foreign subsidy falling in any of the following categories is most likely to distort the internal market:	A foreign subsidy falling in any of the following categories is most likely to distort the internal market:	(1) A foreign subsidy falling in any of the following categories is most likely to distort the internal market:	
Article 4 (1), point (a)				
85	(1) a foreign subsidy granted to an ailing undertaking, that is to say which will likely go out of business in the short or medium term in the absence of any subsidy, unless there is a restructuring plan that is capable	(1) a foreign subsidy granted to an ailing undertaking, that is to say which will likely go out of business in the short or medium term in the absence of any subsidy, unless there is a restructuring plan that is capable	(1) (a) a foreign subsidy granted to an ailing undertaking, that is to say which will likely go out of business in the short or medium term in the absence of any subsidy, unless there is a restructuring plan that is capable	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	of leading to the long-term viability of that undertaking and includes a significant own contribution by the undertaking;	of leading to the long-term viability of that undertaking and includes a significant own contribution by the undertaking;	of leading to the long-term viability of that undertaking and includes a significant own contribution by the undertaking;	
Article 4 (1), point (b)				
86	(2) a foreign subsidy in the form of an unlimited guarantee for debts or liabilities of the undertaking, that is to say without any limitation as to the amount or the duration of such guarantee;	(2) a foreign subsidy in the form of an unlimited guarantee for debts or liabilities of the undertaking, that is to say without any limitation as to the amount or the duration of such guarantee;	(2) (b) a foreign subsidy in the form of an unlimited guarantee for debts or liabilities of the undertaking, that is to say without any limitation as to the amount– or the duration of such guarantee;	
Article 4(1), first paragraph, point (2a)				
86a		<u>(2a) an export financing subsidy granted by a third country which is not a signatory to the OECD Arrangement on officially supported export credits;</u>		
Article 4(1), first paragraph, point (2b)				
86b		<u>(2b) a foreign subsidy to an undertaking active in a sector characterised by structural excess capacity;</u>		
Article 4 (1), point (c)				
87	(3) a foreign subsidy directly facilitating a concentration;	(3) a foreign subsidy directly facilitating a concentration;	(3) (c) a foreign subsidy directly facilitating a concentration referred	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			to in Article 18;	
Article 4 (1), point (d)				
88	(4) a foreign subsidy enabling an undertaking to submit an unduly advantageous tender, on the basis of which the undertaking would be awarded the public contract.	(4) a foreign subsidy enabling an undertaking to submit an unduly advantageous tender, on the basis of which the undertaking would be awarded the public contract.	(4) (d) a foreign subsidy enabling an undertaking to submit an unduly advantageous tender, on the basis of which the undertaking would could be awarded the public contract.	
Article 4 (2)				
88a			(2) An undertaking shall be granted the possibility to provide relevant information to show that a foreign subsidy listed above does not distort the internal market in the specific circumstances of the case.	
Article 5				
89	Article 5 Balancing	Article 5 Balancing	Article 5 Balancing	
Article 5(1)				
90	(1) The Commission shall, where warranted, balance the negative effects of a foreign subsidy in terms of distortion on the internal market with positive effects on the development of the relevant	(1) The Commission shall may, where warranted, balance the negative effects of a foreign subsidy in terms of distortion on the internal market with positive effects on the development of the relevant	(1) The Commission shall, where warranted, balance the negative effects of a foreign subsidy in terms of distortion on the internal market according to Articles 3 and 4 with positive effects on the development	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	economic activity.	economic activity <u>on the internal market</u> .	of the relevant subsidised economic activity on the internal market, including broader positive effects of the foreign subsidy .	
Article 5(2)				
91	(2) The Commission shall take into account the balancing between the negative and positive effects when deciding whether to impose redressive measures or to accept commitments, and the nature and level of those redressive measures or commitments.	(2) The Commission shall take into account the balancing between the negative and positive effects when deciding whether to impose redressive measures or to accept commitments, and the nature and level of those redressive measures or commitments.	(2) The Commission shall take into account the balancing between the negative and positive effects when deciding whether to impose redressive measures or to accept commitments, and the nature and level of those redressive measures or commitments.	
Article 5(2a)				
91a		<u>(2a) At the latest 24 months after the entry into force of this Regulation, the Commission shall publish guidelines on the application of this Article, including on the criteria that are used in the balancing. The Commission shall, in close cooperation with Member States, regularly update those guidelines and keep the European Parliament and the Council informed.</u>		
Article 5(3)				
91b			(3) The Commission shall publish	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			guidance on the application of this Article at the latest at [the date of application of this Regulation] and shall update it in light of its enforcement practice.	
Article 6				
92	Article 6 Commitments and redressive measures	Article 6 Commitments and redressive measures	Article 6 Commitments and redressive measures	
Article 6(1)				
93	(1) To remedy the distortion on the internal market actually or potentially caused by a foreign subsidy, the Commission may impose redressive measures. The undertaking concerned may also offer commitments.	(1) <u>Without prejudice to Article 5, the Commission shall impose redressive measures in order</u> to remedy the distortion on the internal market actually or potentially caused by a foreign subsidy, the Commission may impose redressive measures unless it has accepted commitments offered by the undertaking concerned may also offer commitments pursuant to paragraph 1a.	(1) To remedy the distortion on the internal market actually or potentially caused by a foreign subsidy, the Commission may impose redressive measures. The undertaking concerned under investigation may also offer commitments.	
Article 6(1a)				
93a		<u>(1a) The Commission may accept commitments offered by the undertaking concerned, where such commitments fully and effectively remedy the distortion on the</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<i><u>internal market. By accepting such commitments, the Commission shall make them binding on the undertaking in a decision with commitments in accordance with Article 9(3). The Commission shall monitor the undertaking's compliance with the commitments agreed upon.</u></i>		
Article 6(2)				
94	(2) Commitments or redressive measures shall fully and effectively remedy the distortion caused by the foreign subsidy in the internal market.	(2) Commitments or redressive measures shall fully and effectively remedy the distortion <i><u>actually or potentially</u></i> caused by the foreign subsidy in the internal market.	(2) Commitments or redressive measures shall be proportionate and fully and effectively remedy the distortion caused by the foreign subsidy in the internal market.	
Article 6(3), introductory part				
95	(3) Commitments or redressive measures may consist of the following:	(3) Commitments or redressive measures may consist, <i><u>inter alia</u></i> , of the following:	(3) Commitments or redressive measures may consist, inter alia , of the following:	
Article 6(3), point (a)				
96	(a) offering access under fair and non-discriminatory conditions to an infrastructure that was acquired or supported by the distortive foreign subsidies unless such fair and non-discriminatory access is already provided for by legislation in force in the Union;	(a) offering access under fair and non-discriminatory conditions to an infrastructure <i><u>or facility</u></i> that was acquired or supported by the distortive foreign subsidies unless such fair and non-discriminatory access is already provided for by legislation in force in the Union;	(a) offering access under fair, reasonable , and non-discriminatory conditions to an infrastructure, including research facility, production capability or any other essential facility that was acquired or supported by the distortive foreign subsidies unless such fair	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			and non-discriminatory access is already provided for by legislation in force in the Union;	
Article 6(3), point (b)				
97	(b) reducing capacity or market presence;	(b) reducing capacity or market presence, <u>including by means of a temporary commercial activity restriction on the internal market</u> ;	(b) reducing capacity or market presence;	
Article 6(3), point (c)				
98	(c) refraining from certain investments;	(c) refraining from certain investments;	(c) refraining from certain investments;	
Article 6(3), point (d)				
99	(d) licensing on fair, reasonable and non-discriminatory terms of assets acquired or developed with the help of foreign subsidies;	(d) licensing on fair, reasonable and non-discriminatory terms of assets acquired or developed with the help of foreign subsidies;	(d) licensing on fair, reasonable and non-discriminatory terms of assets acquired or developed with the help of foreign subsidies;	
Article 6(3), point (e)				
100	(e) publication of results of research and development;	(e) publication of results of research and development;	(e) publication of results of research and development;	
Article 6(3), point (f)				
101	(f) divestment of certain assets;	(f) divestment of certain assets;	(f) divestment of certain assets;	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 6(3), point (g)				
102	(g) requiring the undertakings concerned to dissolve the concentration;	(g) requiring the undertakings concerned to dissolve the concentration;	(g) requiring the undertakings concerned to dissolve the concentration;	
Article 6(3), point (h)				
103	(h) repayment of the foreign subsidy, including an appropriate interest rate.	(h) repayment of the foreign subsidy, including an appropriate interest rate.	(h) repayment of the foreign subsidy, including an appropriate interest rate, calculated according to the methodology set out in Commission Regulation (EC) No 794/2004.	
Article 6(3), point (ha)				
103a		<u>(ha) requiring the undertakings concerned to notify the Commission of any participation in future public procurement procedures in the Union for an appropriate period of time where the estimated value of the public contract is below the thresholds set out in Article 27.</u>		
Article 6(3), point (hb)				
103b		<u>(hb) requiring the undertakings concerned to adapt their governance structure.</u>		
Article 6(4)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
104	(4) The Commission may impose reporting and transparency requirements.	(4) The Commission may <u>shall</u> impose reporting and transparency requirements.	(4) The Commission may impose reporting and transparency requirements, including periodic reporting regarding the implementation of the commitments and redressive measures listed in paragraph 3.	
Article 6(5)				
105	(5) If an undertaking offers commitments which fully and effectively remedy the distortion on the internal market, the Commission may accept them and make them binding on the undertaking in a decision with commitments according to Article 9(3).	(5) If an undertaking offers commitments which fully and effectively remedy the distortion on the internal market, the Commission may accept them and make them binding on the undertaking in a decision with commitments according to Article 9(3). <u>deleted</u>	(5) If an undertaking offers commitments which fully and effectively remedy the distortion on the internal market, the Commission may accept them and make them binding on the undertaking in a decision with commitments according to Article 9(3).	
Article 6(6)				
106	(6) Where the undertaking concerned proposes to repay the foreign subsidy including an appropriate interest rate, the Commission shall accept such repayment as commitment if it can ascertain that the repayment is transparent and effective, while taking into account the risk of circumvention.	(6) Where the undertaking concerned proposes to repay the foreign subsidy including an appropriate interest rate, the Commission shall accept such repayment as commitment if only <u>where</u> it can ascertain that the repayment is transparent and effective <u>effectively and adequately remedies the distortive effects</u> , while taking into account the risk of circumvention.	(6) Where the undertaking concerned under investigation proposes to repay the foreign subsidy including an appropriate interest rate, the Commission shall accept such repayment as commitment if it can ascertain that the repayment is transparent and effective, while taking into account the risk of circumvention.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 6a				
106a			<i>Information on future concentration and public procurement procedure</i>	
Article 6, first paragraph				
106b			In decisions adopted pursuant to Articles 9, 24 and 30 of this Regulation, and where strictly warranted, proportionate and necessary, the undertaking or economic operator concerned may be required to inform the Commission, for a limited period of time, of its participation in concentrations or procurement procedures. This is without prejudice to notification obligations pursuant to Articles 19 and 28.	
Chapter 2:				
107	Chapter 2: Ex Officio review of foreign subsidies	Chapter 2: Ex Officio review of foreign subsidies	Chapter 2: Ex Officio review of foreign subsidies	
Article 7				
108	Article 7 Ex officio review of foreign subsidies	Article 7 Ex officio review of foreign subsidies	Article 7 Ex officio review of foreign subsidies	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 7(1)				
109	The Commission may on its own initiative examine information from any source regarding alleged distortive foreign subsidies.	<p>The Commission may on its own initiative examine information from any source, <u>including from Member States and undertakings or from Union-wide social partners</u>, regarding alleged distortive foreign subsidies.</p> <p><u>The Commission shall establish a contact point through which this information can be confidentially reported.</u></p> <p><u>The Commission shall inform the public authority of any follow-up taken.</u></p> <p><u>Competent public authorities shall collect and exchange data with the Commission.</u></p> <p><u>The Commission shall publish guidelines on the criteria for opening an ex officio review by 24 months after the entry into force of this Regulation.</u></p>	(1) The Commission may on its own initiative examine information from any source regarding alleged distortive foreign subsidies. Such source may include, the Member States and any natural or legal person or association.	
Article 7(2)				
109a			(2) Ex officio reviews into public procurements shall be limited to awarded contracts. These reviews cannot result in the cancellation of the decision awarding a public contract or concession or a termination of a public contract or	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			concession.	
Article 8				
110	Article 8 Preliminary review	Article 8 Preliminary review	Article 8 Preliminary review	
Article 8(1), introductory part				
111	(1) The Commission shall seek all the information it considers necessary to assess, on a preliminary basis, whether the financial contribution under examination constitutes a foreign subsidy and whether it distorts the internal market. To that end, the Commission may in particular:	(1) The Commission shall seek all the information it considers necessary to assess, on a preliminary basis, whether the financial contribution under examination constitutes a foreign subsidy and whether it distorts the internal market. To that end, the Commission may in particular:	(1) When the Commission shall considers that the information referred to in Article 7 indicates that a distortive foreign subsidy may exist, it may seek all the information it considers necessary to assess, on a preliminary basis, whether the financial contribution under examination constitutes a foreign subsidy and whether it distorts the internal market. To that end, the Commission may in particular:	
Article 8(1), point (a)				
112	(a) request information in accordance with Article 11;	(a) request information in accordance with Article 11;	(a) request information in accordance with Article 11; and	
Article 8(1), point (b)				
113	(b) conduct inspections in and outside the Union in accordance with Article 12 or Article 13.	(b) conduct inspections in and outside the Union in accordance with Article 12 or Article 13.	(b) conduct inspections in and outside the Union in accordance with Article 12 or Article 13.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 8, first paragraph				
113a			The Commission shall inform Member States about the start of the preliminary review and, if the review is initiated under Chapter 4, the contracting authority or contracting entity concerned.	
Article 8(2), introductory part				
114	(2) Where the Commission, based on the preliminary review, considers that there are sufficient indications that an undertaking has been granted a foreign subsidy that distorts the internal market, it shall	(2) Where the Commission, based on the preliminary review, considers that there are sufficient indications that an undertaking has been granted a foreign subsidy that distorts the internal market, it shall	(2) Where the Commission, based on the preliminary review, considers that there are has sufficient indications that an undertaking has been granted a foreign subsidy that distorts the internal market, it shall:	
Article 8(2), point (a)				
115	(a) adopt a decision to initiate an in-depth investigation ('decision to initiate the in-depth investigation'), which shall summarise the relevant issues of fact and law and shall include the preliminary assessment of the existence of a foreign subsidy and of the actual or potential distortion on the internal market;	(a) adopt a decision to initiate an in-depth investigation ('decision to initiate the in-depth investigation'), which shall summarise the relevant issues of fact and law and shall include the preliminary assessment of the existence of a foreign subsidy and of the actual or potential distortion on the internal market;	(a) adopt without undue delay a decision to initiate an in-depth investigation ('decision to initiate the in-depth investigation'), which shall summarise the relevant issues of fact and law and shall include the preliminary assessment of the existence of a foreign subsidy and of the actual or potential distortion on the internal market;	
Article 8(2), point (b)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
116	(b) inform the undertaking concerned; and	(b) inform the undertaking concerned <u>and where appropriate also Member States</u> ; and	(b) inform the undertaking concerned; and under investigation	
Article 8(2), point (ba)				
116a			(ba) inform Member States and, if the review is initiated under Chapter 4, the contracting authority or contracting entity concerned; and	
Article 8(2), point (c)				
117	(c) publish a notice in the Official Journal of the European Union, which invites interested parties, Member States and the third country concerned to express their views in writing within a prescribed period of time.	(c) publish a notice in the Official Journal of the European Union, which invites interested parties, Member States and the third country concerned to express their views in writing within a prescribed period of time.	(c) publish a notice in the Official Journal of the European Union, which invites interested parties, Member States and the third country concerned to express their views in writing within a prescribed period of time.	
Article 8(3)				
118	(3) Where the Commission, after a preliminary assessment, concludes that there are no sufficient grounds to initiate the in-depth investigation, either because there is no foreign subsidy or because there are no indications of an actual or potential distortion on the internal market, it shall close the preliminary review	(3) Where the Commission, after a preliminary assessment, concludes that there are no sufficient grounds to initiate the in-depth investigation, either because there is no foreign subsidy or because there are no indications of an actual or potential distortion on the internal market, it shall close the preliminary review	(3) Where the Commission, after a preliminary assessment, concludes that there are no sufficient grounds indications to initiate the in-depth investigation, either because there is no foreign subsidy or because there are no indications of an actual or potential distortion on the internal market, it shall close the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	and inform the undertaking concerned.	and inform the undertaking <u>and Member States</u> concerned, <u>and the European Parliament</u> .	preliminary review-and, inform the undertaking under investigation, and Member States and, if the review is initiated under Chapter 4, the contracting authority or contracting entity concerned.	
Article 9				
119	Article 9 In-depth investigation	Article 9 In-depth investigation	Article 9 In-depth investigation	
Article 9(1)				
120	(1) During the in-depth investigation, the Commission shall further assess the foreign subsidy distorting the internal market that has been identified in the decision to initiate the in-depth investigation, seeking all the information it considers necessary in accordance with Articles 11, 12 and 13.	(1) During the in-depth investigation, the Commission shall further assess the foreign subsidy distorting the internal market that has been identified in the decision to initiate the in-depth investigation, seeking all the information it considers necessary in accordance with Articles 11, 12 and 13.	(1) During the in-depth investigation, the Commission shall further assess the foreign subsidy distorting the internal market that has been identified in the decision to initiate the in-depth investigation, seeking all the information it considers necessary in accordance with Articles 11, 12 and 13-	
Article 9(2)				
121	(2) Where the Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 to 5, it may impose redressive measures ('decision with redressive measures').	(2) Where the Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 <u>and 4 and without prejudice to Article 5, it shall</u> to 5, it may impose redressive measures ('decision with redressive measures'), <u>unless it accepts commitments pursuant to</u>	(2) Where the Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 to 5, it may impose redressive measures ('decision with redressive measures'). Those implementing acts shall be adopted in accordance with the advisory	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<u>paragraph 3.</u>	procedure referred to in Article 43(2).	
Article 9(3)				
122	(3) Where the Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 to 5 and the undertaking concerned offers commitments, which the Commission deems appropriate and sufficient to fully and effectively remedy the distortion, it may by a decision make these commitments binding on the undertaking ('decision with commitments'). A decision accepting the repayment of a foreign subsidy in accordance with Article 6(6) shall be considered a decision with commitments.	(3) Where the Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 to 5 and the undertaking concerned offers commitments, which the Commission deems appropriate and sufficient to fully and effectively remedy the distortion, it may by a decision make these commitments binding on the undertaking ('decision with commitments'). A decision accepting the repayment of a foreign subsidy in accordance with Article 6(6) shall be considered a decision with commitments.	(3) Where the Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 to 5 and the undertaking concerned under investigation offers commitments, which the Commission deems appropriate and sufficient to fully and effectively remedy the distortion, it may by a decision make these commitments binding on the undertaking ('decision with commitments'). A decision accepting the repayment of a foreign subsidy in accordance with Article 6(6) shall be considered a decision with commitments. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 43(2).	
Article 9(4), introductory part				
123	(4) The Commission shall adopt a no objection decision where it finds that:	(4) The Commission shall adopt a no objection decision where it finds that:	(4) The Commission shall adopt without undue delay a no objection decision where it finds that:	
Article 9(4), point (a)				
124				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(a) the preliminary assessment as set out in its decision to initiate the in-depth investigation is not confirmed; or	(a) the preliminary assessment as set out in its decision to initiate the in-depth investigation is not confirmed; or	(a) the preliminary assessment as set out in its decision to initiate the in-depth investigation is not confirmed; or	
Article 9(4), point (b)				
125	(b) a distortion on the internal market is outweighed by positive effects within the meaning of Article 5.	(b) a distortion on the internal market is outweighed by positive effects within the meaning of Article 5.	(b) a distortion on the internal market is outweighed by positive effects within the meaning of Article 5.	
Article 9, first paragraph				
125a			Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 43(2).	
Article 9(5)				
125b			(5) The Commission shall as far as possible endeavour to adopt a decision within a period of 18 months from the opening of the in-depth investigation.	
Article 10				
126	Article 10 Interim measures	Article 10 Interim measures	Article 10 Interim measures	
Article 10(1)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
127	The Commission may take interim measures, where:	The Commission may take interim measures, <u>including during the preliminary review period</u> , where:	(1) To preserve competition in the internal market and prevent irreparable damage , the Commission may take adopt interim measures during the in-depth-investigation , where:	
Article 10(1),point (a)				
128	(1) there are indications that a financial contribution constitutes a foreign subsidy and distorts the internal market; and	(1) there are indications that a financial contribution constitutes a foreign subsidy and distorts the internal market; and	(1) (a) there are sufficient indications that a financial contribution constitutes a foreign subsidy and distorts the internal market; and	
Article 10(1),point (b)				
128a			(b) there is a risk of serious and irreparable damage to competition on the internal market.	
Article 10(2)				
129	(2) there is a serious risk of substantial and irreparable damage to competition on the internal market.	(2) there is a serious risk of substantial and irreparable damage to competition on the internal market.	(2) there is a serious risk of substantial and irreparable damage to competition on the internal market. The interim measures may notably consist of the measures mentioned under article 6(3) points (a), (c), and (d).	
Article 10(3)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
129a			(3) The interim measures shall be proportionate and shall apply either for a specific time period, which may be renewed in so far that is necessary and appropriate, or until the final decision is taken.	
Article 10(3), first paragraph				
129b			Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 43(2).	
Article 10, first paragraph a				
129c		<u>Interim measures shall be limited in time and may be prolonged where an indication of distortive effects or a serious risk of substantial and irreparable damage to competition on the internal market continues to exist.</u>		
Article 11				
130	Article 11 Information requests	Article 11 Information requests	Article 11 Information requests	
Article 11(0)				
130a			(0) To carry out the duties	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			assigned to it by this Regulation, the Commission may require information in line with the provisions of this Article.	
Article 11(1)				
131	(1) The Commission may require an undertaking concerned to provide all necessary information.	(1) The Commission may require an undertaking concerned to provide all necessary information.	(1) The Commission may require an undertaking concerned under investigation to provide all necessary information, including the relevant information regarding its tender in a public procurement procedure.	
Article 11(2)				
132	(2) The Commission may also request such information from other undertakings or associations of undertakings.	(2) The Commission may also request such information from other undertakings or associations of undertakings.	(2) The Commission may also request such information from other undertakings or associations of undertakings, including the relevant information regarding their tenders in a public procurement procedure, taking due account of the principle of proportionality.	
Article 11(3), introductory part				
133	(3) A request for information to an undertaking or an association of undertakings shall:	(3) A request for information to an undertaking or an association of undertakings shall:	(3) A request for information pursuant to paragraph (1) or (2) to an undertaking or an association of undertakings shall:	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 11(3), point (a)				
134	(a) state its legal basis and its purpose, specify what information is required and set an appropriate time limit within which the information is to be provided;	(a) state its legal basis and its purpose, specify what information is required and set an appropriate time limit within which the information is to be provided;	(a) state its legal basis and its purpose, specify what information is required and set an appropriate time limit within which the information is to be provided;	
Article 11(3), point (b)				
135	(b) contain a statement that if the information supplied is incorrect, incomplete or misleading fines and periodic penalty payments provided for in Article 15 could be imposed;	(b) contain a statement that if the information supplied is incorrect, incomplete or misleading fines and periodic penalty payments provided for in Article 15 could be imposed;	(b) contain a statement that if the information supplied is incorrect, incomplete or misleading fines and periodic penalty payments provided for in Article 15 could be imposed;	
Article 11(3), point (c)				
136	(c) contain a statement that, pursuant to Article 14, a lack of cooperation from the undertaking concerned allows the Commission to take a decision on the basis of the facts that are available.	(c) contain a statement that, pursuant to Article 14, a lack of cooperation from the undertaking concerned allows the Commission to take a decision on the basis of the facts that are available.	(c) contain a statement that, pursuant to Article 14, a lack of cooperation from the undertaking concerned allows the Commission to take a decision on the basis of the facts that are available.	
Article 11(4)				
137	(4) At the request of the Commission, Member States shall provide it with all necessary information to carry out the duties assigned to it by this Regulation.	(4) At the request of the Commission, Member States shall provide it with all necessary information to carry out the duties assigned to it by this Regulation.	(4) At the request of the Commission, Member States shall provide it with all necessary information to carry out the duties assigned to it by this Regulation. Paragraph 3 point (a) applies mutatis mutandis.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 11(5)				
138	(5) The Commission may also request a third country concerned to provide all necessary information.	(5) The Commission may also request a third country concerned to provide all necessary information.	(5) The Commission may also request a third country concerned to provide all necessary information. Paragraph 3 points (a) and (c) apply mutatis mutandis.	
Article 11(5a), introductory part				
138a			6 The Commission may interview any natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation.	
Article 11(5a), point (a)				
138b			Where an interview is not conducted on the premises of the Commission or by telephone or other electronic means, the Commission shall	
Article 11(5a), point (b)				
138c			(a) inform in advance the Member State in whose territory the interview takes place; or	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 11(5a), point (c)				
138d			(b) shall obtain the agreement of the third country in whose territory the interview takes place.	
Article 12				
139	Article 12 Inspections within the Union	Article 12 Inspections within the Union	Article 12 Inspections within the Union	
Article 12(1)				
140	(1) The Commission may conduct the necessary inspections of undertakings.	(1) <u>In order to carry out the duties assigned to it by this Regulation, the Commission shall, where</u> The Commission may conduct the necessary, <u>conduct</u> inspections of undertakings.	(1) To carry out the duties assigned to it by this Regulation, the Commission may conduct the necessary inspections of undertakings and associations of undertakings.	
Article 12(2), introductory part				
141	(2) Where the Commission undertakes such an inspection, the officials authorised by the Commission to conduct an inspection shall be empowered:	(2) Where the Commission undertakes such an inspection, the officials authorised by the Commission to conduct an inspection shall be empowered:	(2) Where the Commission undertakes such an inspection, the officials authorised by the Commission to conduct an inspection shall be empowered:	
Article 12(2), point (a)				
142	(a) to enter any premises and land of the undertaking concerned;	(a) to enter any premises, <u>land and means of transport</u> and land of the undertaking concerned;	(a) to enter any premises and land of the an undertaking concerned or association of undertakings;	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 12(2), point (b)				
143	(b) to examine books and other business records and take, or request copies;	(b) to examine books and other business records and take, or request copies;	(b) to examine books and other business records, irrespective of the medium on which they are stored and to have the right to access any information which is accessible to the entity subject to the inspection, and to and take, or request copies;	
Article 12(2), point (c)				
144	(c) to ask any representative or member of staff of the undertaking for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers;	(c) to ask any representative or member of staff of the undertaking for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers;	(c) to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers;	
Article 12(2), point (d)				
145	(d) to seal any business premises and books or records for the period and to the extent necessary for the inspection.	(d) to seal any business premises and books or records for the period and to the extent necessary for the inspection.	(d) to seal any business premises and books or records for the period and to the extent necessary for the inspection.	
Article 12(3), introductory part				
146	(3) The undertaking concerned shall submit to inspections ordered by decision of the Commission. The	(3) The undertaking concerned shall submit to inspections ordered by decision of the Commission. The	(3) The undertaking concerned or association of undertakings shall submit to inspections ordered by	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	officials and other accompanying persons authorised by the Commission to conduct an inspection shall exercise their powers upon production of a Commission decision:	officials and other accompanying persons authorised by the Commission to conduct an inspection shall exercise their powers upon production of a Commission decision:	decision of the Commission. The officials and other accompanying persons authorised by the Commission to conduct an inspection shall exercise their powers upon production of a Commission decision:	
Article 12(3), point (a)				
147	(a) specifying the subject matter and purpose of the inspection;	(a) specifying the subject matter and purpose of the inspection;	(a) specifying the subject matter and purpose of the inspection;	
Article 12(3), point (b)				
148	(b) containing a statement that, pursuant to Article 14, a lack of cooperation from the undertaking concerned allows the Commission to take a decision on the basis of the facts that are available;	(b) containing a statement that, pursuant to Article 14, a lack of cooperation from the undertaking concerned allows the Commission to take a decision on the basis of the facts that are available;	(b) containing a statement that, pursuant to Article 14, a lack of cooperation from the undertaking concerned allows the Commission to take a decision on the basis of the facts that are available;	
Article 12(3), point (c)				
149	(c) referring to the possibility to impose fines and penalties provided for in Article 15.	(c) referring to the possibility to impose fines and penalties provided for in Article 15.	(c) referring to the possibility to impose fines and penalties periodic penalty payments provided for in Article 15-;	
Article 12(3), point (d)				
149a			(d) stating the right to have the decision reviewed by the Court of	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			Justice pursuant to Article 263 TFEU.	
Article 12(4)				
150	(4) In good time before the inspection, the Commission shall give notice of the inspection to the Member State in whose territory it is to be conducted.	(4) In good time before the inspection, the Commission shall give notice of the inspection to the Member State in whose territory it is to be conducted.	(4) In good time before the inspection, the Commission shall give notice of the inspection to the Member State in whose territory it is to be conducted and appoint the date on which it is to begin.	
Article 12(5)				
151	(5) Officials of the Commission as well as officials authorised or appointed by the Member State in whose territory the inspection is to be conducted shall, at the request of the Member State or of the Commission, actively assist the officials and other accompanying persons authorised by the Commission. To this end, they shall enjoy the powers specified in paragraph 2.	(5) Officials of the Commission as well as officials authorised or appointed by the Member State in whose territory the inspection is to be conducted shall, at the request of the Member State or of the Commission, actively assist the officials and other accompanying persons authorised by the Commission. To this end, they shall enjoy the powers specified in paragraph 2.	(5) Officials of the Commission as well as officials and other persons authorised or appointed by the Member State in whose territory the inspection is to be conducted shall, at the request of the Member State or of the Commission, actively assist the officials and other accompanying persons authorised by the Commission. To this end, they shall enjoy the powers specified in paragraph 2.	
Article 12(6)				
152	(6) Where officials or other accompanying persons authorised by the Commission find that an undertaking opposes an inspection within the meaning of this Article,	(6) Where officials or other accompanying persons authorised by the Commission find that an undertaking opposes an inspection within the meaning of this Article,	(6) Where officials or other accompanying persons authorised by the Commission find that an undertaking or association of undertakings opposes an inspection	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	the Member State concerned shall provide them with the necessary assistance and shall request, where appropriate, the assistance of the police or of an equivalent enforcement authority so as to enable them to conduct their inspection.	the Member State concerned shall provide them with the necessary assistance and shall request, where appropriate, the assistance of the police or of an equivalent enforcement authority so as to enable them to conduct their inspection.	within the meaning of this Article, the Member State concerned in which territory the inspection takes place shall provide them with the necessary assistance and shall request, where appropriate, the assistance of the police or of an equivalent enforcement authority so as to enable them to conduct their inspection. If the assistance provided for in this paragraph requires authorization from a judicial authority according to national rules, such authorization shall be applied for. Such authorization may also be applied for as a precautionary measure.	
Article 12(7)				
153	(7) Upon request of the Commission, a Member State shall in its own territory carry out any inspection or other fact-finding measure under its national law in order to establish whether there is a foreign subsidy distorting the internal market.	(7) Upon request of the Commission, a Member State shall in its own territory carry out any inspection or other fact-finding measure under its national law in order to establish whether there is a foreign subsidy distorting the internal market.	(7) Upon request of the Commission, a Member State shall in its own territory carry out any inspection or other fact-finding measure under its national law in order to establish whether there is a foreign subsidy distorting the internal market.	
Article 13				
154	Article 13 Inspection outside the Union	Article 13 Inspection outside the Union	Article 13 Inspection outside the Union	
Article 13, first paragraph				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
155	In order to carry out the duties assigned to it by this Regulation, the Commission may conduct inspections in the territory of a third country, provided that the undertaking concerned has given its consent and the government of the third country has been officially notified and has agreed to the inspection. Article 12(1), (2), and (3) points (a) and (b) shall apply by analogy.	In order to carry out the duties assigned to it by this Regulation, the Commission may conduct inspections in the territory of a third country, provided that the undertaking concerned has given its consent and the government of the third country has been officially notified and has agreed to the inspection. Article-12(1), (2), and (3) points (a) and (b) shall apply by analogy.	In order to carry out the duties assigned to it by this Regulation, the Commission may conduct inspections in the territory of a third country, provided that the undertaking concerned association of undertakings has given its consent and the government of the that third country has been officially notified and has agreed to the inspection. Article 12(1), (2), and (3) points (a) and (b) shall apply by analogy.	
Article 14				
156	Article 14 Non-cooperation	Article 14 Non-cooperation	Article 14 Non-cooperation	
Article 14(1), introductory part				
157	(1) The Commission may take a decision pursuant to Article 8 or Article 9 on the basis of the facts available, if an undertaking concerned or a third country:	(1) The Commission may take a decision pursuant to Article 8 or Article 9 on the basis of the facts available, if an undertaking concerned or a third country:	(1) The Commission may take a decision pursuant to Article 8, Article 9, Article 24(3) point (c) or Article 930 (2) , on the basis of the facts available, if an undertaking concerned under investigation or a third country that granted the foreign subsidy :	
Article 14(1), point (a)				
158	(a) provides incomplete, incorrect or	(a) provides incomplete, incorrect or	(a) provides incomplete, incorrect or	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	misleading information in response to an information request under Article 11;	misleading information in response to an information request under Article 11;	misleading information in response to an information request under Article 11;	
Article 14(1), point (b)				
159	(b) fails to provide the information requested within the time limit prescribed by the Commission;	(b) fails to provide the information requested within the time limit prescribed by the Commission;	(b) fails to provide the information requested within the time limit prescribed by the Commission;	
Article 14(1), point (c)				
160	(c) refuses to submit to the Commission's inspection within or outside the Union ordered under Article 12 or Article 13; or	(c) refuses to submit to the Commission's inspection within or outside the Union ordered under Article 12 or Article 13; or	(c) refuses to submit to the Commission's inspection within or outside the Union ordered under Article 12 or Article 13; or	
Article 14(1), point (d)				
161	(d) otherwise impedes the preliminary review or the in-depth investigation.	(d) otherwise impedes the preliminary review or the in-depth investigation.	(d) otherwise impedes the preliminary review or the in-depth investigation.	
Article 14(2)				
162	(2) Where an undertaking or association of undertakings, a Member State or the third country has supplied incorrect or misleading information to the Commission, that information shall be disregarded.	(2) Where an undertaking or association of undertakings, a Member State or the third country has supplied incorrect or misleading information to the Commission, that information shall be disregarded.	(2) Where an undertaking or association of undertakings, a Member State or the third country has supplied incorrect or misleading information to the Commission, that information shall be disregarded.	
Article 14(3)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
163	(3) Where an undertaking concerned, including a public undertaking which is directly or indirectly controlled by the State, fails to provide the necessary information to determine whether a financial contribution confers a benefit to it, that undertaking may be deemed to have received such benefit.	(3) Where an undertaking concerned, including a public undertaking which is directly or indirectly controlled by the State, fails to provide the necessary information to determine whether a financial contribution confers a benefit to it, that undertaking may be deemed to have received such benefit.	(3) Where an undertaking concerned , including a public undertaking which is directly or indirectly controlled by the State, fails to provide the necessary information to determine whether a financial contribution confers a benefit to it, that undertaking may be deemed to have received such benefit.	
Article 14(4)				
164	(4) When applying facts available, the result of the procedure may be less favourable to the undertaking concerned than if it had cooperated.	(4) When applying facts available, the result of the procedure may be less favourable to the undertaking concerned than if it had cooperated.	(4) When applying facts available, the result of the procedure may be less favourable to the undertaking concerned than if it had cooperated.	
Article 15				
165	Article 15 Fines and periodic penalty payments	Article 15 Fines and periodic penalty payments	Article 15 Fines and periodic penalty payments	
Article 15(1), introductory part				
166	(1) The Commission may impose by decision fines and periodic penalty payments where an undertaking concerned or an association of undertakings, intentionally or negligently:	(1) The Commission may <u>shall</u> impose by decision fines and periodic penalty payments where an undertaking concerned or an association of undertakings <u>concerned</u> , intentionally or negligently:	(1) The Commission may impose by decision fines and periodic penalty payments where an undertaking concerned or an association of undertakings, intentionally or negligently:	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 15(1), point (a)				
167	(a) supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 11, or does not supply the information within the prescribed time limit;	(a) supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 11, or does not supply the information within the prescribed time limit;	(a) supplies incorrect, incomplete or misleading information in response to a request made pursuant to Article 11, or does not supply the information within the prescribed time limit;	
Article 15(1), point (b)				
168	(b) produces the required books or other records related to the business in incomplete form during inspections under Article 12;	(b) produces the required books or other records related to the business in incomplete form during inspections under Article 12;	(b) produces the required books or other records related to the business in incomplete form during inspections under Article 12;	
Article 15(1), point (c)				
169	(c) in response to a question asked in accordance with Article 12(2), point (c),	(c) in response to a question asked in accordance with Article 12(2), point (c),	(c) in response to a question asked in accordance with Article 12(2), point (c),	
Article 15(1), point (c)(i)				
170	(i) gives an incorrect or misleading answer,	(i) gives an incorrect or misleading answer,	(i) gives an incorrect or misleading answer,	
Article 15(1), point (c)(ii)				
171	(ii) fails to rectify within a time-limit set by the Commission an incorrect, incomplete or misleading answer given by a member of staff,	(ii) fails to rectify within a time-limit set by the Commission an incorrect, incomplete or misleading answer given by a member of staff,	(ii) fails to rectify within a time-limit set by the Commission an incorrect, incomplete or misleading answer given by a member of staff,	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	or	or	or	
Article 15(1), point (c)(iii)				
172	(iii) fails or refuses to provide a complete answer on facts relating to the subject-matter and purpose of an inspection ordered by a decision adopted pursuant to Article 12(3);	(iii) fails or refuses to provide a complete answer on facts relating to the subject-matter and purpose of an inspection ordered by a decision adopted pursuant to Article 12(3);	(iii) fails or refuses to provide a complete answer on facts relating to the subject-matter and purpose of an inspection ordered by a decision adopted pursuant to Article 12(3);	
Article 15(1), point (d)				
173	(d) refuses to submit to inspections ordered under Article 12 or has broken seals affixed in accordance with Article 12(2)(d).	(d) refuses to submit to inspections ordered under Article 12 or has broken seals affixed in accordance with Article 12(2)(d).	(d) refuses to submit to inspections ordered under Article 12 or has broken seals affixed in accordance with Article 12(2)(d);	
Article 15(1), point (e)				
173a			(e) fails to comply with the conditions for access to the file or the terms of disclosure imposed by the Commission pursuant to Article 38(3).	
Article 15(2)				
174	(2) Fines imposed in the cases referred to in paragraph 1 shall not exceed 1 % of the aggregate turnover of the undertaking or association of undertakings concerned in the preceding business	(2) Fines imposed in the cases referred to in paragraph 1 shall not exceed 1 % of the aggregate turnover of the undertaking or association of undertakings concerned in the preceding business	(2) Fines imposed in the cases referred to in paragraph 1 shall not exceed 1 % of the aggregate turnover of the undertaking or association of undertakings concerned in the preceding	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	year.	year.	business financial year.	
Article 15(3)				
175	(3) Periodic penalty payments imposed in the cases referred to in paragraph 1 shall not exceed 5% of the average daily aggregate turnover of the undertaking or association of undertakings concerned in the preceding business year for each working day of delay, calculated from the date established in the decision, until it submits complete and correct information as requested by the Commission.	(3) Periodic penalty payments imposed in the cases referred to in paragraph 1 shall not exceed 5% of the average daily aggregate turnover of the undertaking or association of undertakings concerned in the preceding business year for each working day of delay, calculated from the date established in the decision, until it submits complete and correct information as requested by the Commission.	(3) Periodic penalty payments imposed in the cases referred to in paragraph 1 shall not exceed 5% of the average daily aggregate turnover of the undertaking or association of undertakings concerned in the preceding business financial year for each working day of delay, calculated from the date established in the decision, until it submits complete and correct information as requested by the Commission, or until it submits to an inspection.	
Article 15(4)				
176	(4) Before adopting any decision in accordance with paragraph 1, the Commission shall set a final time limit of two weeks to receive the missing information from the undertaking or from the association of undertakings concerned.	(4) Before adopting any decision in accordance with paragraph 1, the Commission shall set a final time limit of two weeks to receive the missing information from the undertaking or from the association of undertakings concerned.	(4) Before adopting any decision in accordance with paragraph 1, point (a) the Commission shall set a final time limit of two weeks to receive the missing information from the undertaking or from the association of undertakings concerned .	
Article 15(5)				
177	(5) Where an undertaking concerned does not comply with a decision with commitments pursuant to Article 9(3), a decision ordering	(5) Where an undertaking <u>or association of undertakings</u> concerned does not comply with a decision with commitments pursuant	(5) Where an undertaking concerned does not comply with a decision with commitments pursuant to Article 9(3), a decision ordering	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	interim measures pursuant to Article 10 or a decision imposing redressive measures pursuant to Article 9(2), the Commission may impose by decision:	to Article 9(3), a decision ordering interim measures pursuant to Article 10 or a decision imposing redressive measures pursuant to Article 9(2), the Commission may impose by decision:	interim measures pursuant to Article 10 or a decision imposing redressive measures pursuant to Article 9(2), the Commission may impose by decision:	
Article 15(5), point (a)				
178	(a) fines not exceeding 10 % of the aggregate turnover of the undertaking concerned in the preceding business year; and	(a) fines not exceeding 10 % of the aggregate turnover of the undertaking concerned in the preceding business year; and	(a) fines not exceeding 10 % of the aggregate turnover of the undertaking concerned in the preceding business financial year; and	
Article 15(5), point (b)				
179	(b) periodic penalty payments not exceeding 5% of the average daily aggregate turnover of the undertaking concerned in the preceding business year for each day of non-compliance, starting from the day of the Commission decision imposing such penalty payments, until the Commission finds that the undertaking concerned complies with the decision.	(b) periodic penalty payments not exceeding 5% of the average daily aggregate turnover of the undertaking concerned in the preceding business year for each day of non-compliance, starting from the day of the Commission decision imposing such penalty payments, until the Commission finds that the undertaking concerned complies with the decision.	(b) periodic penalty payments not exceeding 5% of the average daily aggregate turnover of the undertaking concerned in the preceding business financial year for each day of non-compliance, starting from the day of the Commission decision imposing such penalty payments, until the Commission finds that the undertaking concerned complies with the decision.	
Article 15(6)				
180	(6) In fixing the amount of the fine or periodic penalty payment, regard shall be had to the nature, gravity	(6) In fixing the amount of the fine or periodic penalty payment, regard shall be had to the nature, gravity	(6) In fixing the amount of the fine or periodic penalty payment, regard shall be had to the nature, gravity	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	and duration of the infringement, taking due account of the principles of proportionality and appropriateness.	and duration of the infringement, taking due account of the principles of proportionality and appropriateness.	and duration of the infringement, taking due account of the principles of proportionality and appropriateness.	
Article 15(7)				
180a			(7) Where the undertakings or association of undertakings concerned have satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may reduce the definitive amount of the periodic penalty payment compared to that under the original decision imposing periodic penalty payments.	
Article 16				
181	Article 16 Revocation	Article 16 Revocation	Article 16 Revocation	
Article 16(1)				
182	The Commission may revoke a decision taken pursuant to Article 9(2), (3) or (4) and adopt a new decision in any of the following cases:	The Commission may revoke a decision taken pursuant to Article 9(2), (3) or (4) and adopt a new decision in any of the following cases:	(1) The Commission may revoke a decision taken pursuant to Article 9(2), (3) or (4), Article 24(3), and Article 30 (1), (2) or (3) , and adopt a new decision in any of the following cases:	
Article 16 (1), point (a)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
183	(1) where the undertaking concerned acts contrary to its commitments or the redressive measures imposed;	(1) where the undertaking concerned acts contrary to its commitments or the redressive measures imposed;	(1) (a) where the undertaking concerned to which the initial decision was addressed acts contrary to its commitments or the redressive measures imposed;	
Article 16 (1), point (b)				
184	(2) where the decision was based on incomplete, incorrect or misleading information.	(2) where the decision was based on incomplete, incorrect or misleading information.	(2) (b) where the initial decision was based on incomplete, incorrect or misleading information. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 43(2).	
Article 16 (2)				
184a			(2) The revocation and adoption of a new decision by the Commission under paragraph 1, shall neither cancel the decision awarding a public contract or concession nor terminate a public contract or concession, nor lead to any liability of the contracting authority or contracting entity for damages.	
Chapter 3:				
185	Chapter 3:	Chapter 3:	Chapter 3:	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Concentrations	Concentrations	Concentrations	
Article 17				
186	Article 17 Distortions on the internal market by foreign subsidies in concentrations	Article 17 Distortions on the internal market by foreign subsidies in concentrations	Article 17 Distortions on the internal market by foreign subsidies in concentrations	
Article 17, first paragraph				
187	In a concentration, the assessment whether there is a distortion on the internal market within the meaning of Articles 3 or 4 shall be limited to the concentration at stake. Only foreign subsidies granted in the three calendar years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest shall be considered in the assessment.	In a concentration, the assessment whether there is a distortion on the internal market within the meaning of Articles 3 or 4 shall be limited to the concentration at stake. Only foreign subsidies granted in the three calendar years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest shall be considered in the assessment.	In a concentration, the assessment whether there is a distortion on the internal market within the meaning of Articles 3 or 4 shall be limited to the concentration at stake. Only foreign subsidies granted in the three calendar years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest shall be considered in the assessment.	
Article 18				
188	Article 18 Definition of and notification thresholds for concentrations	Article 18 Definition of and notification thresholds for concentrations	Article 18 Definition of and notification thresholds for concentrations	
Article 18(1), introductory part				
189	(1) For the purposes of this Regulation, a concentration shall be	(1) For the purposes of this Regulation, a concentration shall be	(1) For the purposes of this Regulation, a concentration shall be	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	deemed to arise where a change of control on a lasting basis results from any of the following:	deemed to arise where a change of control on a lasting basis results from any of the following:	deemed to arise where a change of control on a lasting basis results from any of the following:	
Article 18(1), point (a)				
190	(a) the merger of two or more previously independent undertakings or parts of undertakings;	(a) the merger of two or more previously independent undertakings or parts of undertakings;	(a) the merger of two or more previously independent undertakings or parts of undertakings;	
Article 18(1), point (b)				
191	(b) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings.	(b) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings.	(b) the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings.	
Article 18(2)				
192	(2) The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of paragraph 1.	(2) The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of paragraph 1.	(2) The creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity shall constitute a concentration within the meaning of paragraph 1.	
Article 18(3), introductory part				
193	(3) For the purposes of Article 19, a	(3) For the purposes of Article 19, a	(3) For the purposes of Article 19, a	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	‘notifiable concentration’ shall be deemed to arise where, in a concentration,	‘notifiable concentration’ shall be deemed to arise where, in a concentration,	‘notifiable concentration’ shall be deemed to arise where, in a concentration,	
Article 18(3), point (a)				
194	(a) the acquired undertaking or at least one of the merging undertakings is established in the Union and generates an aggregate turnover in the Union of at least EUR 500 million; and	(a) the acquired undertaking or at least one of the merging undertakings is established in the Union and generates an aggregate turnover in the Union of at least EUR 500 <u>400</u> million; and	(a) At least one of the merging undertakings , the acquired undertaking or, once created, the joint venture at least one of the merging undertakings is established in the Union and generates an aggregate turnover in the Union of at least EUR 500 600 million; and	
Article 18(3), point (b)				
195	(b) the undertakings concerned received from third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR 50 million.	(b) <u>all</u> the undertakings concerned received from <u>have been granted by</u> third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR 50 million.	(b) The undertakings concerned involved in the concentration received were granted from third countries an combined aggregate financial contribution contributions in the three calendar years prior to notification of more than EUR 50 million.	
Article 18(3), second paragraph				
195a			A concentration shall not be deemed to arise where:	
Article 18(3), second paragraph point (a)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
195b			<p>(a) credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the disposal of all or part of that undertaking or of its assets or the disposal of those securities and that any such disposal takes place within one year of the date of acquisition; that period may be extended by the Commission on request where such institutions or companies can show that the disposal was not reasonably possible within the period set;</p>	
Article 18(3), second paragraph point (b)				
195c			<p>(b) control is acquired by an office-holder according to the law of a Member State relating to liquidation, winding up,</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			insolvency, cessation of payments, compositions or analogous proceedings;	
Article 18(3), second paragraph point (c)				
195d			<p>(c) the operations referred to in paragraph 1(b) are carried out by the financial holding companies referred to in Article 5(3) of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies¹ provided however that the voting rights in respect of the holding are exercised, in particular in relation to the appointment of members of the management and supervisory bodies of the undertakings in which they have holdings, only to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of those undertakings.</p> <p>¹ OJ L 222, 14. 8. 1978, p. 11. Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p. 16).</p>	
Article 18(4), introductory part				
196	(4) In the creation of a joint venture	(4) In the creation of a joint venture	(4) In the creation of a joint venture	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	referred to in paragraph 2, a 'notifiable concentration' shall be deemed to arise where:	referred to in paragraph 2, a 'notifiable concentration' shall be deemed to arise where:	referred to in paragraph 2, a 'notifiable concentration' shall be deemed to arise where:	
Article 18(4), point (a)				
197	(a) the joint venture itself or one of its parent undertakings is established in the Union and generates an aggregate turnover in the Union of at least EUR 500 million; and	(a) the joint venture itself or one of its parent undertakings is established in the Union and generates an aggregate turnover in the Union of at least EUR 500 400 million; and	(a) the joint venture itself or one of its parent undertakings is established in the Union and generates an aggregate turnover in the Union of at least EUR 500 million; and	
Article 18(4), point (b)				
198	(b) the joint venture itself and its parent undertakings received from third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR 50 million.	(b) the joint venture itself and its parent undertakings received from <u>have been granted by</u> third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR 50 million.	(b) the joint venture itself and its parent undertakings received from third countries an aggregate financial contribution in the three calendar years prior to notification of more than EUR 50 million.	
Article 19				
199	Article 19 Prior notification of concentrations	Article 19 Prior notification of concentrations	Article 19 Prior notification of concentrations	
Article 19(1)				
200	(1) Notifiable concentrations shall be notified to the Commission prior to their implementation and following the conclusion of the	(1) Notifiable concentrations shall be notified to the Commission prior to their implementation and following the conclusion of the	(1) Notifiable concentrations shall be notified to the Commission prior to their implementation and following the conclusion of the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	agreement, the announcement of the public bid, or the acquisition of a controlling interest.	agreement, the announcement of the public bid, or the acquisition of a controlling interest.	agreement, the announcement of the public bid, or the acquisition of a controlling interest.	
Article 19(2)				
201	(2) The undertakings concerned may also notify the proposed concentration when they demonstrate to the Commission a good faith intention to conclude an agreement or, in the case of a public bid, where they have publicly announced their intention to make such a bid, provided that the intended agreement or bid would result in a notifiable concentration under paragraph 1.	(2) The undertakings concerned may also notify the proposed concentration when they demonstrate to the Commission a good faith intention to conclude an agreement or, in the case of a public bid, where they have publicly announced their intention to make such a bid, provided that the intended agreement or bid would result in a notifiable concentration under paragraph 1.	(2) The undertakings concerned may also notify the proposed concentration when they demonstrate to the Commission a good faith intention to conclude an agreement or, in the case of a public bid, where they have publicly announced their intention to make such a bid, provided that the intended agreement or bid would result in a notifiable concentration under paragraph 1.	
Article 19(3)				
202	(3) A concentration which consists in a merger within the meaning of Article 18(1), point (a) or in the acquisition of joint control within the meaning of Article 18(1), point (b) shall be notified jointly by the parties to the merger or by those acquiring joint control as the case may be. In all other cases, the notification shall be done by the person or undertaking acquiring control of the whole or parts of one or more undertakings.	(3) A concentration which consists in a merger within the meaning of Article 18(1), point (a) or in the acquisition of joint control within the meaning of Article 18(1), point (b) shall be notified jointly by the parties to the merger or by those acquiring joint control as the case may be. In all other cases, the notification shall be done by the person or undertaking acquiring control of the whole or parts of one or more undertakings.	(3) A concentration which consists in a merger within the meaning of Article 18(1), point (a) or in the acquisition of joint control within the meaning of Article 18(1), point (b) shall be notified jointly by the parties to the merger or by those acquiring joint control as the case may be. In all other cases, the notification shall be done by the person or undertaking acquiring control of the whole or parts of one or more undertakings.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 19(4)				
203	(4) If the undertakings concerned fail to meet their obligation to notify, the Commission may review a notifiable concentration in accordance with this Regulation by requesting the notification of that concentration. In that case the Commission shall not be bound by the time limits referred to in Article 23(1) and (4).	(4) If the undertakings concerned fail to meet their obligation to notify, the Commission may shall review a notifiable concentration in accordance with this Regulation by requesting the notification of that concentration. In that case the Commission shall not be bound by the time limits referred to in Article 23(1) and (4).	(4) If the undertakings concerned fail to meet their obligation to notify, the Commission may review a notifiable concentration in accordance with this Regulation by requesting the notification of that concentration. In that case the Commission shall not be bound by the time limits referred to in Article 23(1) and (4).	
Article 19(5)				
204	(5) The Commission may request the prior notification of any concentration which is not a notifiable concentration within the meaning of Article 18 at any time prior to its implementation where the Commission suspects that the undertakings concerned may have benefitted from foreign subsidies in the three years prior to the concentration. That concentration shall be deemed to be a notifiable concentration for the purposes of this Regulation.	(5) The Commission may request the prior notification of any concentration which is not a notifiable concentration within the meaning of Article 18 at any time prior to its implementation where the Commission suspects that the undertakings concerned may have benefitted from been granted foreign subsidies in the three years prior to the concentration. That concentration shall be deemed to be a notifiable concentration for the purposes of this Regulation.	(5) The Commission may request the prior notification of any concentration which is not a notifiable concentration within the meaning of Article 18 at any time prior to its implementation where the Commission suspects that the undertakings concerned foreign subsidies may have benefitted from foreign subsidies been granted to the undertakings concerned in the three years prior to the concentration. That concentration shall be deemed to be a notifiable concentration for the purposes of this Regulation. The Commission shall publish guidance on the application of this paragraph at the latest at [date of application of this Regulation] and shall update it in light of enforcement its	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			practice.	
Article 20				
205	Article 20 Definition of control	Article 20 Definition of control	Article 20 Definition of control	
Article 20(1), introductory part				
206	(1) For the purposes of Article 18, control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:	(1) For the purposes of Article 18, control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:	(1) For the purposes of Article 18, control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:	
Article 20(1), point (a)				
207	(a) ownership or the right to use all or part of the assets of an undertaking;	(a) ownership or the right to use all or part of the assets of an undertaking;	(a) ownership or the right to use all or part of the assets of an undertaking;	
Article 20(1), point (b)				
208	(b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.	(b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.	(b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.	
Article 20(2), introductory part				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
209	(2) Control shall be acquired by persons or undertakings which:	(2) Control shall be acquired by persons or undertakings which:	(2) Control shall be acquired by persons or undertakings which:	
Article 20(2), point (a)				
210	(a) are holders of the rights or entitled to rights under the contracts concerned; or	(a) are holders of the rights or entitled to rights under the contracts concerned; or	(a) are holders of the rights or entitled to rights under the contracts concerned; or	
Article 20(2), point (b)				
211	(b) while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom.	(b) while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom.	(b) while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom.	
Article 21				
212	Article 21 Calculation of turnover	Article 21 Calculation of turnover	Article 21 Calculation of turnover	
Article 21(1), introductory part				
213	(1) Aggregate turnover shall comprise the amounts derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services falling within the undertakings' ordinary activities after deduction of sales rebates and of value added tax and other taxes	(1) Aggregate turnover shall comprise the amounts derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services falling within the undertakings' ordinary activities after deduction of sales rebates and of value added tax and other taxes	(1) Aggregate turnover shall comprise the amounts derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services falling within the undertakings' ordinary activities after deduction of sales rebates and of value added tax and other taxes	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	directly related to turnover. The aggregate turnover of an undertaking concerned shall not include the sale of products or the provision of services between any of the undertakings referred to in paragraph 4.	directly related to turnover. The aggregate turnover of an undertaking concerned shall not include the sale of products or the provision of services between any of the undertakings referred to in paragraph 4.	directly related to turnover. The aggregate turnover of an undertaking concerned shall not include the sale of products or the provision of services between any of the undertakings referred to in paragraph 4.	
Article 21(1), first paragraph				
214	Turnover in the internal market shall comprise products sold and services provided to undertakings or consumers in the internal market.	Turnover in the internal market shall comprise products sold and services provided to undertakings or consumers in the internal market.	Turnover in the internal market Union shall comprise products sold and services provided to undertakings or consumers in the internal market.	
Article 21(2), introductory part				
215	(2) By way of derogation from paragraph 1, where the concentration consists of the acquisition of parts, whether or not constituted as legal entities, of one or more undertakings, only the turnover relating to the parts which are the object of the concentration shall be taken into account with regard to the seller or sellers.	(2) By way of derogation from paragraph 1, where the concentration consists of the acquisition of parts, whether or not constituted as legal entities, of one or more undertakings, only the turnover relating to the parts which are the object of the concentration shall be taken into account with regard to the seller or sellers.	(2) By way of derogation from paragraph 1, where the concentration consists of the acquisition of parts, whether or not constituted as legal entities, of one or more undertakings, only the turnover relating to the parts which are the object of the concentration shall be taken into account with regard to the seller or sellers.	
Article 21(2), first paragraph				
216	However, two or more transactions within the meaning of the first subparagraph which take place	However, two or more transactions within the meaning of the first subparagraph which take place	However, two or more transactions within the meaning of the first subparagraph which take place	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	within a two-year period between the same persons or undertakings shall be treated as one and the same concentration arising on the date of the latest transaction.	within a two-year period between the same persons or undertakings shall be treated as one and the same concentration arising on the date of the latest transaction.	within a two-year period between the same persons or undertakings shall be treated as one and the same concentration arising on the date of the latest transaction.	
Article 21(3), introductory part				
217	(3) Instead of turnover, the following shall be used for the following categories of undertakings:	(3) Instead of turnover, the following shall be used for the following categories of undertakings:	(3) Instead of turnover, the following shall be used for the following categories of undertakings:	
Article 21(3), point (a), introductory part				
218	<p>(a) for credit institutions and other financial institutions, the sum of the following income items as defined in Council Directive 86/635/EEC¹, after deduction of value added tax and other taxes directly related to those items, where appropriate:</p> <p>¹ Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).</p>	<p>(a) for credit institutions and other financial institutions, the sum of the following income items as defined in Council Directive 86/635/EEC¹, after deduction of value added tax and other taxes directly related to those items, where appropriate:</p> <p>¹ Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).</p>	<p>(a) for credit institutions and other financial institutions, the sum of the following income items as defined in Council Directive 86/635/EEC¹, after deduction of value added tax and other taxes directly related to those items, where appropriate:</p> <p>¹ Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).</p>	
Article 21(3), point (a)(i)				
219	(i) interest income and similar income;	(i) interest income and similar income;	(i) interest income and similar income;	
Article 21(3), point (a)(ii), introductory part				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
220	(ii) income from securities:	(ii) income from securities:	(ii) income from securities:	
Article 21(3), point (a)(ii), first indent				
221	- income from shares and other variable yield securities,	- income from shares and other variable yield securities,	- income from shares and other variable yield securities,	
Article 21(3), point (a)(ii), second indent				
222	- income from participating interests,	- income from participating interests,	- income from participating interests,	
Article 21(3), point (a)(ii), third indent				
223	- income from shares in affiliated undertakings;	- income from shares in affiliated undertakings;	- income from shares in affiliated undertakings;	
Article 21(3), point (a)(iii)				
224	(iii) commissions receivable;	(iii) commissions receivable;	(iii) commissions receivable;	
Article 21(3), point (a)(iv)				
225	(iv) net profit on financial operations;	(iv) net profit on financial operations;	(iv) net profit on financial operations;	
Article 21(3), point (a)(v)				
226	(v) other operating income;	(v) other operating income;	(v) other operating income;	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 21(3), point (b), introductory part				
227	(b) for insurance undertakings, the value of gross premiums written which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums;	(b) for insurance undertakings, the value of gross premiums written which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums;	(b) for insurance undertakings, the value of gross premiums written which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums;	
Article 21(3), point (b), first paragraph				
228	For the purposes of point (a), for a credit or financial institution in the internal market the turnover shall comprise the income items, as defined in that point, which are received by the branch or division of that institution established in the internal market.	For the purposes of point (a), for a credit or financial institution in the internal market the turnover shall comprise the income items, as defined in that point, which are received by the branch or division of that institution established in the internal market.	For the purposes of point (a), for a credit or financial institution in the internal market the turnover shall comprise the income items, as defined in that point, which are received by the branch or division of that institution established in the internal market.	
Article 21(4), introductory part				
229	(4) Without prejudice to paragraph 2, the aggregate turnover of an undertaking concerned shall be calculated by adding together the respective turnovers of:	(4) Without prejudice to paragraph 2, the aggregate turnover of an undertaking concerned shall be calculated by adding together the respective turnovers of:	(4) Without prejudice to paragraph 2, the aggregate turnover of an undertaking concerned shall be calculated by adding together the respective turnovers of:	
Article 21(4), point (a)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
230	(a) the undertaking concerned;	(a) the undertaking concerned;	(a) the undertaking concerned;	
Article 21(4), point (b), introductory part				
231	(b) those undertakings in which the undertaking concerned, directly or indirectly:	(b) those undertakings in which the undertaking concerned, directly or indirectly:	(b) those undertakings in which the undertaking concerned, directly or indirectly:	
Article 21(4), point (b)(i)				
232	(i) owns more than half the capital or business assets,	(i) owns more than half the capital or business assets,	(i) owns more than half the capital or business assets,	
Article 21(4), point (b)(ii)				
233	(ii) has the power to exercise more than half the voting rights,	(ii) has the power to exercise more than half the voting rights,	(ii) has the power to exercise more than half the voting rights,	
Article 21(4), point (b)(iii)				
234	(iii) has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings,	(iii) has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings,	(iii) has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings,	
Article 21(4), point (b)(iv)				
235	(iv) has the right to manage the undertakings' affairs;	(iv) has the right to manage the undertakings' affairs;	(iv) has the right to manage the undertakings' affairs;	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 21(4), point (c)				
236	(c) those undertakings which have in the undertaking concerned any of the rights or powers referred to in point (b);	(c) those undertakings which have in the undertaking concerned any of the rights or powers referred to in point (b);	(c) those undertakings which have in the undertaking concerned any of the rights or powers referred to in point (b);	
Article 21(4), point (d)				
237	(d) those undertakings in which an undertaking as referred to in point (c) has any of the rights or powers referred to in point (b);	(d) those undertakings in which an undertaking as referred to in point (c) has any of the rights or powers referred to in point (b);	(d) those undertakings in which an undertaking as referred to in point (c) has any of the rights or powers referred to in point (b);	
Article 21(4), point (e)				
238	(e) those undertakings in which two or more undertakings as referred to in points (a) to (d) jointly have any of the rights or powers referred to in point (b).	(e) those undertakings in which two or more undertakings as referred to in points (a) to (d) jointly have any of the rights or powers referred to in point (b).	(e) those undertakings in which two or more undertakings as referred to in points (a) to (d) jointly have any of the rights or powers referred to in point (b).	
Article 21(5), introductory part				
239	(5) Where undertakings concerned jointly have the rights or powers listed in paragraph 4, point (b), in calculating the aggregate turnover of the undertakings concerned,	(5) Where undertakings concerned jointly have the rights or powers listed in paragraph 4, point (b), in calculating the aggregate turnover of the undertakings concerned,	(5) Where undertakings concerned jointly have the rights or powers listed in paragraph 4, point (b), in calculating the aggregate turnover of the undertakings concerned,	
Article 21(5), point (a)				
240	(a) account shall be taken of the	(a) account shall be taken of the	(a) account shall be taken of the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	turnover resulting from the sale of products and the provision of services between the joint undertaking and any third undertakings, and this turnover shall be apportioned equally amongst the undertakings concerned;	turnover resulting from the sale of products and the provision of services between the joint undertaking and any third undertakings, and this turnover shall be apportioned equally amongst the undertakings concerned;	turnover resulting from the sale of products and the provision of services between the joint undertaking and any third undertakings, and this turnover shall be apportioned equally amongst the undertakings concerned;	
Article 21(5), point (b)				
241	(b) no account shall be taken of the turnover resulting from the sale of products or the provision of services between the joint undertaking and each of the undertakings concerned or any other undertaking connected with any one of them, as set out in paragraph 4, points (b) to (e).	(b) no account shall be taken of the turnover resulting from the sale of products or the provision of services between the joint undertaking and each of the undertakings concerned or any other undertaking connected with any one of them, as set out in paragraph 4, points (b) to (e).	(b) no account shall be taken of the turnover resulting from the sale of products or the provision of services between the joint undertaking and each of the undertakings concerned or any other undertaking connected with any one of them, as set out in paragraph 4, points (b) to (e).	
Article 22				
242	Article 22 Aggregation of financial contributions	Article 22 Aggregation of financial contributions	Article 22 Aggregation of financial contributions	
Article 22, first paragraph				
243	The aggregate financial contribution to an undertaking concerned shall be calculated by adding together the respective financial contributions received from third countries by all undertakings referred to in Article 21(4), points (a) to (e).	The aggregate financial contribution to an undertaking concerned shall be calculated by adding together the respective financial contributions received from third countries by all undertakings referred to in Article 21(4), points (a) to (e).	The aggregate financial contribution to an undertaking concerned shall be calculated by adding together the respective financial contributions received from provided by third countries by to all undertakings referred to in Article 21(4), points	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			(a) to (e).	
Article 23				
244	Article 23 Suspension of concentrations and time limits	Article 23 Suspension of concentrations and time limits	Article 23 Suspension of concentrations and time limits	
Article 23(1), first subparagraph				
245	(1) A notifiable concentration shall not be implemented before its notification.	(1) A notifiable concentration shall not be implemented before its notification.	(1) A notifiable concentration shall not be implemented before its notification.	
Article 23(1), second subparagraph, introductory part				
246	In addition, the following time limits shall apply:	In addition, the following time limits shall apply:	In addition, the following time limits shall apply:	
Article 23(1), second subparagraph, point (a)				
247	(a) where the Commission receives the complete notification, the concentration shall not be implemented for a period of 25 working days after that receipt;	(a) where the Commission receives the complete notification, the concentration shall not be implemented for a period of 25 working days after that receipt;	(a) where the Commission receives the complete notification, the concentration shall not be implemented for a period of 25 working days after that receipt;	
Article 23(1), second subparagraph, point (b)				
248	(b) where the Commission initiates an in-depth investigation no later than 25 working days after receipt of	(b) where the Commission initiates an in-depth investigation no later than 25 working days after receipt of	(b) where the Commission initiates an in-depth investigation no later than 25 working days after receipt of	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	the complete notification, the concentration shall not be implemented for a period of 90 working days after the opening of the in-depth investigation; that period shall be extended by 15 working days where the undertakings concerned offer commitments pursuant to Article 6 with a view to remedy the distortion on the internal market;	the complete notification, the concentration shall not be implemented for a period of 90 working days after the opening of the in-depth investigation; that period shall be extended by 15 working days where the undertakings concerned offer commitments pursuant to Article 6 with a view to remedy the distortion on the internal market;	the complete notification, the concentration shall not be implemented for a period of 90 working days after the opening of the in-depth investigation; that period shall be extended by 15 working days where the undertakings concerned offer commitments pursuant to Article 6 with a view to remedy the distortion on the internal market;	
Article 23(1), second subparagraph, point (c)				
249	(c) where the concentration has been declared not to distort the internal market pursuant to a decision under Article 24(3), point (a) or point (b), it may be implemented thereafter.	(c) where the concentration has been declared not to distort the internal market pursuant to a decision under Article 24(3), point (a) or point (b), it may be implemented thereafter.	(c) where the concentration has been declared not to distort the internal market pursuant to Commission adopted a decision under Article 24(3), point (a) or point (b), the concentration may be implemented thereafter.	
Article 23(1), third subparagraph				
250	Each period shall begin on the working day following that of the receipt of the complete notification or of the adoption of the relevant Commission decision, respectively.	Each period shall begin on the working day following that of the receipt of the complete notification or of the adoption of the relevant Commission decision, respectively.	Each period shall begin on the working day following that of the receipt of the complete notification or of the adoption of the relevant Commission decision, respectively.	
Article 23(2), introductory part				
251	(2) Paragraph 1 shall not prevent the implementation of a public bid or of	(2) Paragraph 1 shall not prevent the implementation of a public bid or of	(2) Paragraph 1 shall not prevent the implementation of a public bid or of	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	a series of transactions in securities including those convertible into other securities admitted to trading on a market such as a stock exchange, by which control is acquired from various sellers, provided that:	a series of transactions in securities including those convertible into other securities admitted to trading on a market such as a stock exchange, by which control is acquired from various sellers, provided that:	a series of transactions in securities including those convertible into other securities admitted to trading on a market such as a stock exchange, by which control is acquired from various sellers, provided that:	
Article 23(2), point (a)				
252	(a) the concentration is notified to the Commission pursuant to Article 19 without delay; and	(a) the concentration is notified to the Commission pursuant to Article 19 without delay; and	(a) the concentration is notified to the Commission pursuant to Article 19 without delay; and	
Article 23(2), point (b)				
253	(b) the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of its investments based on a derogation granted by the Commission under paragraph 3.	(b) the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of its investments based on a derogation granted by the Commission under paragraph 3.	(b) the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of its investments based on a derogation granted by the Commission under paragraph 3.	
Article 23(3)				
254	(3) The Commission may, upon request, grant a derogation from the obligations laid down in paragraphs 1 or 2. The request to grant a derogation shall state the grounds for the derogation. In deciding on the request, the Commission shall take into account in particular the effects	(3) The Commission may, upon request, grant a derogation from the obligations laid down in paragraphs 1 or 2. The request to grant a derogation shall state the grounds for the derogation. In deciding on the request, the Commission shall take into account in particular the effects	(3) The Commission may, upon request, grant a derogation from the obligations laid down in paragraphs 1 or 2. The request to grant a derogation shall state the grounds for the derogation. In deciding on the request, the Commission shall take into account in particular the effects	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	of the suspension on one or more undertakings concerned by the concentration or on a third party and the risk of a distortion on the internal market posed by the concentration. Such a derogation may be granted subject to certain conditions and obligations in order to ensure that there is no distortion on the internal market. A derogation may be applied for and granted at any time, either before notification or after the transaction.	of the suspension on one or more undertakings concerned by the concentration or on a third party and the risk of a distortion on the internal market posed by the concentration. Such a derogation may be granted subject to certain conditions and obligations in order to ensure that there is no distortion on the internal market. A derogation may be applied for and granted at any time, either before notification or after the transaction.	of the suspension on one or more undertakings concerned by the concentration or on a third party and the risk of a distortion on the internal market posed by the concentration. Such a derogation may be granted subject to certain conditions and obligations in order to ensure that there is no distortion on the internal market. A derogation may be applied for and granted at any time, either before notification or after the transaction.	
Article 23(4)				
255	(4) The time limits provided for in paragraph 1, point (b) shall be extended if the undertakings concerned make a request to that effect not later than 15 working days after the opening of the in-depth investigation pursuant to Article 8. The undertakings concerned may make only one such request. Likewise, at any time following the opening of the in-depth investigation, the time limits provided for in paragraph 1, point (b) may be extended by the Commission with the agreement of the undertakings concerned. The total duration of any extension or extensions pursuant to this paragraph shall not exceed 20 working days.	(4) The time limits provided for in paragraph 1, point (b) shall be extended if the undertakings concerned make a request to that effect not later than 15 working days after the opening of the in-depth investigation pursuant to Article 8. The undertakings concerned may make only one such request. Likewise, at any time following the opening of the in-depth investigation, the time limits provided for in paragraph 1, point (b) may be extended by the Commission with the agreement of the undertakings concerned. The total duration of any extension or extensions pursuant to this paragraph shall not exceed 20 working days.	(4) The time limits provided for in paragraph 1, point (b) shall be extended if the undertakings concerned make a request to that effect not later than 15 working days after the opening of the in-depth investigation pursuant to Article 8. The undertakings concerned may make only one such request. Likewise, at any time following the opening of the in-depth investigation, the time limits provided for in paragraph 1, point (b) may be extended by the Commission with the agreement of the undertakings concerned. The total duration of any extension or extensions pursuant to this paragraph shall not exceed 20 working days.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 23(5)				
256	(5) The time limits provided for in paragraph 1 may exceptionally be suspended where the undertakings have not supplied the complete information which the Commission has requested pursuant to Article 11 or have refused to submit to an inspection ordered by decision pursuant to Article 12.	(5) The time limits provided for in paragraph 1 may exceptionally be suspended where the undertakings have not supplied the complete information which the Commission has requested pursuant to Article 11 or have refused to submit to an inspection ordered by decision pursuant to Article 12.	(5) The time limits provided for in paragraph 1 may exceptionally be suspended where the undertakings have not supplied the complete information which the Commission has requested pursuant to Article 11 or have refused to submit to an inspection ordered by decision pursuant to Article 12.	
Article 23(6), introductory part				
257	(6) The Commission may adopt a decision pursuant to Article 24(3) without being bound by the time limits referred to in paragraphs 1 and 4, in cases where:	(6) The Commission may adopt a decision pursuant to Article 24(3) without being bound by the time limits referred to in paragraphs 1 and 4, in cases where:	(6) The Commission may adopt a decision pursuant to Article 24(3) without being bound by the time limits referred to in paragraphs 1 and 4, in cases where:	
Article 23(6), point (a)				
258	(a) it finds that a concentration has been implemented in breach of the commitments attached to a decision taken under Article 24(3), point (a), which has found that, in the absence of the commitments, the concentration would distort the internal market; or	(a) it finds that a concentration has been implemented in breach of the commitments attached to a decision taken under Article 24(3), point (a), which has found that, in the absence of the commitments, the concentration would distort the internal market; or	(a) it finds that a concentration has been implemented in breach of the commitments attached to a decision taken under Article 24(3), point (a); which has found that, in the absence of the commitments, the concentration would distort the internal market; or	
Article 23(6), point (b)				
259	(b) a decision has been revoked	(b) a decision has been revoked	(b) a decision has been revoked	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	pursuant to Article 24(1).	pursuant to Article 24(1).	pursuant to Article 24(1).	
Article 23(7)				
260	(7) Any transaction carried out in breach of paragraph 1 shall be considered valid only after a decision pursuant to Article 24(3) has been adopted.	(7) Any transaction carried out in breach of paragraph 1 shall be considered valid only after a decision pursuant to Article 24(3) has been adopted.	(7) Any transaction carried out in breach of paragraph 1 shall be considered valid only after a decision pursuant to Article 24(3) has been adopted.	
Article 23(8)				
261	(8) This Article shall have no effect on the validity of transactions in securities including those convertible into other securities admitted to trading on a market such as a stock exchange, unless the buyer and seller were aware or ought to have been aware that the transaction was carried out in breach of paragraph 1.	(8) This Article shall have no effect on the validity of transactions in securities including those convertible into other securities admitted to trading on a market such as a stock exchange, unless the buyer and seller were aware or ought to have been aware that the transaction was carried out in breach of paragraph 1.	(8) This Article shall have no effect on the validity of transactions in securities including those convertible into other securities admitted to trading on a market such as a stock exchange, unless the buyer and seller were aware or ought to have been aware that the transaction was carried out in breach of paragraph 1.	
Article 24				
262	Article 24 Procedural rules applicable to the preliminary review and the in-depth investigation of notified concentrations	Article 24 Procedural rules applicable to the preliminary review and the in-depth investigation of notified concentrations	Article 24 Procedural rules applicable to the preliminary review and the in-depth investigation of notified concentrations	
Article 24(1)				
263				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(1) Articles 8, 9(1), (3) and (4), 10, 11, 12, 13, 14 and 16 shall apply to notified concentrations.	(1) Articles 8, 9(1), (3) and (4), 10, 11, 12, 13, 14 and 16 shall apply to notified concentrations.	(1) Articles 8, 9(1), (3) and (4), 10, 11, 12, 13, 14 and 16 shall apply to notified concentrations.	
Article 24(2)				
264	(2) The Commission may initiate an in-depth investigation under Article 8(2) no later than 25 working days after receipt of the complete notification.	(2) The Commission may initiate an in-depth investigation under Article 8(2) no later than 25 working days after receipt of the complete notification.	(2) The Commission may initiate an in-depth investigation under Article 8(2) no later than 25 working days after receipt of the complete notification.	
Article 24(3), introductory part				
265	(3) After the in-depth investigation, the Commission shall adopt one of the following decisions:	(3) After the in-depth investigation, the Commission shall adopt one of the following decisions:	(3) After the in-depth investigation, the Commission shall adopt one of the following decisions:	
Article 24(3), point (a)				
266	(a) a decision with commitments pursuant to Article 9(3);	(a) a decision with commitments pursuant to Article 9(3);	(a) a decision with commitments pursuant to Article 9(3);	
Article 24(3), point (b)				
267	(b) a no objection decision pursuant to Article 9(4);	(b) a no objection decision pursuant to Article 9(4);	(b) a no objection decision pursuant to Article 9(4);	
Article 24(3), point (c)				
268	(c) a decision prohibiting a concentration, where the	(c) a decision prohibiting a concentration, where the	(c) a decision prohibiting a concentration, where the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 to 5.	Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 to 5.	Commission finds that a foreign subsidy distorts the internal market pursuant to Articles 3 to 5.	
Article 24, first subparagraph				
268a			Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 43(2).	
Article 24(4)				
269	(4) Decisions pursuant to paragraph 3 shall be adopted within 90 working days after the opening of the in-depth investigation at the latest, extended as the case may be pursuant to Article 23(1), point (b), (4) and (5). If the Commission does not adopt a decision within that time limit, the undertakings concerned shall be allowed to implement the concentration.	(4) Decisions pursuant to paragraph 3 shall be adopted within 90 working days after the opening of the in-depth investigation at the latest, extended as the case may be pursuant to Article 23(1), point (b), (4) and (5). If the Commission does not adopt a decision within that time limit, the undertakings concerned shall be allowed to implement the concentration.	(4) Decisions pursuant to paragraph 3 shall be adopted within 90 working days after the opening of the in-depth investigation at the latest, extended as the case may be pursuant to Article 23(1), point (b), (4) and (5). If the Commission does not adopt a decision within that time limit, the undertakings concerned shall be allowed to implement the concentration.	
Article 24(5)				
270	(5) In any request for information to an undertaking, the Commission shall specify whether time limits will be suspended pursuant to Article 23(5), in the event the undertaking fails to provide complete information in the prescribed time	(5) In any request for information to an undertaking, the Commission shall specify whether time limits will be suspended pursuant to Article 23(5), in the event the undertaking fails to provide complete information in the prescribed time	(5) In any request for information to an undertaking, the Commission shall specify whether time limits will be suspended pursuant to Article 23(5), in the event the undertaking fails to provide complete information in the prescribed time	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	limit.	limit.	limit.	
Article 24(6), first subparagraph, introductory part				
271	(6) The Commission may, where it finds that a concentration has already been implemented and that concentration has been found to distort the internal market pursuant to Articles 3 to 5 adopt one of the following measures:	(6) The Commission may, where it finds that a concentration has already been implemented and that concentration has been found to distort the internal market pursuant to Articles 3 to 5 adopt one of the following measures:	(6) The Commission may, where it finds that a concentration notifiable under Article 19(1) or which has been notified upon request of the Commission under Article 19(5) has already been implemented and that concentration has been found to foreign subsidies in that concentration distort the internal market pursuant to Articles 3 to 5, adopt one of the following measures:	
Article 24(6), first subparagraph, point (a)				
272	(a) require the undertakings concerned to dissolve the concentration, in particular through the dissolution of the merger or the disposal of all the shares or assets acquired, to restore the situation prevailing prior to the implementation of the concentration; in circumstances where restoration of the situation prevailing before the implementation of the concentration is not possible through dissolution of the concentration, the Commission may take any other measure appropriate to achieve such restoration as far as possible;	(a) require the undertakings concerned to dissolve the concentration, in particular through the dissolution of the merger or the disposal of all the shares or assets acquired, to restore the situation prevailing prior to the implementation of the concentration; in circumstances where restoration of the situation prevailing before the implementation of the concentration is not possible through dissolution of the concentration, the Commission may take any other measure appropriate to achieve such restoration as far as possible;	(a) require the undertakings concerned to dissolve the concentration, in particular through the dissolution of the merger or the disposal of all the shares or assets acquired, to restore the situation prevailing prior to the implementation of the concentration; in circumstances where restoration of the situation prevailing before the implementation of the concentration is not possible through dissolution of the concentration, the Commission may take any other measure appropriate to achieve such restoration as far as possible;	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 24(6), first subparagraph, point (b)				
273	(b) order any other appropriate measure to ensure that the undertakings concerned dissolve the concentration or take other restorative measures as required in its decision.	(b) order any other appropriate measure to ensure that the undertakings concerned dissolve the concentration or take other restorative measures as required in its decision.	(b) order any other appropriate measure to ensure that the undertakings concerned dissolve the concentration or take other restorative measures as required in its decision.	
Article 24(6), second subparagraph				
274	The measures referred to in points (a) and (b) may be imposed either in a decision pursuant to paragraph 3, point (c), or by separate decision	The measures referred to in points (a) and (b) may be imposed either in a decision pursuant to paragraph 3, point (c), or by separate decision	The measures referred to in points (a) and (b) may be imposed either in a decision pursuant to paragraph 3, point (c), or by separate decision	
Article 24(6), third subparagraph				
275	The Commission may adopt any of the measures referred to in points (a) or (b) where it finds that a concentration has been implemented in breach of a decision taken pursuant to paragraph (3), point (a), which has found that, in the absence of the commitments, the concentration would fulfil the criterion laid down in paragraph 3, point (c).	The Commission may adopt any of the measures referred to in points (a) or (b) where it finds that a concentration has been implemented in breach of a decision taken pursuant to paragraph (3), point (a), which has found that, in the absence of the commitments, the concentration would fulfil the criterion laid down in paragraph 3, point (c).	The Commission may adopt any of the measures referred to in points (a) or (b) where it finds that a concentration has been implemented in breach of a decision taken pursuant to paragraph (3), point (a), which has found that, in the absence of the commitments, the concentration would fulfil the criterion laid down in paragraph 3, point (c).	
Article 24(7), introductory part				
276	(7) The Commission may order interim measures referred to in	(7) The Commission may order interim measures referred to in	(7) The Commission may order interim measures referred to in	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Article 10 also where:	Article 10 also where:	Article 10 also where:	
Article 24(7), point (a)				
277	(a) a concentration has been implemented in breach of Article 19;	(a) a concentration has been implemented in breach of Article 19;	(a) a concentration has been implemented in breach of Article 19;	
Article 24(7), point (b)				
278	(b) a concentration has been implemented in breach of a decision with commitments under this Article, paragraph 3, point (a).	(b) a concentration has been implemented in breach of a decision with commitments under this Article, paragraph 3, point (a).	(b) a concentration has been implemented in breach of a decision with commitments under this Article, paragraph 3, point (a).	
Article 24(7), first subparagraph				
278a			Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 43(2).	
Article 25				
279	Article 25 Fines and periodic penalty payments applicable to concentrations	Article 25 Fines and periodic penalty payments applicable to concentrations	Article 25 Fines and periodic penalty payments applicable to concentrations	
Article 25(1)				
280	(1) The Commission may impose fines and periodic penalty payments as set out in Article 15.	(1) The Commission may impose fines and periodic penalty payments as set out in Article 15.	(1) The Commission may impose fines and periodic penalty payments as set out in Article 15.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 25(2)				
281	(2) In addition, the Commission may impose by decision on undertakings concerned fines not exceeding 1 % of their aggregate turnover in the preceding business year where they, intentionally or negligently, supply incorrect or misleading information in a notification pursuant to Article 19 or supplement thereto.	(2) In addition, the Commission may impose by decision on undertakings concerned fines not exceeding 1 % of their aggregate turnover in the preceding business year where they, intentionally or negligently, supply incorrect or misleading information in a notification pursuant to Article 19 or supplement thereto.	(2) In addition, the Commission may impose by decision on undertakings concerned fines not exceeding 1 % of their aggregate turnover in the preceding business financial year where they, intentionally or negligently, supply incorrect or misleading information in a notification pursuant to Article 19 or supplement thereto.	
Article 25(3), introductory part				
282	(3) The Commission may impose by decision on undertakings concerned fines not exceeding 10 % of their aggregate turnover in the preceding business year where they, intentionally or negligently:	(3) The Commission may impose by decision on undertakings concerned fines not exceeding 10 % of their aggregate turnover in the preceding business year where they, intentionally or negligently:	(3) In addition , the Commission may impose by decision on undertakings concerned fines not exceeding 10 % of their aggregate turnover in the preceding business financial year where they, intentionally or negligently:	
Article 25(3), point (a)				
283	(a) fail to notify a notifiable concentration in accordance with Article 19 prior to its implementation, unless they are expressly authorised to do so by Article 23;	(a) fail to notify a notifiable concentration in accordance with Article 19 prior to its implementation, unless they are expressly authorised to do so by Article 23;	(a) fail to notify a notifiable concentration in accordance with Article 19 prior to its implementation, unless they are expressly authorised to do so by Article 23;	
Article 25(3), point (b)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
284	(b) implement a notified concentration in breach of Article 23;	(b) implement a notified concentration in breach of Article 23;	(b) implement a notified concentration in breach of fail to notify a notifiable concentration in breach of accordance with Article 23; 19 prior to its	
Article 25(3), point (c)				
285	(c) implement a notified concentration prohibited in accordance with Article 24(3), point (c).	(c) implement a notified concentration prohibited in accordance with Article 24(3), point (c).	(c) implement a notified concentration prohibited in accordance with in breach of Article 24(3), point (c). 23;	
Chapter 4:				
286	Chapter 4: Public procurement procedures	Chapter 4: Public procurement procedures	Chapter 4: Public procurement procedures	
Article 26				
287	Article 26 Distortions on the internal market by foreign subsidies in public procurement procedures	Article 26 Distortions on the internal market by foreign subsidies in public procurement procedures	Article 26 Distortions on the internal market by foreign subsidies in public procurement procedures	
Article 26 (1), first paragraph				
288	Foreign subsidies that cause or risk causing a distortion in a public procurement procedure shall be understood as foreign subsidies that enable an undertaking to submit a tender that is unduly advantageous	Foreign subsidies that cause or risk causing a distortion in a public procurement procedure shall be understood as foreign subsidies that enable an undertaking to submit a tender that is unduly advantageous	(1) Foreign subsidies that cause or risk causing a distortion in a public procurement procedure shall be understood as foreign subsidies that enable an undertaking economic operator to submit a tender that is	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	in relation to the works, supplies or services concerned. The assessment of whether there is a distortion on the internal market pursuant to Article 3 and whether a tender is unduly advantageous in relation to the works, supplies or services concerned shall be limited to the public procurement procedure at stake. Only foreign subsidies granted during the three years prior to the notification shall be taken into account in the assessment.	in relation to the works, supplies or services concerned. The assessment of whether there is a distortion on the internal market pursuant to Article 3 and whether a tender is unduly advantageous in relation to the works, supplies or services concerned shall be limited to the public procurement procedure at stake. Only foreign subsidies granted during the three years prior to the notification shall be taken into account in the assessment.	unduly advantageous in relation to the works, supplies or services concerned. The assessment of whether there is a distortion on the internal market pursuant to Article 3 and whether a tender is unduly advantageous in relation to the works, supplies or services concerned shall be limited to the public procurement procedure at stake in question . Only foreign subsidies granted during the three years prior to the notification shall be taken into account in the assessment.	
Article 26 (2)				
288a			(2) The Commission shall publish guidance on the application of paragraph 1 at the latest at [the date of application of this Regulation] and shall update it in light of its enforcement practice.	
Article 27				
289	Article 27 Definition of and notification threshold in public procurement procedures	Article 27 Definition of and notification threshold in public procurement procedures	Article 27 Definition of and notification threshold in public procurement procedures	
Article 27(1), introductory part				
290				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(1) For the purposes of Article 28, a public procurement procedure means:	(1) For the purposes of Article 28, a public procurement procedure means:	(1) For the purposes of Article 28 this Regulation , a public procurement procedure means:	
Article 27(1), point (a)				
291	(a) any type of award procedure laid down in Directive 2014/24/EU and Directive 2014/25/EU of the European Parliament and of the Council for the conclusion of a public contract as defined in Article 2(1), point (5) of Directive 2014/24/EU or of a supply, works and service contract as defined in Article 2, point (1) of Directive 2014/25/EU;	(a) any type of award procedure laid down in Directive 2014/24/EU and Directive 2014/25/EU of the European Parliament and of the Council for the conclusion of a public contract as defined in Article 2(1), point (5) of Directive 2014/24/EU or of a supply, works and service contract as defined in Article 2, point (1) of Directive 2014/25/EU;	(a) any type of award procedure laid down in covered by Directive 2014/24/EU and Directive 2014/25/EU of the European Parliament and of the Council for the conclusion of a public contract as defined in Article 2(1), point (5) of Directive 2014/24/EU or of a supply, works and service contract as defined in Article 2, point (1) of Directive 2014/25/EU;	
Article 27(1), point (b)				
292	(b) a procedure for the award of a works or a service concession as defined in Article 5, point (1) of Directive 2014/23/EU of the European Parliament and of the Council;	(b) a procedure for the award of a works or a service concession as defined in Article 5, point (1) of Directive 2014/23/EU of the European Parliament and of the Council;	(b) a procedure for the award of a works or a service concession as defined in Article 5, point (1) of covered by Directive 2014/23/EU of the European Parliament and of the Council;	
Article 27(1), point (c)				
293	(c) procedures for the award of contracts referred to in Article 10(4), point (a) of Directive 2014/23/EU, Article 9(1), point (a) of Directive 2014/24/EU and Article	(c) procedures for the award of contracts referred to in Article 10(4), point (a) of Directive 2014/23/EU, Article 9(1), point (a) of Directive 2014/24/EU and Article	(c) procedures for the award of contracts referred to in– Article 10(4), point (a) of Directive 2014/23/EU, Article 9(1), point (a) of Directive 2014/24/EU and Article	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	20(1) point (a) of Directive 2014/25/EU.	20(1) point (a) of Directive 2014/25/EU.	20(1) point (a) of Directive 2014/25/EU.	
Article 27(2)				
294	(2) For the purpose of Article 28, a notifiable foreign financial contribution in an EU public procurement procedure shall be deemed to arise where the estimated value of that public procurement is equal or greater than EUR 250 million.	(2) For the purpose of Article 28 <u>of this Regulation</u> , a notifiable foreign financial contribution in an EU public procurement procedure shall be deemed to arise where the estimated <u>total</u> value of that public procurement, <u>calculated in accordance with the provisions laid down in Article 5 of Directive 2014/24/EU and Article 16 of Directive 2014/25/EU</u> , is equal <u>to</u> or greater than EUR 250 <u>200</u> million.	(2) For the purpose of Article 28 this Regulation , a notifiable foreign financial contribution in an EU public procurement procedure shall be deemed to arise where the estimated value of that public procurement is equal or greater than EUR 250 million.	
Article 27(2)(point (a)				
294a			(a) the estimated value net of value added tax (VAT) of that contract, specific procurement under the dynamic purchasing system, or framework agreement is equal or greater than EUR 300 million; and	
Article 27(2)(point (b)				
294b			(b) the economic operator, including its subsidiary companies without commercial autonomy, its holding companies, and, where	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			applicable, its main subcontractors and suppliers involved in the same tender in the public procurement procedure was granted aggregate financial contributions in the three calendar years prior to notification or, if applicable, the updated notification, equal to or greater than EUR 5 million per third country.	
Article 27(2a)				
294c			(2a) Where the contracting authority or contracting entity decides to divide the procurement into lots, for the purpose of Article 28, a foreign financial contribution in such a procurement procedure subject to the notification requirement in accordance with the threshold set out in paragraph 2(a), shall not be deemed to arise where the estimated value net of VAT of the tender for each lot for which the economic operator is tendering less than EUR 50 million. However, where the aggregate value of all the lots the tenderer applies for is equal or greater than EUR 150 million net of VAT, foreign financial contributions must be notified for all such lots the estimated value of which is equal or greater than	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			EUR 5 million.	
Article 27(3)				
295	<p>(3) Procedures for the award of contracts falling within the scope of Directive 2009/81/EC of the European Parliament and of the Council¹ do not fall under this Chapter.</p> <p>¹ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).</p>	<p>(3) Procedures for the award of contracts falling within the scope of Directive 2009/81/EC of the European Parliament and of the Council¹ do not fall under this Chapter.</p> <p>¹ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).</p>	<p>(3) Procedures for the award of contracts falling within the scope of Directive 2009/81/EC of the European Parliament and of the Council¹ do not fall under this Chapter. This exclusion also applies for procedures for the award of a contract using an exemption regulated in Directive 2009/81/EC.</p> <p>¹ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).</p>	
Article 27(3a)				
295a			<p>(3a) Procedures for the award of contracts provided by Article 32(2) (b) and (c) of Directive 2014/24/EU, and Article 50 point (c) and (d) of Directive 2014/25/EU shall be covered the provisions of Chapter 2 of this regulation and are excluded from the application of Chapter 4 of this Regulation. Procedures for the award of</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			concessions falling under Article 31(4) of Directive 2014/23/EU as well as those analogous to procedures for awarding contracts under Article 32(2) (b) and (c) of Directive 2014/24/EU shall also be covered by the provisions of Chapter 2 of this Regulation and are excluded from the application of Chapter 4 of this Regulation.	
Article 27(4)				
296	(4) For the purposes of this Chapter, the definitions of the terms “contracting authority” in Article 6 of Directive 2014/23/EU Article 2(1) of Directive 2014/24/EU, Article 3 of Directive 2014/25/EU, , and “contracting entity” in Article 7 of Directive 2014/23/EU and Article 4 of Directive 2014/25/EU shall apply.	(4) For the purposes of this Chapter, the definitions of the terms “contracting authority” in Article 6 of Directive 2014/23/EU Article 2(1) of Directive 2014/24/EU, Article 3 of Directive 2014/25/EU, , and “contracting entity” in Article 7 of Directive 2014/23/EU and Article 4 of Directive 2014/25/EU shall apply.	(4) For the purposes of this Chapter, the definitions of the terms "contracting authority" in Article 6 of Directive 2014/23/EU, Article 2(1) of Directive 2014/24/EU, Article 3 of Directive 2014/25/EU ⁵ , and "contracting entity" in Article 7 of Directive 2014/23/EU and Article 4 of Directive 2014/25/EU shall apply.	
Article 27(5)				
296a			(5) The contracting authority or contracting entity shall state in the contract notice or, in case a procedure without a prior publication is conducted, in the procurement documents, that the economic operators are under the notification obligation as set out in Article 28 of this Regulation.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			However, the absence of such a statement is without prejudice to the application of this Regulation for contracts falling under its scope.	
Article 28				
297	Article 28 Prior notification of foreign financial contributions in the context of public procurement procedures	Article 28 Prior notification of foreign financial contributions in the context of public procurement procedures	Article 28 Prior notification of foreign financial contributions in the context of public procurement procedures	
Article 28(1)				
298	(1) When submitting a tender or a request to participate in a public procurement procedure, undertakings shall either notify to the contracting authority or the contracting entity all foreign financial contributions received in the three years preceding that notification or confirm in a declaration that they did not receive any foreign financial contributions in the last three years. Undertakings which do not submit such information or declaration shall not be awarded the contract.	(1) When submitting a tender or a request to participate in a public procurement procedure, undertakings shall either notify to the contracting authority or the contracting entity all foreign financial contributions received in the three years preceding that notification or confirm in a declaration that they did not receive any foreign financial contributions in the last three years. Undertakings which do not submit such information or declaration shall not be awarded the contract.	(1) When submitting a tender or a request to participate in the contracting authority or contracting entity estimates that the value of the procurement is equal or greater than the value set in Article 27(2), it shall require that the economic operator submits a notification or a declaration in line with Article 27. In an open procedure, the notification or declaration shall be submitted only once, together with the tender. In a public procurement procedure consisting of multiple stages, as provided for in Article 29(5), the notification or declaration, undertakings shall either notify to the contracting authority or the contracting entity all foreign financial contributions	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>received in the three years preceding thatbe submitted twice, first with the request to participate and then as an updated notification or declaration with the submitted tender or final tender. In a notification or confirm in a declaration that they did not receive any updated notification submitted in accordance with Article 27(2), the economic operator shall indicate all foreign financial contributions granted in the last three years preceding that notification or updated notification. In the contrary case, the economic operator shall confirm in a Undertakings which do not submit such information or declaration shall not be awarded the contractthat it did not receive any notifiable foreign financial contributions pursuant to Article 27(2).</p>	
Article 28(1a)				
298a			<p>(1a) Without prejudice to provisions regarding the possibility of the contracting authority or contracting entity to require the economic operators to supplement, clarify or complete the relevant information or documentation, provided by Directive 2014/24/EU, Directive</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>2014/25/EU or Directive 2014/23/EU or as provided by the national law implementing them, when a notification or declaration is missing from the request to participate or the tender, the contracting authority or contracting entity may request the economic operators concerned to submit the relevant document within 10 working days, provided that such requests are made in full compliance with the principles of equal treatment and transparency. Once the notification or declaration is submitted, the contracting authority or the contracting entity shall transfer the notification or declaration to the Commission without delay</p>	
Article 28(1aa)				
298b			<p>(1b) The Commission shall examine the content of the notification received under the provisions of Article 28(4) without undue delay. Where the Commission finds that the notification is incomplete, it shall communicate its findings to the contracting authority or contracting entity and to the economic operator concerned, and request that the economic operator completes its content</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			within 10 working days.	
Article 28(1b)				
298c			(1c) Tenders or requests to participate from economic operators subject to the obligations specified under this Article and ultimately not accompanied by the notification or declaration submitted in accordance with this Article shall be declared irregular and rejected by the contracting authority or contracting entity. The contracting authority or contracting entity shall inform the Commission of this rejection. Where a notification accompanying a tender or request to participate remains incomplete despite a request to complete their content, shall be declared irregular by the Commission within 10 working days. The contracting authority or the contracting entity shall reject the tender or request to participate on that basis and in accordance with the decision of the Commission under Article 30(3a).	
Article 28(2)				
299	(2) The obligation to notify foreign financial contributions under this	(2) The obligation to notify foreign financial contributions under this	(2) The obligation to notify foreign financial contributions under this	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	paragraph shall extend to economic operators, groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU, Article 19(2) of Directive 2014/24/EU and Article 37(2) of Directive 2014/25/EU, main subcontractors and main suppliers. A subcontractor or supplier shall be deemed to be main where their participation ensures key elements of the contract performance and in any case where the economic share of their contribution exceeds 30% of the estimated value of the contract.	paragraph shall extend to economic operators, groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU, Article 19(2) of Directive 2014/24/EU and Article 37(2) of Directive 2014/25/EU, main subcontractors and main suppliers. A subcontractor or supplier shall be deemed to be main where their participation ensures key elements of the contract performance and in any case where the economic share of their contribution exceeds 30% <u>20 %</u> of the estimated value of the contract.	paragraph Article shall extend to economic operators, groups of economic operators referred to in Article 26(2) of Directive 2014/23/EU, Article 19(2) of Directive 2014/24/EU and Article 37(2) of Directive 2014/25/EU, as well as main subcontractors and main suppliers known at the time of notification or declaration, or the time at which the request for the submission or completion of the notification or declaration is made. For the purposes of this Regulation, –a subcontractor or supplier shall be deemed to be main where their participation ensures key elements of the contract performance and in any case where the economic share of their contribution exceeds 30% 20% of the estimated value of the contract submitted tender, net of VAT.	
Article 28(3)				
300	(3) For groups of economic operators, main subcontractors and main suppliers, the lead economic operator shall ensure notification.	(3) For groups of economic operators, main subcontractors and main suppliers, the lead economic operator shall ensure notification. <u><i>The lead economic operator shall not be liable for information provided by their main subcontractors or main suppliers.</i></u>	(3) For On behalf of groups of economic operators, main subcontractors and main suppliers, the lead economic operator main contractor or main concessionaire within the meaning of Directives 2014/23/EU, 2014/24/EU and 2014/25/EU shall ensure the submission of the notification or declaration. For the purpose of	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			Article 32, the main contractor or main concessionaire is responsible only for the veracity of data linked to the foreign financial contributions it itself may have received.	
Article 28(4)				
301	(4) The contracting authority or the contracting entity shall transfer the notification to the Commission without delay.	(4) The contracting authority or the contracting entity shall transfer the notification to the Commission without delay.	(4) The contracting authority or the contracting entity shall transfer the notification to the Commission without delay.	
Article 28(5)				
302	(5) Where the undertaking, economic operators or groups of economic operators referred to in paragraph 1 fail to notify a foreign financial contribution, or where such a notification is not transferred to the Commission, the Commission may initiate a review.	(5) Where the undertaking, economic operators or groups of economic operators referred to in paragraph 1 fail to notify a foreign financial contribution, or where such a notification is not transferred to the Commission, the Commission may initiate a review.	(5) Where the undertaking, economic operators or groups of economic operators referred to in paragraph 1 fail to notify a foreign financial contribution Commission had closed a preliminary review without adopting a decision and receives new information leading it to suspect that a submitted notification or declaration was incomplete, despite being required to be completed under this Article, or where such a notification or declaration is not transferred to the Commission, the Commission may initiate a re-open a preliminary review.	
Article 28(5a)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
302a			(5a) Where the contracting authority or contracting entity in examining tenders suspects the presence of foreign subsidies, although a declaration was submitted, it shall communicate these concerns to the Commission without delay. The contracting authority or contracting entity shall not initiate an assessment of abnormally low tenders where such an assessment would be based on the suspicions of the presence of foreign subsidies alone. Other legal or natural persons may report to the Commission any information relating to distortive foreign subsidies and may communicate any suspicions that a false declaration has been made.	
Article 28(6)				
303	(6) Where the Commission suspects that an undertaking may have benefitted from foreign subsidies in the three years prior to the submission of the tender or request to participate in the public procurement procedure, it may request the notification of the foreign financial contributions received by that undertaking in any public procurement procedure which	(6) Where the Commission suspects that an undertaking may have benefitted from <u>been granted</u> foreign subsidies in the three years prior to the submission of the tender or request to participate in the public procurement procedure, it may request the notification of the foreign financial contributions received by that undertaking in any public procurement procedure which	(6) Where the Commission suspects that an undertaking economic operator may have benefitted from foreign subsidies in the three years prior to the submission of the tender or request to participate in the public procurement procedure, it may before the award of the contract request the notification of the foreign financial contributions received by that	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	are not notifiable under Article 27(2) or fall within the scope of paragraph 5 of this Article, at any time before the award of the contract. Once the Commission has requested the notification of such a financial contribution, it is deemed to be a notifiable foreign financial contribution in a public procurement procedure.	are not notifiable under Article 27(2) or fall within the scope of paragraph 5 of this Article, at any time before the award of the contract. Once the Commission has requested the notification of such a financial contribution, it is deemed to be a notifiable foreign financial contribution in a public procurement procedure.	undertaking provided by third countries to that economic operator in any public procurement procedure covered by Article 27, paragraph 1 which are not notifiable under Article 27(2) or fall within the scope of paragraph 5 of this Article, at any time before the award of the contract. Once. This is without prejudice of the possibility for the Commission to start an ex officio procedure. If the Commission has requested the notification of such a financial contribution, it is deemed to be a notifiable foreign financial contribution in a public procurement procedure and is subject to the provisions set out in Chapter 4 of this Regulation. The Commission shall publish guidance on the application of this paragraph at the latest at the start of application of this Regulation and shall update it in light of its enforcement practice.	
Article 29				
304	Article 29 Procedural rules applicable to the preliminary review and the in-depth investigation of notified financial contributions in public procurement procedures	Article 29 Procedural rules applicable to the preliminary review and the in-depth investigation of notified financial contributions in public procurement procedures	Article 29 Procedural rules applicable to the preliminary review and the in-depth investigation of notified financial contributions in public procurement procedures	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 29(1)				
305	(1) Articles 8, 9 (1), (3) and (4), 11, 12, 13, 14, 16 and 22 shall apply to notified financial contributions in public procurement procedures.	(1) Articles 8, 9 (1), (3) and (4), 11, 12, 13, 14, 16 and 22 shall apply to notified financial contributions in public procurement procedures.	(1) Articles 8, 9 (1), (3) and (4), 11, 12, 13, 14, 16 and 22 shall apply to notified financial contributions in public procurement procedures.	
Article 29(2)				
306	(2) The Commission shall carry out a preliminary review no later than 60 days after it received the notification.	(2) The Commission shall carry out complete a preliminary review no later than 60 40 days after it received the notification.	(2) The Commission shall carry out a preliminary review no later than 60 20 working days after it received the complete notification. In duly justified cases, the Commission may once extend this time limit by 10 working days.	
Article 29(3)				
307	(3) The Commission shall decide whether to initiate an in-depth investigation within the time limit for completing the preliminary review and inform the undertaking concerned and the contracting authority or the contracting entity without delay.	(3) The Commission shall decide whether to initiate an in-depth investigation within the time limit for completing the preliminary review and inform the undertaking concerned and the contracting authority or the contracting entity without delay.	(3) The Commission shall decide whether to initiate an in-depth investigation within the time limit for completing the preliminary review and inform the undertaking economic operator concerned and the contracting authority or the contracting entity without delay.	
Article 29(4)				
308	(4) The Commission may adopt a decision closing the in-depth investigation no later than 200 days	(4) The Commission may adopt a decision closing the in-depth investigation no later than 200 120	(4) The Commission may adopt a decision closing the in-depth investigation no later than 200 110	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	after it received the notification. In exceptional circumstances, this time limit may be extended after consultation with the concerned contracting authority or contracting entity.	days after it received the notification. In exceptional circumstances, this time limit may be extended <u>by 20 days</u> after consultation with the concerned contracting authority or contracting entity.	working days after it received the complete notification. In exceptional circumstances, this time limit may be extended. This period may be extended once by 20 working days, after consultation with the concerned contracting authority or contracting entity-, in the following cases:	
Article 29(4)(point (a))				
308a			(a) in exceptional circumstances;	
Article 29(4)(point (b))				
308b			(b) in the cases referred to in Article 14(1)(a) and (b);	
Article 29(4)(point (c))				
308c			(c) in exceptional circumstances in the investigations referred to in paragraph 5 of this Article.	
Article 29(5)				
308d			(5) Where the public procurement procedure applied is, in accordance with Articles 28 to 32 of Directive 2014/24/EU and Articles 46 to 52 of Directive 2014/25/EU, either the restricted procedure, a competitive	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>procedure with negotiation, a negotiated procedure without prior publication, a competitive dialogue or an innovation partnership, or a similar procedure according to Directive 2014/23/EU, the preliminary review, based on the request to participate, is conducted in accordance with paragraph 3, the commission shall examine within 20 working days the information submitted without reaching a decision on opening an in-depth investigation. After the deadline of 20 working days elapses, the preliminary review shall be suspended until the submission of a final tender or a tender in the case of the restricted procedure. Once the tender or final tender containing a complete updated notification is submitted, the preliminary review will be resumed and the Commission has 20 working days to finalise it, taking into account any additional information. The decision closing any ensuing in-depth investigation shall be adopted within 70 working days from the submission of the completed updated notification.</p>	
Article 30				
309				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Article 30 Commission decisions	Article 30 Commission decisions	Article 30 Commission decisions	
Article 30(1)				
310	(1) Where, after an in-depth investigation, the Commission finds that an undertaking benefits from a foreign subsidy which distorts the internal market pursuant to Articles 3 to 5, and where the undertaking concerned offers commitments that fully and effectively remove the distortion on the internal market, it shall adopt a decision with commitments pursuant to Article 9(3). The assessment under Article 5 shall not result in a modification of the initial tender submitted by the undertaking that is incompatible with Union law.	(1) Where, after an in-depth investigation, the Commission finds that an undertaking benefits from a foreign subsidy which distorts the internal market pursuant to Articles 3 to 5, and where the undertaking concerned offers commitments that fully and effectively remove the distortion on the internal market, it shall adopt a decision with commitments pursuant to Article 9(3). The assessment under Article 5 shall not result in a modification of the initial tender submitted by the undertaking that is incompatible with Union law.	(1) Where, after an in-depth investigation, the Commission finds that an undertaking economic operator benefits from a foreign subsidy which distorts the internal market pursuant to Articles 3 to 5, and where the undertaking economic operator concerned offers commitments that fully and effectively remove the distortion on the internal market, it shall adopt a decision with commitments pursuant to Article 9(3). Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 43(2). The assessment under Article 5 shall not result in a modification of the initial tender or final tender submitted by the undertaking economic operator that is incompatible with Union law.	
Article 30(2)				
311	(2) Where the undertaking concerned does not offer commitments or where the Commission considers that the commitments referred to in	(2) Where the undertaking concerned does not offer commitments or where the Commission considers that the commitments referred to in	(2) Where the undertaking economic operator concerned does not offer commitments or where the Commission considers that the commitments referred to in	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	paragraph 1 are neither appropriate nor sufficient to fully and effectively remove the distortion it shall adopt a decision prohibiting the award of the contract to the undertaking concerned (“decision prohibiting the award of the contract”).	paragraph 1 are neither appropriate nor sufficient to fully and effectively remove the distortion it shall adopt a decision prohibiting the award of the contract to the undertaking concerned (“decision prohibiting the award of the contract”).	paragraph 1 are neither appropriate nor sufficient to fully and effectively remove the distortion it shall adopt a decision prohibiting the award of the contract to the undertaking economic operator concerned ("decision prohibiting the award of the contract") and on that basis the contracting authority or contracting entity shall reject the tender. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 43(2).	
Article 30(3)				
312	(3) Where, after an in-depth investigation, the Commission does not find that an undertaking benefits from a foreign subsidy which distorts the internal market, it shall adopt a decision pursuant to Article 9(4).	(3) Where, after an in-depth investigation, the Commission does not find that an undertaking benefits from a foreign subsidy which distorts the internal market, it shall adopt a decision pursuant to Article 9(4).	(3) Where, after an in-depth investigation, the Commission does not find that an undertaking economic operator benefits from a foreign subsidy which distorts the internal market, it shall adopt a decision pursuant to Article 9(4). Those implementing decisions shall be adopted in accordance with the advisory procedure referred to in Article 43(2).	
Article 30(3a)				
312a			(3a) Where, in the case provided for in Article 28(1b), the Commission finds that a tender or	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			request to participate is irregular, it shall request that the contracting authority or contracting entity adopts a decision rejecting the tender or request to participate on formal grounds. Those implementing decisions shall be adopted in accordance with the advisory procedure referred to in Article 43(2).	
Article 30(4)				
312b			(4) The review provided for in Article 263 of the Treaty on the Functioning of the European Union against one of the decisions referred to in paragraphs 1, 2 or 3 and or Article 28(1b), and the references for preliminary rulings provided for in Article 267, paragraph 1(b) relating to same decisions may not have the effect of suspending an award procedure in the course of awarding a contract or of affecting the execution of a contract already awarded. A nullification of such a decision in those proceedings shall not give rise to damages to be borne by the contracting authority or contracting entity.	
Article 31				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
313	Article 31 Evaluations in public procurement procedures involving a notification and suspension of award	Article 31 Evaluations in public procurement procedures involving a notification and suspension of award	Article 31 Evaluations in public procurement procedures involving a notification and suspension of award	
Article 31(1)				
314	(1) During the preliminary review and the in-depth investigation, the evaluation of tenders in a public procurement procedure may continue. The contract shall not be awarded before the expiry of the time limit set in Article 29(2).	(1) During the preliminary review and the in-depth investigation, the evaluation of tenders in a public procurement procedure may continue. The contract shall not be awarded before the expiry of the time limit set in Article 29(2).	(1) During the preliminary review and the in-depth investigation, the evaluation of tenders in a procedural steps in the public procurement procedure may continue. The contract shall not be awarded before the expiry of the time limit set in Article 29(2).	
Article 31(2)				
315	(2) If a decision to open an in-depth investigation is taken pursuant to Article 29(3), the contract shall not be awarded to an undertaking submitting a notification under Article 28 until the Commission reaches a decision under Article 30(3) or the time limit set in Article 29(4) elapses. If the Commission has not adopted a decision within this time limit, the contract may be awarded to any undertaking, including the one submitting the notification.	(2) If a decision to open an in-depth investigation is taken pursuant to Article 29(3), the contract shall not be awarded to an undertaking submitting a notification under Article 28 until the Commission reaches a decision under Article 30(3) or the time limit set in Article 29(4) elapses. If the Commission has not adopted a decision within this time limit, the contract may be awarded to any undertaking, including the one submitting the notification.	(2) If a decision to open an in-depth investigation is taken pursuant to Article 29(3), the contract shall not be awarded to an undertaking economic operator submitting a notification under Article 28 until the Commission reaches a decision under Article 30(3) or the time limit set in Article 29(4) or 29(5) elapses. If the Commission has not adopted a decision within this the applicable time limit, the contract may be awarded to any undertaking economic operator , including the one submitting the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			notification.	
Article 31(3)				
316	(3) The contract may be awarded to an undertaking submitting a declaration under Article 28 before the Commission takes any of the decisions referred to in Article 30 or before the time limit laid down in Article 29(4) elapses only if the tender evaluation has established that the undertaking in question has in any case submitted the most economically advantageous tender.	(3) The contract may be awarded to an undertaking submitting a declaration under Article 28 before the Commission takes any of the decisions referred to in Article 30 or before the time limit laid down in Article 29(4) <u>of this Regulation</u> elapses only if the tender evaluation has established that the undertaking in question has in any case submitted the most economically advantageous tender, <u>as defined in Article 67(2) of Directive 2014/24/EU and Article 82(2) of Directive 2014/25/EU. Information relating to distortive foreign subsidies, including any suspicion that a false declaration has been made, may be reported to the Commission.</u>	(3) Where the contracting authority or contracting entity has established, by actions The contract may be awarded to an undertaking submitting a declaration under Article 28 before the Commission takes any of the decisions referred to in Article 30 or before the time limit laid down in Article 29(4) elapses only if the tender evaluation has established that the undertaking in question has in any case submitted the most economically advantageous tender this Regulation, that the economic operator, submitting a declaration did not receive any notifiable foreign financial contributions in the last three years and has submitted the most economically advantageous tender, the contract or concession may be awarded to that economic operator before the Commission takes any of the decisions referred to in Article 30 or before the time limits laid down in Articles 29(2), 29(4) or 29(5) elapse.	
Article 31(4)				
317	(4) Where the Commission issues a	(4) Where the Commission issues a	(4) Where the Commission issues a	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	decision under Article 30(2) regarding the most economically advantageous tender, the contract may be awarded to the undertaking having submitted the next best tender not subject to a decision under Article 30(2).	decision under Article 30(2) regarding the most economically advantageous tender, the contract may be awarded to the undertaking having submitted the next best tender not subject to a decision under Article 30(2).	decision under Article 30(2) regarding concerning a tender which the contracting authority or contracting entity has found to be the most economically advantageous tender, the contract may be awarded to the undertaking economic operator having submitted the next best tender not subject to a decision under Article 30(2).	
Article 31(5)				
318	(5) Where the Commission adopts a decision in accordance with Article 30(1) or (3), the contract may be awarded to any undertaking having submitted the most economically advantageous tender, including, as the case may be, the undertaking(s) having submitted the notification under Article 28.	(5) Where the Commission adopts a decision in accordance with Article 30(1) or (3), the contract may be awarded to any undertaking having submitted the most economically advantageous tender, including, as the case may be, the undertaking(s) having submitted the notification under Article 28.	(5) Where the Commission adopts a decision in accordance with Article 30(1) or (3), the contract may be awarded to any undertaking economic operator having submitted the most economically advantageous tender, including, as the case may be, the undertaking(s) economic operator having submitted the notification under Article 28.	
Article 31(6)				
319	(6) In all cases, the contracting authority or the contracting entity shall inform the Commission of any decision relating to the outcome of the public procurement procedure.	(6) In all cases, the contracting authority or the contracting entity shall inform the Commission <u>without undue delay</u> of any decision relating to the outcome of the public procurement procedure.	(6) In all cases, The contracting authority or the contracting entity shall inform the Commission of any decision relating to the outcome cancellation of the public procurement procedure, the rejection of the tender or request to participate by the economic	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			operator concerned, the submission of a new tender by the economic operator concerned or the award of the contract.	
Article 31(7)				
320	(7) The principles governing public procurement, including proportionality, non-discrimination, equal treatment, and transparency, shall be observed as regards all undertakings involved in the public procurement procedure. The investigation of foreign subsidies pursuant to this Regulation shall not result in the contracting authority or the contracting entity treating the undertaking concerned in a way that is contrary to those principles.	(7) The principles governing public procurement <u>procedures</u> , including proportionality, non-discrimination, equal treatment, and transparency <u>as well as compliance with obligations relating to applicable environmental, social and labour law and standards in the performance of the contract</u> , shall be observed as regards all undertakings involved in the public procurement procedure. The investigation of foreign subsidies pursuant to this Regulation shall not result in the contracting authority or the contracting entity treating the undertaking concerned in a way that is contrary to those principles.	(7) The principles governing public procurement, including proportionality, non-discrimination, equal treatment, transparency and competition and transparency, shall be observed as regards all undertakings economic operators involved in the public procurement procedure. The investigation of foreign subsidies pursuant to this Regulation shall not result in the contracting authority or the contracting entity treating the undertaking economic operators concerned in a way that is contrary to those principles.	
Article 31(8)				
321	(8) Each time limit shall begin on the working day following that of the receipt of the notification or of the adoption of the relevant Commission decision.	(8) Each time limit shall begin on the working day following that of the receipt of the notification or of the adoption of the relevant Commission decision.	(8) Each time limit shall begin on the working day following that of the receipt of the notification or of the adoption of the relevant Commission decision.	
Article 32				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
322	Article 32 Fines and periodic penalty payments applicable to financial contributions in the context of public procurement procedures	Article 32 Fines and periodic penalty payments applicable to financial contributions in the context of public procurement procedures	Article 32 Fines and, periodic penalty payments and sectoral measures applicable to financial contributions in the context of public procurement procedures	
Article 32(1)				
323	(1) The Commission may impose fines and periodic penalty payments as set out in Article 15.	(1) The Commission may impose fines and periodic penalty payments as set out in Article 15.	(1) The Commission may impose fines and periodic penalty payments as set out in Article 15.	
Article 32(2)				
324	(2) In addition, the Commission may impose by decision on the undertakings concerned fines not exceeding 1 % of their aggregate turnover in the preceding business year, where they intentionally or negligently supply incorrect or misleading information in a notification pursuant to Article 28 or supplement thereto;	(2) In addition, the Commission may impose by decision on the undertakings concerned fines not exceeding 1 % of their aggregate turnover in the preceding business year, where they intentionally or negligently supply incorrect or misleading information in a notification <u>and declarations</u> pursuant to Article 28 or supplement thereto;	(2) In addition, the Commission may impose by decision on the undertakings economic operators concerned fines not exceeding 1 % of their aggregate turnover in the preceding business financial year, where they intentionally or negligently supply incorrect or misleading information in a notification or declaration pursuant to Article 28 or supplement thereto;	
Article 32(3)				
325	(3) The Commission may impose by decision on the undertakings concerned fines not exceeding 10 % of their aggregate turnover in the	(3) The Commission may impose by decision on the undertakings concerned fines not exceeding 10 % of their aggregate turnover in the	(3) The Commission may impose by decision on the undertakings economic operator concerned fines not exceeding 10 %	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	preceding business year where they, intentionally or negligently, fail to notify a subsidy in accordance with Article 28 during the public procurement procedure.	preceding business year where they, intentionally or negligently, fail to notify a subsidy in accordance with Article 28 during the public procurement procedure.	of their aggregate turnover in the preceding business financial year where they, intentionally or negligently, fail to notify a subsidy in accordance with Article 28 during the public procurement procedure.	
Chapter 5:				
326	Chapter 5: Common procedural provisions	Chapter 5: Common procedural provisions	Chapter 5: Common procedural provisions	
Article 33				
327	Article 33 Relation between procedures	Article 33 Relation between procedures	Article 33 Relation between procedures	
Article 33(1)				
328	(1) A financial contribution notified in the context of a concentration under Article 19 may be relevant and assessed again in relation to another economic activity.	(1) A financial contribution notified in the context of a concentration under Article 19 may be relevant and assessed again <u>under this Regulation</u> in relation to another economic activity.	(1) A financial contribution notified in the context of a concentration under Article 19 or in the context of a public procurement under Article 28 may be relevant and assessed again under this Regulation in relation to another economic activity.	
Article 33(2)				
329	(2) A financial contribution notified in the context of a public procurement procedure under Article	(2) A financial contribution notified in the context of a public procurement procedure under Article	(2) A financial contribution notified assessed in the context of a public procurement an ex officio	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	28 may be relevant and assessed again in relation to another economic activity.	28 may be relevant and assessed again <u>under this Regulation</u> in relation to another economic activity.	procedure in relation to a specific economic activity under Article 288 or Article 9 may be relevant and assessed again under this Regulation in relation to another economic activity.	
Article 33a				
329a			Communication of information	
Article 33a(1)				
329b			(1) Where a Member State considers that foreign subsidies may exist and may distort the internal market, it shall transfer this information to the Commission. The Commission may on the basis of this information decide to start a preliminary review pursuant to Article 8, or request a notification pursuant to Article 19(5) or Article 28(6). A Member State may communicate to the Commission any information it may have relating to the application of Article 5 by the Commission.	
Article 33a(2)				
329c				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			(2) A natural or legal person may communicate to the Commission any information it may have about foreign subsidies that may distort the internal market. The Commission may on the basis of this information decide to start a preliminary review pursuant to Article 8, or request a notification pursuant to Article 19(5) or Article 28(6).	
Article 34				
330	Article 34 Market investigation	Article 34 Market investigation	Article 34 Market investigation	
Article 34(1)				
331	(1) Where the information available substantiates a reasonable suspicion that foreign subsidies in a particular sector, for a particular type of economic activity or based on a particular subsidy instrument may distort the internal market, the Commission may conduct a market investigation into the particular sector, the particular type of economic activity or into the use of the subsidy instrument concerned. In the course of that market investigation, the Commission may request the undertakings or associations of undertakings	(1) Where the information available substantiates a reasonable suspicion that foreign subsidies in a particular sector, for a particular type of economic activity or based on a particular subsidy instrument may distort the internal market, the Commission may shall conduct a market investigation into the particular sector, the particular type of economic activity or into the use of the subsidy instrument concerned. In the course of that market investigation, the Commission may shall request the undertakings or associations of undertakings	(1) Where the information available substantiates a reasonable suspicion that foreign subsidies in a particular sector, for a particular type of economic activity or based on a particular subsidy instrument may distort the internal market, the Commission may conduct a market investigation into the particular sector, the particular type of economic activity or into the use of the subsidy instrument concerned. The Commission shall give due regard to the information communicated by Member States in that regard. In the course of that	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	concerned to supply the necessary information and may carry out the necessary inspections. The Commission may also request the Member State or third country concerned to supply information.	concerned to supply the necessary information and may carry out the necessary inspections. The Commission may also request the Member State or third country concerned to supply information.	market investigation, the Commission may request the undertakings or associations of undertakings concerned to supply the necessary information and may carry out the necessary inspections. The Commission may also request the Member State or States or the third country concerned to supply information.	
Article 34(2)				
332	(2) The Commission may publish a report on the results of its market investigation into particular sectors, particular types of economic activity or particular subsidy instruments and invite comments from interested parties.	(2) The Commission may <u>shall, where relevant,</u> publish a report on the results of its market investigation into particular sectors, particular types of economic activity or particular subsidy instruments and invite comments from interested parties.	(2) The Commission may publish a report on the results of its market investigation into particular sectors, particular types of economic activity or particular subsidy instruments and invite <u>seek</u> comments from interested parties.	
Article 34(3)				
333	(3) The Commission may use the information obtained from such market investigations in the framework of procedures under this Regulation.	(3) The Commission may use the information obtained from such market investigations in the framework of procedures under this Regulation.	(3) The Commission may use the information obtained from such market investigations in the framework of procedures under this Regulation.	
Article 34(4)				
334	(4) Articles 11, 12, 13 and 15 of this Regulation shall apply.	(4) Articles 11, 12, 13 and 15 of this Regulation shall apply.	(4) Articles 11, 12, 13 and 15 of this Regulation shall apply.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 34a				
334a		<u>Article 34a</u> <u>Third-country dialogue</u>		
Article 34a(1)				
334b		<u>1. Where, following a market investigation pursuant to Article 34, the Commission discovers the existence of systemic distortive foreign subsidies, or where other information available substantiates a reasonable suspicion as to the existence of such subsidies, the Commission, on behalf of the Union, may engage in a dialogue with the third country in question to explore options aimed at obtaining the cessation or modification of the subsidies with a view to eliminating their distortive effects on the internal market.</u>		
Article 34a(2)				
334c		<u>2. That dialogue shall not prevent the Commission from taking further action under this Regulation, including the opening or continuation of investigations or the application of interim or redressive measures.</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 34a(3)				
334d		<u><i>3. The Commission may seek to obtain the cessation or modification of the systemic distortive subsidies also by raising the matter in any relevant international forum.</i></u>		
Article 34a(4)				
334e		<u><i>4. The Commission may enter into consultations or cooperation, on behalf of the Union, with any other third country affected by the same systemic distortive subsidies or with any interested third country, with a view to obtaining the cessation or modification of the subsidies. This may involve, where appropriate, coordination in relevant international fora and coordination in response to the systemic distortive subsidies.</i></u>		
Article 34a(5)				
334f		<u><i>5. The Commission shall, without undue delay, inform the European Parliament and the Council of relevant developments.</i></u>		
Article 35				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
335	Article 35 Limitation periods	Article 35 Limitation periods	Article 35 Limitation periods	
Article 35(1)				
336	(1) The powers of the Commission under Article 9 shall be subject to a limitation period of ten years, starting on the day on which a foreign subsidy is granted to the undertaking concerned. Any action taken by the Commission under Articles 8, 11, 12 or 13 with respect to a foreign subsidy shall interrupt the limitation period. After each interruption, the limitation period shall start to run afresh.	(1) The powers of the Commission under Article 9 shall be subject to a limitation period of ten years, starting on the day on which a foreign subsidy is granted to the undertaking concerned. Any action taken by the Commission under Articles 8, 11, 12, <u>13 or 34</u> or 13 with respect to a foreign subsidy shall interrupt the limitation period. After each interruption, the limitation period shall start to run afresh.	(1) The powers of the Commission under Article Articles 8 and 9 shall be subject to a limitation period of ten years, starting on the day on which a foreign subsidy is granted to the undertaking concerned . Any action taken by the Commission under Articles 8, 11, 12 or 13 with respect to a foreign subsidy shall interrupt the limitation period. After each interruption, the limitation period shall start to run afresh.	
Article 35(2)				
337	(2) The powers of the Commission to impose fines and periodic penalty payments under Articles 15, 25 and 32 shall be subject to a limitation period of three years, starting on the day on which the infringement referred to in Articles 15, 25 or 32 took place. In the case of continuing or repeated infringements, the limitation period shall start on the day on which the infringement ceases. Any action taken by the Commission with respect to an	(2) The powers of the Commission to impose fines and periodic penalty payments under Articles 15, 25 and 32 shall be subject to a limitation period of three years, starting on the day on which the infringement referred to in Articles 15, 25 or 32 took place. In the case of continuing or repeated infringements, the limitation period shall start on the day on which the infringement ceases. Any action taken by the Commission with respect to an	(2) The powers of the Commission to impose fines and periodic penalty payments under Articles 15, 25 and 32 shall be subject to a limitation period of three years, starting on the day on which the infringement referred to in Articles 15, 25 or 32 took place. In the case of continuing or repeated infringements, the limitation period shall start on the day on which the infringement ceases. Any action taken by the Commission with respect to an	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	infringement referred to in Articles 15, 25 or 32 shall interrupt the limitation period for the imposition of fines or periodic penalty payments. After each interruption, the limitation period shall start to run afresh.	infringement referred to in Articles 15, 25 or 32 shall interrupt the limitation period for the imposition of fines or periodic penalty payments. After each interruption, the limitation period shall start to run afresh.	infringement referred to in Articles 15, 25 or 32 shall interrupt the limitation period for the imposition of fines or periodic penalty payments. After each interruption, the limitation period shall start to run afresh.	
Article 35(3)				
338	(3) The powers of the Commission to enforce decisions imposing fines and periodic penalty payments under Articles 15, 25 and 32 shall be subject to a limitation period of five years, starting on the day on which the Commission decision imposing fines or periodic penalty payments was taken. Any action taken by the Commission, or by a Member State acting upon request of the Commission, intended to enforce payment of the fine or periodic penalty payment shall interrupt that limitation period. After each interruption, the limitation period shall start to run afresh.	(3) The powers of the Commission to enforce decisions imposing fines and periodic penalty payments under Articles 15, 25 and 32 shall be subject to a limitation period of five years, starting on the day on which the Commission decision imposing fines or periodic penalty payments was taken. Any action taken by the Commission, or by a Member State acting upon request of the Commission, intended to enforce payment of the fine or periodic penalty payment shall interrupt that limitation period. After each interruption, the limitation period shall start to run afresh.	(3) The powers of the Commission to enforce decisions imposing fines and periodic penalty payments under Articles 15, 25 and 32 shall be subject to a limitation period of five years, starting on the day on which the Commission decision imposing fines or periodic penalty payments was taken. Any action taken by the Commission, or by a Member State acting upon request of the Commission, intended to enforce payment of the fine or periodic penalty payment shall interrupt that limitation period. After each interruption, the limitation period shall start to run afresh.	
Article 35(4)				
338a			(4) The limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 35(4), point (a)				
338b			(a) having taken a decision pursuant to Article 8 or 9 in the instances set out in paragraph 1; or	
Article 35(4), point (b)				
338c			(b) having imposed a fine or a periodic penalty payment in the situation set out in paragraph 2.	
Article 35, subparagraph				
338d			The limitation period shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.	
Article 35a				
338e			Anti-circumvention	
Article 35a(1)				
338f			(1) An undertaking shall not in any way arrange financial	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			operations or contracts to circumvent the notification requirements laid down in Article 19(1) and (5) and Article 28(1), (2) and (6).	
Article 35a(2)				
338g			(2) The Commission may, when it suspects hat an undertaking engaged in a practice referred to in paragraph 1, require such undertaking to provide any information that it deems necessary to determine whether the undertaking engaged in the practices referred to in paragraph 1.	
Article 35a(3)				
338h			(3) Where an undertaking circumvents or attempts to circumvent the notification requirements in Article 19(1) and (5) or Article 28(1), (2) and (6) engaging in a practice referred to in paragraph 1, the Commission shall initiate a review pursuant to Article 19(4), or Article 28(5) and may adopt measures pursuant to Article 25(3) point a and Article 32(3). Where a concentration has been implemented in breach of Article 19, the Commission may	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			adopt measures pursuant to Article 24(6) and (7), and fines pursuant to Article 25(3).	
Article 36				
339	Article 36 Publication of decisions	Article 36 Publication of decisions	Article 36 Publication of decisions	
Article 36(1)				
340	(1) The Commission shall publish a summary notice of the decisions adopted pursuant to Article 8(2).	(1) The Commission shall publish a summary notice of the decisions adopted pursuant to Article 8(2).	(1) The Commission shall publish make public a summary notice of the decisions adopted pursuant to Article 8(2) point (a), allowing any natural or legal person, Member States or the third country that granted the foreign subsidy, to express their views.	
Article 36(2)				
341	(2) The Commission shall publish the decisions adopted pursuant to Article 9(2), (3) and (4), Article 24(3), and Article 30(1), (2) and (3) in the Official Journal of the European Union.	(2) The Commission shall publish the decisions adopted pursuant to Article 9(2), (3) and (4), Article 24(3), and Article 30(1), (2) and (3) in the Official Journal of the European Union.	(2) The Commission shall publish the decisions adopted pursuant to Article 9(2), (3) and (4), Article 24(3) and 6 , and Article 30(1), (2) and (3) in the Official Journal of the European Union.	
Article 36(3)				
342	(3) When publishing summary	(3) When publishing summary	(3) When publishing summary	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	notices and decisions, the Commission shall take due account of the legitimate interests of undertakings in the protection of their business secrets and other confidential information.	notices and decisions, the Commission shall take due account of the legitimate interests of undertakings in the protection of their business secrets and other confidential information.	notices and decisions, the Commission shall take due account of the legitimate interests of undertakings in the protection of their business secrets and other confidential information.	
Article 37				
343	Article 37 Addressees of decisions	Article 37 Addressees of decisions	Article 37 Addressees of decisions	
Article 37(1)				
344	(1) Decisions adopted pursuant to Articles 8, 9, 15, 24(3), 25, 30(1) and 32 shall be addressed to the undertakings or to the association of undertakings concerned. The Commission shall notify the decision to the addressee without delay and shall give the addressee the opportunity to indicate to the Commission which information it considers to be confidential. The Commission shall provide the contracting authority or the contracting entity concerned with a copy of any Commission decision addressed to an undertaking participating in a public procurement procedure.	(1) Decisions adopted pursuant to Articles 8, 9, 15, 24(3), 25, 30(1) and 32 shall be addressed to the undertakings or to the association of undertakings concerned. The Commission shall notify the decision to the addressee without delay and shall give the addressee the opportunity to indicate to the Commission which information it considers to be confidential. The Commission shall provide the contracting authority or the contracting entity concerned with a copy of any Commission decision addressed to an undertaking participating in a public procurement procedure.	(1) Decisions adopted pursuant to Articles 8, 9, 15, 24(3), 25, 30(1) and 32 shall be The Commission shall notify a decision addressed to the undertakings an undertaking or to the an association of undertakings concerned. The Commission shall notify the decision to the addressee without delay and shall give the addressee the opportunity to indicate to the Commission which information in the decision it considers to be confidential. The Commission shall provide the contracting authority or the contracting entity concerned with a copy of any Commission decision addressed to an undertaking participating in a public procurement procedure.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 37(1a)				
344a			(1a) The Commission shall inform the contracting authority or the contracting entity concerned about a decision pursuant to Article 30(1) and (3) addressed to an undertaking participating in a public procurement procedure.	
Article 37(2)				
345	(2) Decisions adopted pursuant to Article 30(2) and (3) shall be addressed to the contracting authority or the contracting entity concerned. The Commission shall provide the undertaking to which the award of the public contract is prohibited with a copy of that decision.	(2) Decisions adopted pursuant to Article 30(2) and (3) shall be addressed to the contracting authority or the contracting entity concerned. The Commission shall provide the undertaking to which the award of the public contract is prohibited with a copy of that decision.	(2) Decisions adopted pursuant to Article 30(2) and (3) shall be addressed to the contracting authority or the contracting entity concerned. The Commission shall provide the undertaking to which the award of the public contract is prohibited with a copy of that decision.	
Article 38				
346	Article 38 Disclosure and rights of defence	Article 38 Disclosure and rights of defence	Article 38 Disclosure and rights of defence	
Article 38(1)				
347	(1) The Commission shall, before adopting a decision pursuant to Articles 9, 15, 24(3) point (c), 25, 30(2) or 32 give the undertaking concerned the opportunity to submit	(1) The Commission shall, before adopting a decision pursuant to Articles 9, 15, 24(3) point (c), 25, 30(2) or 32 give the undertaking concerned the opportunity to submit	(1) The Commission shall, before adopting a decision pursuant to Articles 9, 10, 15, 16, 24(3), 25, 30 15, 24(3) point (c), 25, 30(2) or 32 give the undertaking	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	observations on the grounds on which the Commission intends to adopt its decision.	observations on the grounds on which the Commission intends to adopt its decision.	concerned under investigation the opportunity to submit observations on the grounds on which the Commission intends to adopt its decision.	
Article 38(1a)				
347a			(1a) By way of derogation from paragraph 1, a decision pursuant to Article 10 may be taken provisionally, without the undertaking investigated being given the opportunity to submit its observations beforehand, provided that the Commission gives it that opportunity as soon as possible after having taken its decision.	
Article 38(2)				
348	(2) The Commission shall base its decision only on grounds on which the undertakings concerned have been given the opportunity to submit their observations.	(2) The Commission shall base its decision only on grounds on which the undertakings concerned have been given the opportunity to submit their observations.	(2) The Commission shall base its decision only on grounds on which the undertakings concerned have been given the opportunity to submit their observations.	
Article 38(3)				
348a			(3) To be able to exercise their right pursuant to paragraph 1, the undertaking under investigation shall be entitled to have access to the file of the Commission.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>The right of access to file shall not extend to confidential information and internal documents of the Commission or the Member States. In particular, the right of access to file shall not extend to correspondence between the Commission and the Member States.</p> <p>The right of access to file shall be subject to the legitimate interest of undertakings in the protection of their business secrets and other confidential information. The Commission may ask the undertaking under investigation and the undertakings that provided information to the Commission to agree on terms to disclose the information. In case of disagreement between the undertakings, the Commission shall have the power to impose the terms to disclose the information. Nothing in this paragraph shall prevent the Commission from using and disclosing to the extent necessary information showing the existence of a distortive foreign subsidy.</p>	
Article 39				
349	Article 39 Professional secrecy	Article 39 Professional secrecy	Article 39 Professional secrecy and confidentiality	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 39(1)				
350	(1) Information acquired under this Regulation shall be used only for the purposes for which it was acquired.	(1) Information acquired under this Regulation shall be used only for the purposes for which it was acquired.	(1) Information acquired under this Regulation shall be used only for the purposes for which it was acquired, unless the provider of the information agrees otherwise.	
Article 39(2)				
351	(2) The Commission, its officials and other persons working under its supervision shall not disclose information covered by the obligation of professional secrecy that they have acquired under this Regulation.	(2) The Commission, its officials and other persons working under its supervision shall not disclose information covered by the obligation of professional secrecy that they have acquired under this Regulation.	(2) Member States and the Commission, its their officials and other persons working under its their supervision shall ensure the protection of confidential information acquired in application of this Regulation in accordance with Union and the respective national law, and to this end, shall not disclose information covered by the obligation of professional secrecy that they have acquired under pursuant to this Regulation.	
Article 39(3)				
352	(3) Paragraphs 1 and 2 shall not prevent publication of statistics and reports which do not contain information allowing to identify specific undertakings or associations of undertakings.	(3) Paragraphs 1 and 2 shall not prevent publication of statistics and reports which do not contain information allowing to identify specific undertakings or associations of undertakings.	(3) Paragraphs 1 and 2 shall not prevent publication of statistics and reports which do not contain information allowing to identify specific natural persons , undertakings or associations of	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			undertakings.	
Article 39(4)				
352a			(4) The disclosure of any information communicated under this Regulation shall not prejudice essential security interests of Member States.	
Chapter 6:				
353	Chapter 6: Relationship to other instruments	Chapter 6: Relationship to other instruments	Chapter 6: Relationship to other instruments	
Article 40				
354	Article 40 Relationship to other instruments	Article 40 Relationship to other instruments	Article 40 Relationship to other instruments	
Article 40(1)				
355	<p>(1) This Regulation is without prejudice to the application of Articles 101, 102, 106, 107 and 108 of the Treaty, Council Regulation (EC) No 1/2003¹ and Council Regulation (EC) No 139/2004².</p> <p>1. Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1). 2. Council Regulation (EC) No 139/2004 of</p>	<p>(1) This Regulation is without prejudice to the application of Articles 101, 102, 106, 107 and 108 of the Treaty, Council Regulation (EC) No 1/2003¹ and Council Regulation (EC) No 139/2004².</p> <p>1. Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1). 2. Council Regulation (EC) No 139/2004 of</p>	<p>(1) This Regulation is without prejudice to the application of Articles 101, 102, 106, 107 and 108 of the Treaty TFEU, Council Regulation (EC) No 1/2003¹ and of Council Regulation (EC) No 139/2004².</p> <p>1. Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).	20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).	2. Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).	
Article 40(2)				
356	<p>(2) This Regulation is without prejudice to the application of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016¹.</p> <p>1. Regulation (EU) 2016/1037 of the European Parliament and of the Council on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55).</p>	<p>(2) This Regulation is without prejudice to the application of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016¹.</p> <p>1. Regulation (EU) 2016/1037 of the European Parliament and of the Council on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55).</p>	<p>(2) This Regulation is without prejudice to the application of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016¹.</p> <p>1. Regulation (EU) 2016/1037 of the European Parliament and of the Council on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55).</p>	
Article 40(3)				
357	<p>(3) This Regulation is without prejudice to the application of Regulation (EU) 2019/452 of the European Parliament and of the Council¹.</p> <p>1. Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I, 21.3.2019, p. 1).</p>	<p>(3) This Regulation is without prejudice to the application of Regulation (EU) 2019/452 of the European Parliament and of the Council¹.</p> <p>1. Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I, 21.3.2019, p. 1).</p>	<p>(3) This Regulation is without prejudice to the application of Regulation (EU) 2019/452 of the European Parliament and of the Council¹.</p> <p>1. Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I, 21.3.2019, p. 1).</p>	
Article 40(3a)				
357a		<u>3a. This Regulation is without</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p><u>prejudice to the application of Regulation (EU) 2022/... of the European Parliament and of the Council¹.</u></p> <p><u>1. Regulation (EU) 2022/... of the European Parliament and of the Council on the access of third-country economic operators, goods and services to the Union's public procurement market and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement markets of third countries (International Procurement Instrument - IPI) (OJ L ...).</u></p>		
Article 40(4)				
358	<p>(4) This Regulation takes precedence over Regulation (EU) 2016/1035 of the European Parliament and of the Council until that Regulation becomes applicable pursuant to its Article 18. Where, after that date, a foreign subsidy falls within the scope of application of both Regulation (EU) 2016/1035 and this Regulation, Regulation (EU) 2016/1035 takes precedence. However, the provisions applicable to public procurement and concentrations of this Regulation take precedence over Regulation (EU) 2016/1035.</p>	<p>(4) This Regulation takes precedence over Regulation (EU) 2016/1035 of the European Parliament and of the Council until that Regulation becomes applicable pursuant to its Article 18. Where, after that date, a foreign subsidy falls within the scope of application of both Regulation (EU) 2016/1035 and this Regulation, Regulation (EU) 2016/1035 takes precedence. However, the provisions applicable to public procurement and concentrations of this Regulation take precedence over Regulation (EU) 2016/1035.</p>	<p>(4) This Regulation takes precedence over Regulation (EU) 2016/1035 of the European Parliament and of the Council until that Regulation becomes applicable pursuant to its Article 18. Where, after that date, a foreign subsidy falls within the scope of application of both Regulation (EU) 2016/1035 and this Regulation, Regulation (EU) 2016/1035 takes precedence. However, the provisions applicable to public procurement and concentrations of this Regulation take precedence over Regulation (EU) 2016/1035.</p>	
Article 40(5)				
359				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	(5) This Regulation takes precedence over Council Regulation (EEC) No 4057/86.	(5) This Regulation takes precedence over Council Regulation (EEC) No 4057/86.	(5) This Regulation takes precedence over Council Regulation (EEC) No 4057/86.	
Article 40(6)				
360	(6) This Regulation is without prejudice to the application of Regulation (EU) 2019/712 of the European Parliament and of the Council. Notifiable concentrations, as defined in Article 18 of this Regulation, involving air carriers shall be subject to the provisions of Chapter 3. Public procurement procedures, as defined in Article 27 of this Regulation, involving air carriers shall be subject to the provisions of Chapter 4.	(6) This Regulation is without prejudice to the application of Regulation (EU) 2019/712 of the European Parliament and of the Council. Notifiable concentrations, as defined in Article 18 of this Regulation, involving air carriers shall be subject to the provisions of Chapter 3. Public procurement procedures, as defined in Article 27 of this Regulation, involving air carriers shall be subject to the provisions of Chapter 4.	(6) This Regulation is without prejudice to the application of Regulation (EU) 2019/712 of the European Parliament and of the Council. Notifiable Concentrations, as defined in Article 18 of this Regulation, involving air carriers shall be subject to the provisions of Chapter 3. Public procurement procedures, as defined in Article 27 of this Regulation, involving air carriers shall be subject to the provisions of Chapter 4.	
Article 40(6a)				
360a			<p>(6a) This Regulation shall be interpreted consistently with Directives 2009/81/EC¹, 2014/23/EU², 2014/24/EU³ and 2014/25/EU⁴ of the European Parliament and of the Council, and Council Directives 89/665/EEC⁵ and 92/13/EEC⁶.</p> <p>1. Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			<p>contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.08.2009, p.76).</p> <p>2. Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.03.2014, p.1).</p> <p>3. 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, 28.03.2014, p.65).</p> <p>4. Directive 2014/25/EU of the European Parliament and 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, 28.03.2014, p. 243).</p> <p>5. Council Directive of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts</p> <p>6. Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors</p>	
Article 40(6b)				
360b			<p>(6b) This Regulation is without prejudice to the application of [Regulation XXX of the European Parliament and of the Council on the access of third-country goods and services to the Union's</p>	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries]	
Article 40(7)				
361	(7) An investigation pursuant to this Regulation shall not be carried out and measures shall not be imposed or maintained where such investigation or measures would be contrary to the Union's obligations emanating from any relevant international agreement it has entered into. In particular, no action shall be taken under this Regulation which would amount to a specific action against a subsidy within the meaning of Article 32.1 of the Agreement on Subsidies and Countervailing Measures. This Regulation shall not prevent the Union from exercising its rights or fulfilling its obligations under international agreements.	(7) An investigation pursuant to this Regulation shall not be carried out and measures shall not be imposed or maintained where such investigation or measures would be contrary to the Union's obligations emanating from any relevant international agreement it has entered into. In particular, no action shall be taken under this Regulation which would amount to a specific action against a subsidy within the meaning of Article 32.1 of the Agreement on Subsidies and Countervailing Measures <u>and granted by a third country which is a member of the World Trade Organisation.</u> – This Regulation shall not prevent the Union from exercising its rights or fulfilling its obligations under international agreements.	(7) An investigation pursuant to this Regulation shall not be carried out and measures shall not be imposed or maintained where such investigation or measures would be contrary to the Union's obligations emanating from any relevant international agreement it has entered into. In particular, no action shall be taken under this Regulation which would amount to a specific action against a subsidy within the meaning of Article 32.1 of the Agreement on Subsidies and Countervailing Measures.– This Regulation shall not prevent the Union from exercising its rights or fulfilling its obligations under international agreements.	
Chapter 7:				
362	Chapter 7:	Chapter 7:	Chapter 7:	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	Transitional and final provisions	Transitional and final provisions	Transitional and final provisions	
Article 40a				
362a				
Article 40a, first paragraph				
362b			In accordance with Article 261 of the TFEU, the Court of Justice of the European Union shall have unlimited jurisdiction to review decisions by which the Commission has imposed fines or periodic penalty payments. It may cancel, reduce or increase the fine or periodic penalty payment imposed.	
Article 41				
363	Article 41 Committee procedure for decisions	Article 41 Committee procedure for decisions	Article 41 Committee procedure for decisions	
Article 41, first paragraph				
364	Decisions pursuant to Articles 9, 24(3) and 30 shall be adopted in accordance with the advisory procedure referred to in Article 43(2).	Decisions pursuant to Articles 9, 24(3) and 30 shall be adopted in accordance with the advisory procedure referred to in Article 43(2).	Decisions pursuant to Articles 9, 24(3) and 30 shall be adopted in accordance with the advisory procedure referred to in Article 43(2).	
Article 42				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
365	Article 42 Committee procedure for implementing acts	Article 42 Committee procedure for implementing acts	Article 42 Committee procedure for Implementing acts	
Article 42(1), introductory part				
366	(1) The Commission is empowered to adopt implementing acts concerning:	(1) The Commission is empowered to adopt implementing acts concerning:	(1) The Commission is empowered to adopt implementing acts concerning:	
Article 42(1), point (a)				
367	(a) the form, content and procedural details of notifications of concentrations pursuant to Article 19;	(a) the form, content and procedural details of notifications of concentrations pursuant to Article 19, <u>including a possible simplified procedure</u> ;	(a) the form, content and procedural details of notifications of concentrations pursuant to Article 19, taking utmost account of the goal of limiting administrative burden for notifying parties pursuant to Article 19 of this Regulation and Article 4 of Regulation (EC) No 139/2004 ;	
Article 42(1), point (b)				
368	(b) the form, content and procedural details of notifications of foreign financial contributions in public procurement procedures pursuant to Article 28;	(b) the form, content and procedural details of notifications of foreign financial contributions in public procurement procedures pursuant to Article 28, <u>including a possible simplified procedure</u> ;	(b) the form, content and procedural details of notifications of foreign financial contributions and declaration of no foreign financial contribution in public procurement procedures pursuant to Article 28;	
Article 42(1), point (bb)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
368a			(ba) procedural details for oral statements pursuant to Article 11(6), Article 12(2) point c and Article 13;	
Article 42(1), point (c)				
369	(c) details of the disclosure pursuant to Article 38;	(c) details of the disclosure pursuant to Article 38;	(c) details of the disclosure pursuant to Article 38 and professional secrecy pursuant to Article 39 applicable to the preliminary review pursuant to Article 8 and to the in-depth investigation pursuant to Article 9;	
Article 42(1), point (d)				
370	(d) the form content and procedural details of transparency requirements;	(d) the form content and procedural details of transparency requirements;	(d) the form, content and procedural details of transparency requirements;	
Article 42(1), point (e)				
371	(e) detailed rules on the calculation of time limits;	(e) detailed rules on the calculation of time limits;	(e) detailed rules on the calculation of time limits;	
Article 42(1), point (f)				
372	(f) the conditions and time limits for proposing commitments under Article 30;	(f) the conditions and time limits for proposing commitments under Article 30;	(f) the conditions procedural details and time limits for proposing commitments under Article 24 and 30;	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 42(1), point (g)				
373	(g) detailed rules on the procedural steps referred to in Article 28, 29, 30 and 31 concerning investigations regarding public procurement procedures.	(g) detailed rules on the procedural steps referred to in Article 28, 29, 30 and 31 concerning investigations regarding public procurement procedures.	(g) detailed rules on the procedural steps referred to in Article 28, 29, 30 and 31– concerning investigations regarding public procurement procedures.	
Article 42(1a)				
373a		<u><i>(1a) The first implementing act or acts, covering all of the elements mentioned in paragraph 1, shall be adopted no later than one year after the entry into force of this Regulation.</i></u>		
Article 42(2)				
374	(2) Implementing acts referred to in paragraph 1 shall be adopted in accordance with the advisory procedure referred to in Article 43(2).	(2) Implementing acts referred to in paragraph 1 shall be adopted in accordance with the advisory procedure referred to in Article 43(2).	(2) Implementing acts referred to in paragraph 1 shall be adopted in accordance with the advisory procedure referred to in Article 43(2).	
Article 42(3)				
374a			(3) Before the adoption of any measures pursuant to paragraph 1, the Commission shall make public a draft thereof and seek comments within the time limit it lays down, which may not be less than four weeks.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 43				
375	Article 43 Committee	Article 43 Committee	Article 43 Committee procedure	
Article 43(1)				
376	(1) The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	(1) The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	(1) The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	
Article 43(2)				
377	(2) Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.	(2) Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.	(2) Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.	
Article 44				
378	Article 44 Delegated acts	Article 44 Delegated acts	Article 44 Delegated acts	
Article 44 , introductory part				
379	(1) The Commission is empowered to adopt delegated acts for the purposes of:	(1) The Commission is empowered to adopt delegated acts for the purposes of:	(1) The Commission is empowered to adopt delegated acts in accordance with Article 45 for the purposes of:	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 44(1)				
380	(a) amending the thresholds for notifications as set out in Articles 18 and 27, in the light of the practice of the Commission during the first five years of application of this Regulation, and taking into account the effectiveness of application;	(a) amending the thresholds for notifications as set out in Articles 18 and 27, in the light of the practice of the Commission during the first five years of application of this Regulation, and taking into account the effectiveness of application;	(a) (1) amending raising, if necessary, the thresholds for notifications as set out in Articles 18 and 27, in the light of the practice of the Commission during the first five years of application of this Regulation, and taking into account the effectiveness of application; Article 18(3) for concentrations and in Articles 27 (2) and 27 (2a) for public procurement procedures, after having:	
Article 44(1), point (a)				
381	(b) exempting certain categories of undertakings concerned from the obligation to notify pursuant to Articles 19 and 28, in light of the practice of the Commission in the first five years of application of this Regulation, in case this practice allows to identify economic activities where foreign subsidies are unlikely to distort the internal market;	(b) exempting certain categories of undertakings concerned from the obligation to notify pursuant to Articles 19 and 28, in light of the practice of the Commission in the first five years of application of this Regulation, in case this practice allows to identify economic activities where foreign subsidies are unlikely to distort the internal market;	(b) (a) exempting certain categories of undertakings concerned from the obligation to notify pursuant to Articles 19 and 28, in light of the practice of assessed those thresholds in the light of its practice in preceding years of application of this Regulation, taking into account the administrative burden for the Commission in the first five years of application of this Regulation, in case this practice allows to identify economic activities where foreign subsidies are unlikely to distort the internal market; and the undertaking concerned, as well as the effectiveness of the application	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			of the Regulation, and	
Article 44(1), point (b)				
382	(c) amending the timelines for review and in-depth investigations as set out in Articles 24 and 29.	(c) amending the timelines for review and in-depth investigations as set out in Articles 24 and 29.	(e)(b) amending the timelines for review and in-depth investigations as set out in Articles 24 and 29. concluded on the necessity of raising them in order to:	
Article 44(1), point (b)(i)				
382a			(i) capture more accurately distortive foreign subsidies subject to the notification procedures set out in Chapter 3 and Chapter 4 ; and	
Article 44(1), point (b)(ii)				
382b			(ii) ensure a reasonable administrative burden on the Commission and the undertakings concerned.	
Article 44(1), point (c)				
382c			(c) In particular, the thresholds for notifications in Articles 18(3), 27(2) and 27(2a) shall be raised if the practice of the Commission during the preceding years of application of this Regulation	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 44(1), point (c)(i)				
382d			(i) shows that a large part of notifications made pursuant to Chapters 3 or 4 resulted either in the Commission closing the preliminary review pursuant to Article 8(3) or in the Commission adopting, following the in-depth investigation, a non-objection decision pursuant to Article 9(4), and	
Article 44(1), point (c)(ii)				
382e			(ii) provides indications that the thresholds for notifications as set out in Articles 18(3) 27(2) and 27(2a) are set too low in terms of administrative burden for the Commission and the undertakings concerned, or	
Article 44(1), point (c)(iii)				
382f			(iii) provides any other additional indications supporting such conclusion.	
Article 44(2)				
383	(2) Delegated acts referred to in	(2) <i>Delegated acts referred to in</i>	(2) reducing the timelines for	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	paragraph 1 shall be adopted in accordance with Article 45.	paragraph 1 shall be adopted in accordance with Article 45.	preliminary review and in-depth investigations as set out in Article 24(2) and Article 24(4) for notified concentrations and in Article 29(2) and in Article 29(4) for notified financial contributions in public procurement procedures. The Commission may adopt such delegated acts referred to in paragraph 1 shall be adopted in accordance with Article 45 where the practice of the Commission in the application of this Regulation shows that the duration of the Commission's assessment can be performed more quickly than the timelines foreseen in this Regulation and hence can justify to reduce the timelines in Articles 24(2), 24(4), 29(2) and 29(4).	
Article 45				
384	Article 45 Exercise of the delegation	Article 45 Exercise of the delegation	Article 45 Exercise of the delegation	
Article 45(1)				
385	(1) The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	(1) The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	(1) The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	
Article 45(2)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
386	(2) The power to adopt delegated acts referred to in Article 44 shall be conferred on the Commission for an indeterminate period of time starting two years after the date of entry into force of this Regulation.	(2) The power to adopt delegated acts referred to in Article 44 shall be conferred on the Commission for an indeterminate period of time starting two years after the date of entry into force of this Regulation.	(2) The power to adopt delegated acts referred to in Article 44 44(1) and Article 44(2) shall be conferred on the Commission for an indeterminate period of time starting five years, on [...] [two years after the date of entry into force of this Regulation]. The Commission shall draw up a report in respect f the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.	
Article 45(3)				
387	(3) The delegation of power referred to in Article 44 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated	(3) The delegation of power referred to in Article 44 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity	(3) The delegation of power referred to in Article 44 44(1), and Article 44(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union Official Journal of the European Union or at a later date	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	acts already in force.	of any delegated acts already in force.	specified therein. It shall not affect the validity of any delegated acts already in force.	
Article 45(4)				
388	(4) Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.	(4) Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.	(4) Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.	
Article 45(5)				
389	(5) As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	(5) As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	(5) As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	
Article 45(6)				
390	(6) A delegated act adopted pursuant to Article 44 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament	(6) A delegated act adopted pursuant to Article 44 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European	(6) A delegated act adopted pursuant to Article 44 44(1) or Article 44(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.	Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.	that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.	
Article 45a				
390a			Separate delegated acts for different delegated powers	
Article 45a				
390b			The Commission shall adopt a separate delegated act in respect of each power delegated to it pursuant to this Regulation	
Article 46				
391	Article 46 Review	Article 46 Review	Article 46 Review	
Article 46, first paragraph				
392	Within five years after the entry into force of this Regulation at the latest, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation, accompanied, where	<u>1.</u> Within five ^{two} years after the entry into force of this Regulation at the latest, <u>and every three years thereafter,</u> the Commission shall <u>review and evaluate the functioning and effectiveness of this Regulation</u>	Within five By [OJ: insert the date three years after the entry into force of this Regulation] and every five years thereafter at the latest, the Commission shall present a report to the European Parliament and the	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	the Commission considers it appropriate, by relevant legislative proposals.	<u>and</u> present a report to the European Parliament and the Council on the <u>its</u> application. <u>This review shall include an assessment of the notification thresholds set out in Articles 18 and 27 and their effects on of this Regulation, accompanied, where the Commission's capacity to implement this Regulation in an effective manner</u> considers it appropriate, by relevant legislative proposals.	Council on the application of this Regulation, accompanied, where the Commission considers it appropriate, by relevant legislative proposals. This report will notably include an evaluation of the practice of the Commission in terms of the criteria used in deciding to open preliminary reviews and in-depth investigations on the basis of this Regulation, as well as an assessment of the practice of the Commission regarding the determination of the positive and negative effects in the context of the balancing test pursuant to Article 5.	
Article 46, first paragraph a				
392a		<u>1a. Where the report recommends amendments to this Regulation and where the Commission considers it appropriate in light of its practice during the application of this Regulation and taking into account the effectiveness of application, the report may be accompanied by relevant legislative proposals, including:</u> <u>(a) to amend the thresholds for notifications as set out in Articles 18 and 27;</u> <u>(b) to exempt certain categories of undertakings concerned, such as</u>		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p><u>good-faith sovereign wealth or pension funds, from the obligation to notify pursuant to Articles 19 and 28, especially where the practice of the Commission enables the identification of economic activities where foreign subsidies are unlikely to distort the internal market;</u></p> <p><u>(c) to establish specific thresholds for notifications for certain economic sectors or differentiated thresholds for different types of public procurement contracts, especially where the practice of the Commission enables the identification of economic activities where foreign subsidies are more likely to distort the internal market, including as regards strategic sectors and critical infrastructure;</u></p> <p><u>(d) to amend the timelines for review and in-depth investigations as set out in Articles 24 and 29;</u></p> <p><u>(e) to abrogate the present Regulation, if the Commission considers that multilateral rules to address distortive subsidies have rendered this Regulation fully redundant.</u></p>		
Article 47				
393	Article 47 Transitional provisions	Article 47 Transitional provisions	Article 47 Transitional provisions	
Article 47(1)				

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
394	(1) This Regulation shall apply to foreign subsidies granted in the ten years prior to the date of application of this Regulation where such foreign subsidies distort the internal market after the start of application of this Regulation.	(1) This Regulation shall apply to foreign subsidies granted in the ten ^{seven} years prior to the date of application of this Regulation where such foreign subsidies distort the internal market after the start of application of this Regulation.	(1) This Regulation shall apply to foreign subsidies granted in the ten ^{five} years prior to the date of application of this Regulation where such foreign subsidies distort the internal market after the start of application of this Regulation.	
Article 47(2)				
395	(2) This Regulation shall apply to foreign financial contributions granted in the three years prior to the date of application of this Regulation where such foreign financial contributions were granted to an undertaking notifying a concentration or notifying financial contributions in the context of a public procurement procedure pursuant to this Regulation.	(2) This Regulation shall apply to foreign financial contributions granted in the three years prior to the date of application of this Regulation where such foreign financial contributions were granted to an undertaking notifying a concentration or notifying financial contributions in the context of a public procurement procedure pursuant to this Regulation.	(2) By way of derogation to paragraph (1) , this Regulation shall apply to foreign financial contributions granted in the three years prior to the date of application of this Regulation where such foreign financial contributions were granted to an undertaking notifying a concentration or notifying financial contributions in the context of a public procurement procedure pursuant to this Regulation.	
Article 47(3)				
396	(3) This Regulation shall not apply to concentrations for which the agreement was concluded, the public bid was announced, or a controlling interest was acquired before the date of application of the Regulation.	(3) This Regulation shall not apply to concentrations for which the agreement was concluded, the public bid was announced, or a controlling interest was acquired before the date of application of the Regulation.	(3) By way of derogation to paragraph (1) , this Regulation shall not apply to concentrations for which the agreement was concluded, the public bid was announced, or a controlling interest was acquired before the date of application of the Regulation.	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 47(4)				
397	(4) This Regulation shall not apply to public procurement procedures initiated before the date of application of the Regulation.	(4) This Regulation shall not apply to public procurement procedures initiated before the date of application of the Regulation.	(4) By way of derogation to paragraph (1) , this Regulation shall not apply to public procurement contracts that have been awarded, or procedures initiated before the date of application of the Regulation.	
Article 48				
398	Article 48 Entry into force and date of application	Article 48 Entry into force and date of application	Article 48 Entry into force and date of application	
Article 48, first paragraph				
399	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union Official Journal of the European Union.	
Article 48, second paragraph				
400	It shall apply from [date: six months after entry into force].	It shall apply from [date: six months after entry into force].	It shall apply from [date: six months after entry into force].	
Article 48, third paragraph				
400a			By way of derogation from the second paragraph of this Article,	

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
			Articles 12(5), 12(6) and 12(7) shall apply from [date: eighteen months after entry into force].	
Article 48, fourth paragraph				
401	This Regulation shall be binding in its entirety and directly applicable in all Member States.	This Regulation shall be binding in its entirety and directly applicable in all Member States.	This Regulation shall be binding in its entirety and directly applicable in all Member States.	
Formula				
402	Done at Brussels,	Done at Brussels,	Done at Brussels,	
Formula				
403	For the European Parliament	For the European Parliament	For the European Parliament	
Formula				
404	The President	The President	The President	
Formula				
405	For the Council	For the Council	For the Council	
Formula				
406	The President	The President	The President	