

COMMUNICATION FROM THE COMMISSION**Communication pursuant to Articles 4(2), 8(1), 15, 17(2) and 25 of Implementing Regulation (EU) 2023/1441 on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market**

(2023/C 246/02)

Pursuant to Article 25(1) of Commission Implementing Regulation (EU) 2023/1441 of 10 July 2023 on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market ('Implementing Regulation') ⁽¹⁾ the transmission of documents to and from the Commission pursuant to Regulation (EU) 2022/2560 and the Implementing Regulation shall take place through digital means, except where the Commission exceptionally allows for the use of the means identified in Article 25(6) and (7) of the Implementing Regulation. Pursuant to Article 25(3) of the Implementing Regulation, the Commission may issue technical specifications regarding the means of transmission and signature of documents to be provided pursuant to Regulation (EU) 2022/2560 and the Implementing Regulation.

This Communication sets out the technical specifications relevant for the transmission and signature of notifications submitted pursuant to Article 20 of Regulation (EU) 2022/2560 and Article 4 of the Implementing Regulation; comments following the opening of an in-depth investigation submitted pursuant to Article 10(3) of Regulation (EU) 2022/2560 and Article 8 of the Implementing Regulation; commitments offered by the undertakings concerned submitted pursuant to Article 25 of Regulation (EU) 2022/2560 and Article 15 of the Implementing Regulation; and observations on the Commission's grounds on which it intends to adopt its decision submitted pursuant to Article 42 Regulation (EU) 2022/2560 and Article 17 of the Implementing Regulation.

1. METHOD OF TRANSMITTING DOCUMENTS TO THE COMMISSION

1. Transmissions of documents under 10 gigabytes in size should be sent electronically using EU Send Web ('EU Send') ⁽²⁾, the Commission's online exchange platform for secure transmission of documents. EU Send requires prior registration and prescribes size limitations to documents transmitted through the system that are subject to change. If a transmission is under 10 gigabytes in size but exceeds the size limitations of EU Send, it should be sent in several parts.
2. Transmissions sent using EU Send must be accompanied by a transmittal form, provided by EU Send. The transmittal form must be completed correctly.
3. Transmissions of more than 10 gigabytes in size may be hand-delivered or sent by registered post to the address published on the website of the Commission's Directorate-General for Competition using hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in a USB 2.0 or 3.0 external enclosure.
4. Documents sent by registered post or delivered by hand should be addressed to the Commission's Directorate-General for Competition at the address published on website of the Commission's Directorate-General for Competition. Addressing documents to other Commission departments may result in delays.

2. SIGNING DOCUMENTS ELECTRONICALLY

5. This section sets out technical specifications for the signature of documents submitted electronically (where a signature is required). This applies to documents sent using EU Send and to those delivered to the Commission on external storage devices.

⁽¹⁾ OJ L 177, 12.7.2023, p. 1.

⁽²⁾ For instructions on how to use EU Send (also called eTrustEx), see https://competition-policy.ec.europa.eu/index/it-tools/etrustex_en

6. To be considered valid, documents submitted electronically must be signed using at least one Qualified Electronic Signature (QES) complying with the requirements set out in Regulation (EU) No 910/2014 (the 'eIDAS Regulation') ⁽³⁾. Only QES are explicitly recognised as having legal effect equivalent to that of hand-written signatures in all Member States. Therefore, other types of electronic signatures, such as scanned signatures or Advanced Electronic Signatures as set out in the eIDAS Regulation, that do not meet the requirements of QES, are not accepted.
7. The format of the QES must comply with one of the formats referenced in Commission Implementing Decision (EU) 2015/1506 ⁽⁴⁾ or their latest specifications as these are published by the European Telecommunications Standards Institute.
8. Qualified Trust Services ⁽⁵⁾ may be obtained from Qualified Trust Service Providers (QTSPs) as set out in the eIDAS Regulation. QTSPs are commercial service providers and qualified members of the EU's Trust Scheme. QTSPs are listed in the Trusted List Browser ⁽⁶⁾.
9. The Commission will validate QES-signed documents. To increase confidence that a QES will be successfully validated by the Commission, it is possible to test its validity by involving a QTSP who provides a paid qualified validation service ⁽⁷⁾. The Commission's Digital Signature Services web application may also be used for demonstration purposes ⁽⁸⁾. For the avoidance of doubt, this platform must not be used to submit any case-related documents or any confidential or case-specific information.
10. Signed documents must not be encrypted or contain any certificates, other than QES- related certificates.
11. The QES metadata must match the contact details of the signatory. When using one or several QES to sign a document, please provide, for information purposes, the contact details of the signatory with the indication '[e-signed]' at the end of the document. A visual representation of the electronic signature is optional and brings no additional legal value.
12. Modifying a signed document will invalidate any existing electronic signatures. The document therefore should not be modified after introducing one or more QES.
13. Documents electronically signed using a QES must not be locked or password- protected. This will enable the Commission's dedicated software to access the document and verify the validity of the QES.

3. TECHNICAL SPECIFICATIONS OF DOCUMENTS SUBMITTED ELECTRONICALLY

14. This section sets out technical specifications for documents submitted electronically, such as transmissions sent using EU Send and those delivered on external storage devices.

⁽³⁾ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

⁽⁴⁾ Commission Implementing Decision (EU) 2015/1506 of 8 September 2015 laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies pursuant to Articles 27(5) and 37(5) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market (OJ L 235, 9.9.2015, p. 37).

⁽⁵⁾ A qualified trust service means a trust service that meets the applicable requirements laid down in Regulation (EU) No 910/2014.

⁽⁶⁾ QTSPs by Member State are listed here: <https://esignature.ec.europa.eu/efda/tl-browser/#/screen/home>. Only QTSPs with the tag 'QCert for ESig' can provide a qualified certificate for electronic signature, which is required for QES.

⁽⁷⁾ QTSPs by Member State are listed here: <https://esignature.ec.europa.eu/efda/tl-browser/#/screen/home>. QTSPs indicated as 'QVal for QESig' can provide qualified validation service for qualified electronic signature.

⁽⁸⁾ The Commission's Digital Signature Services web application: <https://ec.europa.eu/cefdigital/DSS/webapp-demo/validation>.

15. All documents submitted in electronic format must be scanned for and be free of viruses before submission. The Commission will delete any infected files and dispose of any infected external storage media. Deleted or disposed of files may make the submission invalid or incomplete.
16. Documents submitted using EU Send must not be encrypted. For documents delivered on external storage devices, encryption is strongly encouraged. Encryption should be implemented only on the storage device. Individual documents stored on the device should not be password-protected. Decryption passwords should be sent separately.
17. All documents (except those documents subject to point 20 below) must be in Portable Document Format (PDF) or spreadsheet (XLSX) format. Documents in PDF must be searchable, either as digitally created PDFs or by having been scanned for optical character recognition (OCR). Documents in XLSX format must be submitted with all underlying data unredacted and all underlying formulas and algorithms intact.
18. The filename of documents should be defined so that the relevant section in the Form FS-CO ⁽⁹⁾ or in other submissions is easily identifiable. Each document filename should also contain the number of the proceeding for which the submission is made. Document filenames must not include special or non-Latin characters, and the complete path must be limited to 250 characters.
19. Every page in a PDF must be marked with corporate identification and consecutive document control numbers (e.g. ABC-00000001).

4. ADDITIONAL SPECIFICATIONS FOR SUPPORTING DOCUMENTS

20. Supporting documents (such as those submitted as part of section 8 of the Form FS-CO) must be submitted in native format (i.e. not converted into PDF).
21. Emails and other files must be submitted as separate files (they should not be in '.pst', '.zip' or '.nsf' formats). Nsf files should be converted into any 'single' email format (such as '.msg' or '.eml').
22. Supporting documents must be transmitted in whole and unredacted. All underlying metadata must be intact. No deduplication or email threading software may be used.

5. ALTERNATIVE METHODS TO SIGN AND SUBMIT DOCUMENTS

23. Where transmission via EU Send is not technically possible and the Commission exceptionally allows other means of transmission to be used, documents under 10 gigabytes in size may be hand-delivered or sent by registered post according to point 4 above. The electronic documents must be digitally signed with a QES and be put on external storage devices, such as USB, CD, or DVD, or hard disk drives formatted in Microsoft Windows-compatible, uncompressed data in a USB 2.0 or 3.0 external enclosure.
24. If signing documents with a QES is not feasible, and the Commission exceptionally allows other means of signature to be used, a hand-signed paper copy of the complete submission may be hand-delivered or sent by registered post according to point 4 above. In this case, the submission must be accompanied by two digital copies of the full submission on external storage devices (such as USB, CD, or DVD, or external hard disk drives formatted in Microsoft Windows-compatible, uncompressed data in a USB 2.0 or 3.0 external enclosure) for information. The submission must also be accompanied by a hand-signed declaration stating that the signed paper copy and digital copies are identical.

⁽⁹⁾ Annex I of the Implementing Regulation.

6. DATE OF APPLICABILITY

25. The instructions will be applicable as of the day of the entry into force of the Implementing Regulation.
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