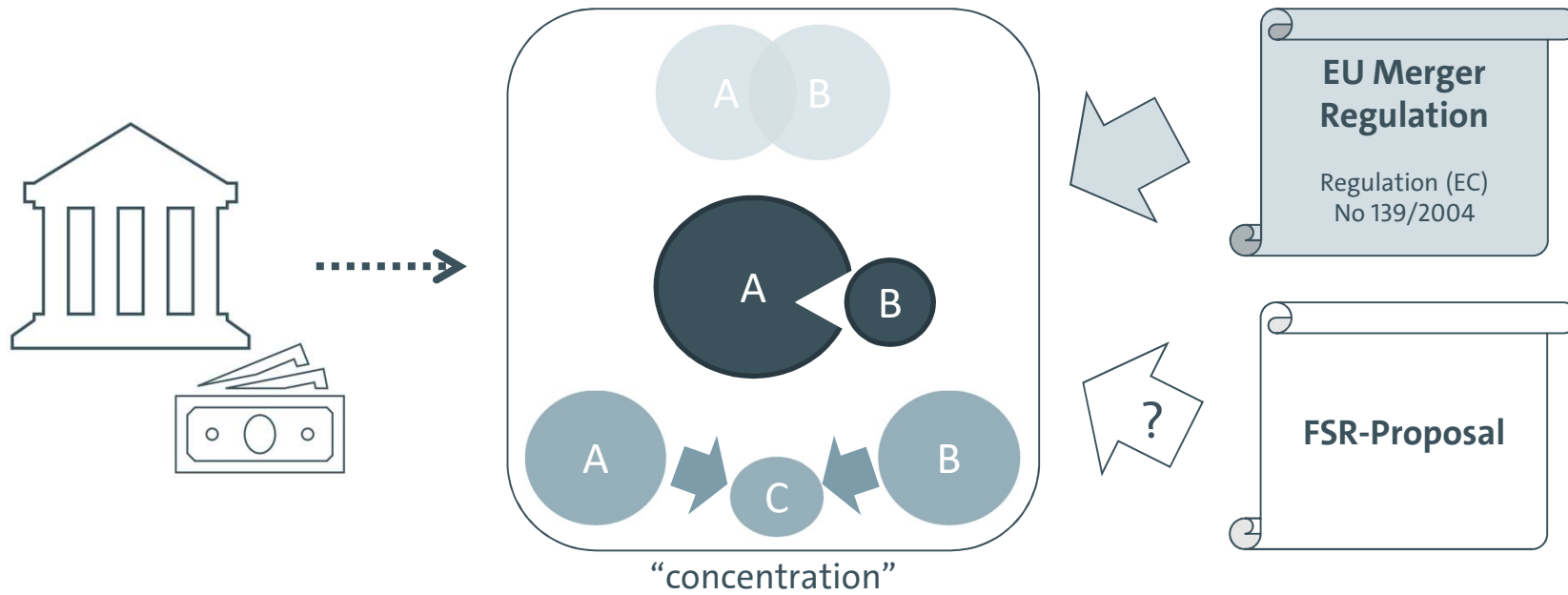


Dr. Tabea Bauermeister, B.A.

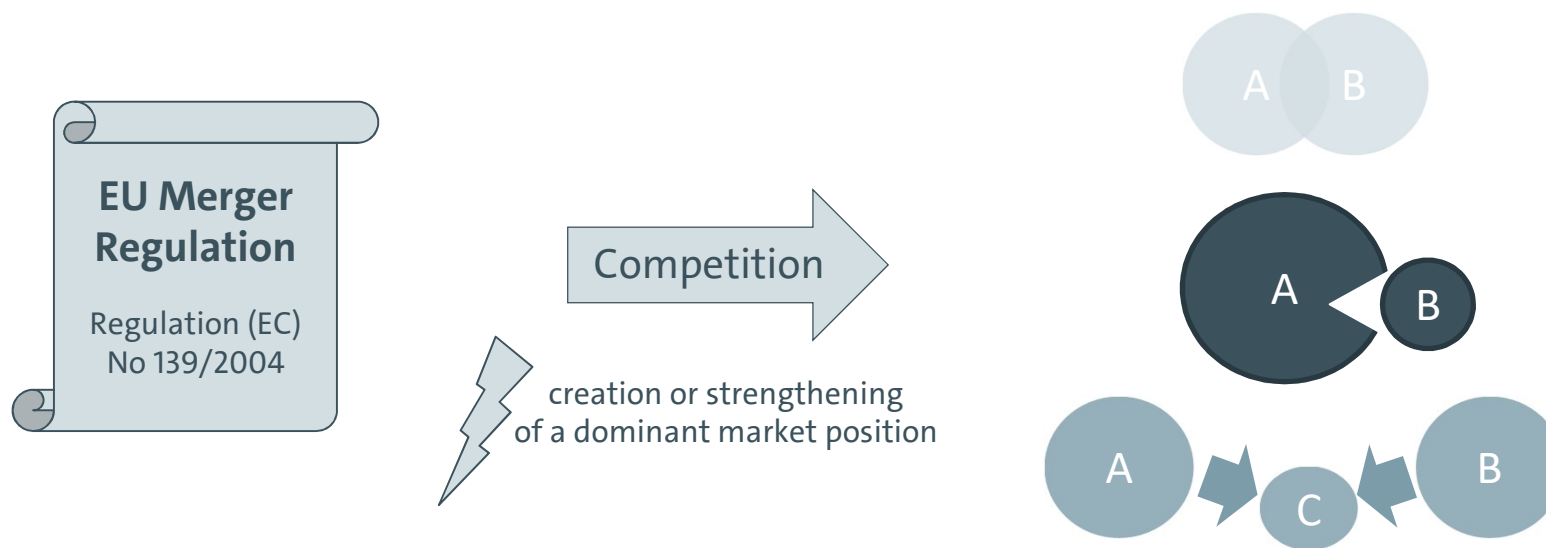
The protection against foreign subsidies distorting the internal market – Tool 1 as a merger control instrument –



Emerging questions

- I. Is there a regulatory gap regarding concentrations and foreign subsidies?
- II. Which mechanisms does Tool 1 introduce for regulating concentrations, especially in comparison to the EU Merger Regulation?
- III. Has Tool 1 the potential to successfully tackle the regulatory gap without undue impediment to M&A-transactions?

I. Is there a regulatory gap regarding concentrations and foreign subsidies?

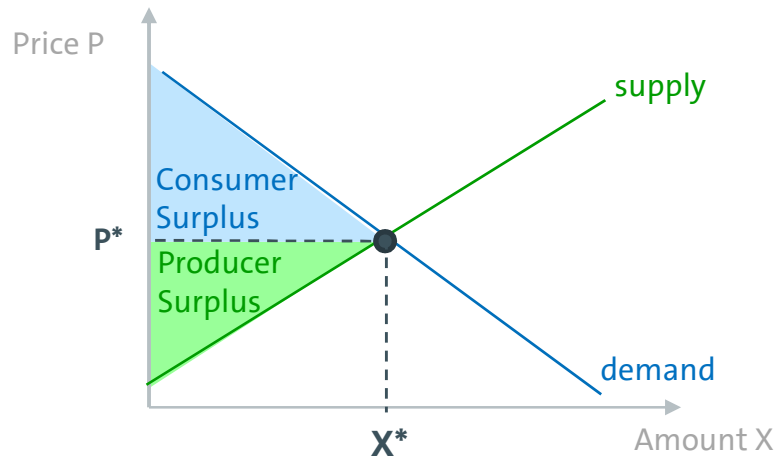


I. Is there a regulatory gap regarding concentrations and foreign subsidies?

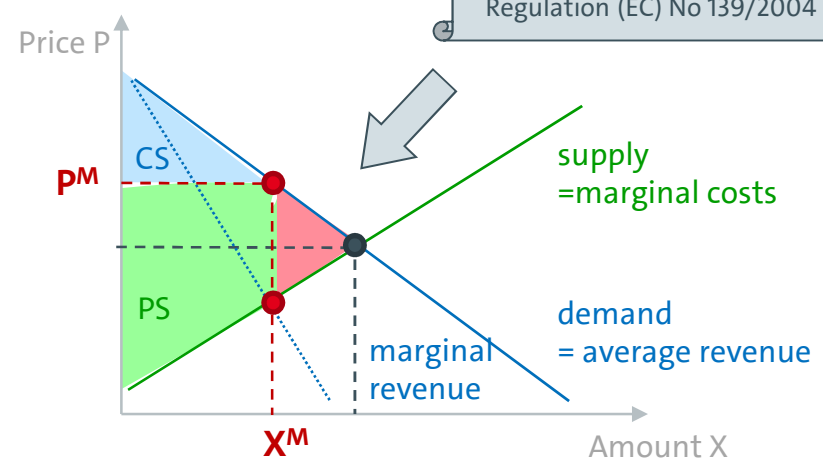
1. Hazards of a dominant market position

Welfare

Scenario A: perfect competition



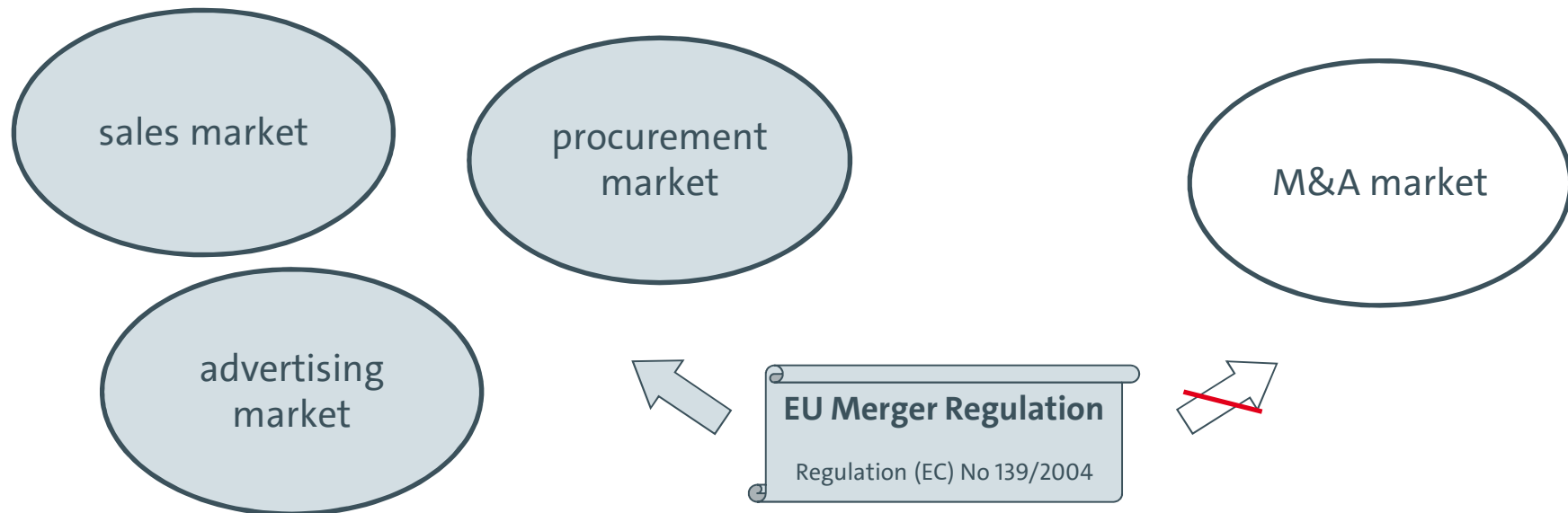
Scenario B: absolute pricing power



EU Merger Regulation
 Regulation (EC) No 139/2004

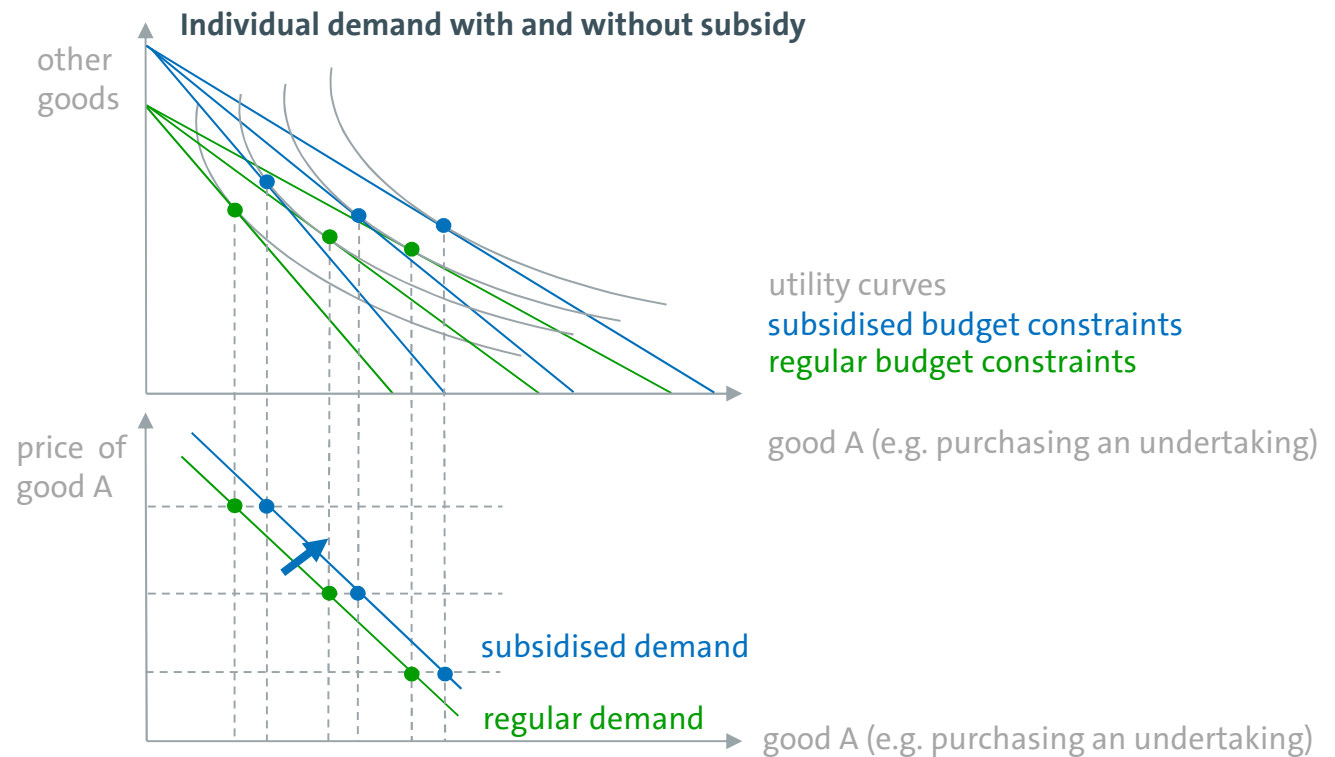
I. Is there a regulatory gap regarding concentrations and foreign subsidies?

2. Markets potentially affected by concentrations



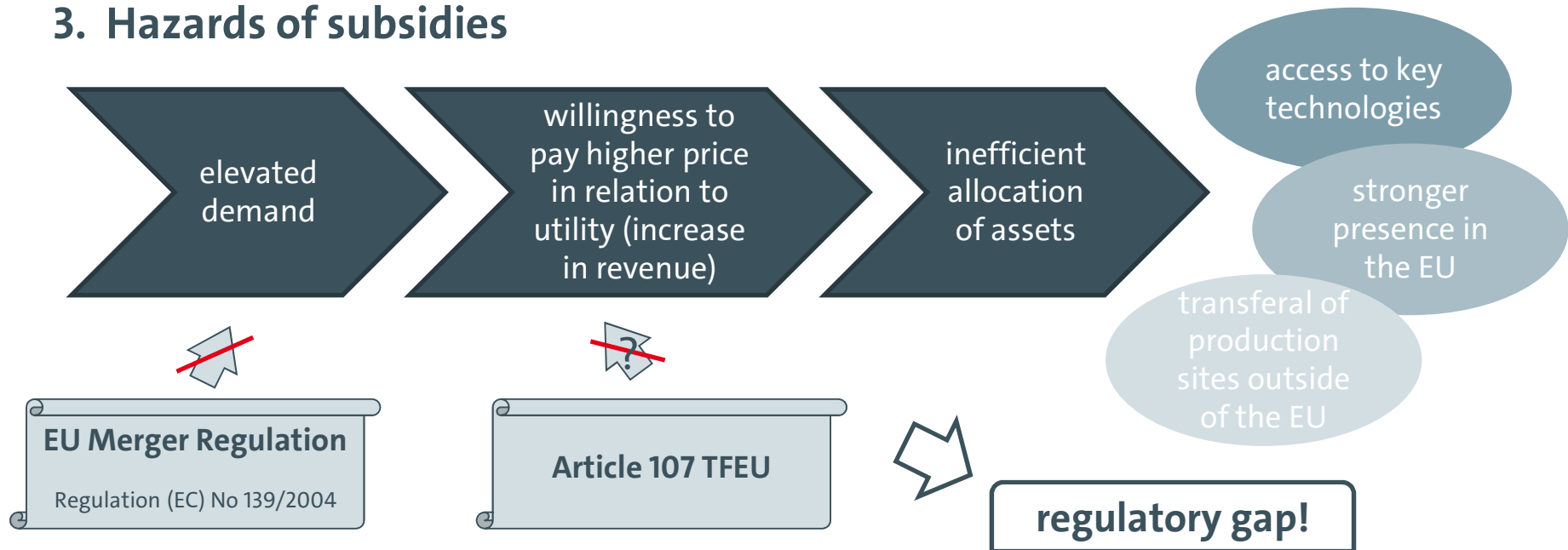
I. Is there a regulatory gap regarding concentrations and foreign subsidies?

3. Hazards of subsidies



I. Is there a regulatory gap regarding concentrations and foreign subsidies?

3. Hazards of subsidies

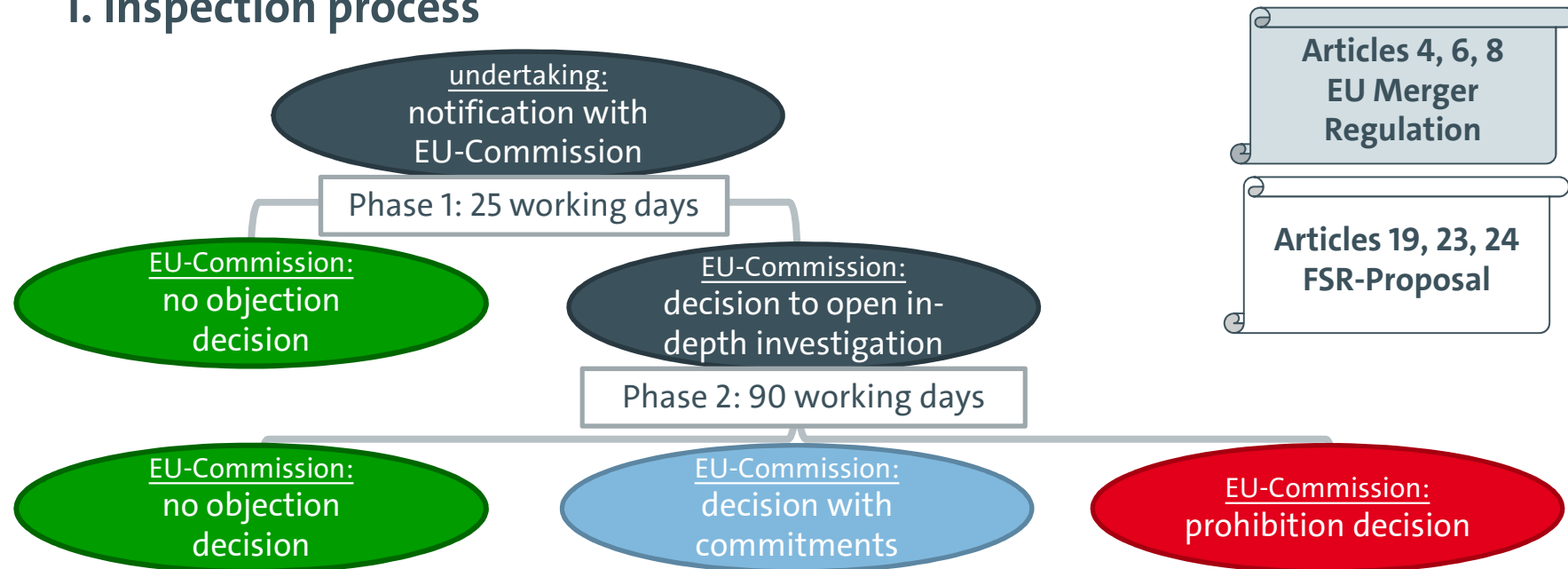


Emerging questions

- I. Is there a regulatory gap regarding concentrations and foreign subsidies?
- II. Which mechanisms does Tool 1 introduce for regulating concentrations, especially in comparison to the EU Merger Regulation?
 1. Inspection process
 2. Scope of application
 3. Prohibition criteria
- III. Has Tool 1 the potential to successfully tackle the regulatory gap without undue impediment to M&A-transactions?

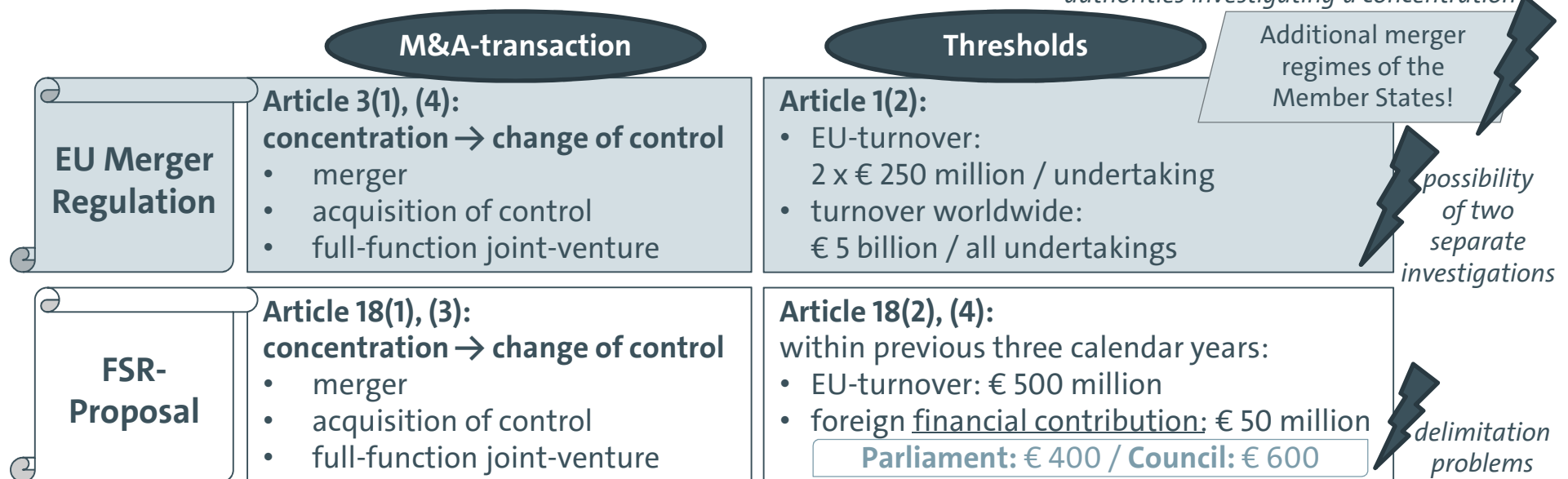
II. Mechanisms introduced and comparison to Merger Regulation

1. Inspection process



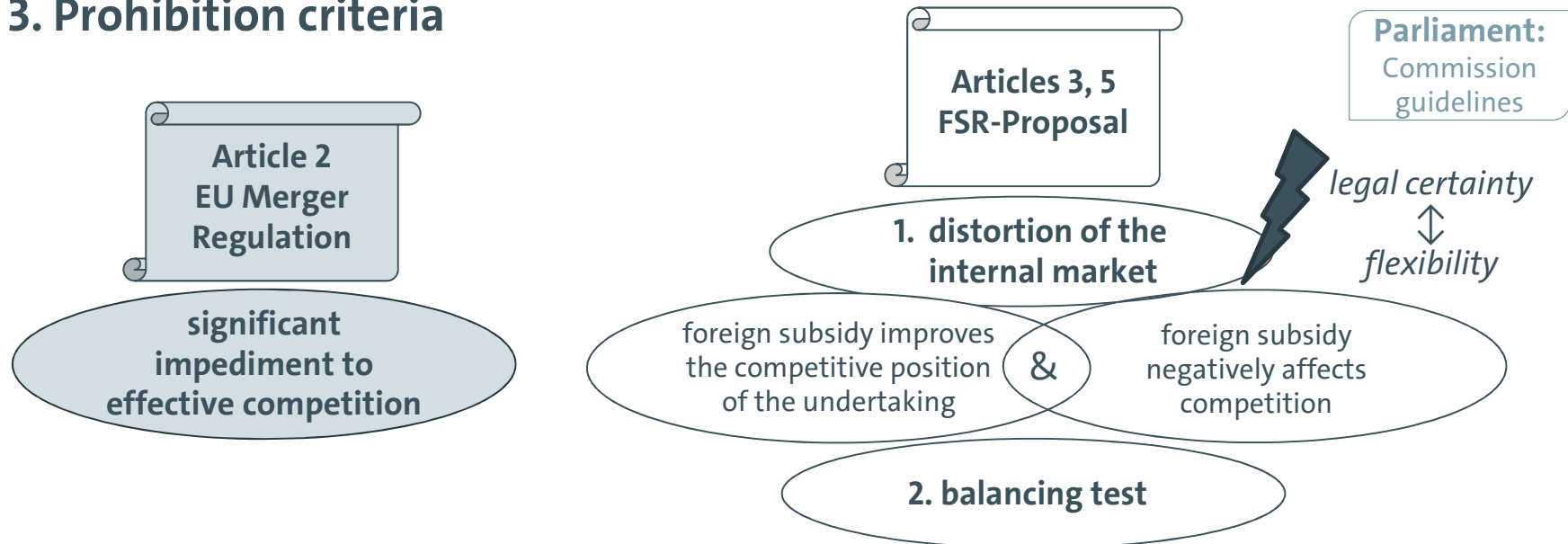
II. Mechanisms introduced and comparison to Merger Regulation

2. Scope of application



II. Mechanisms introduced and comparison to Merger Regulation

3. Prohibition criteria



→ general criteria of FSR-Proposal (non-specific to concentrations)

II. Which mechanisms does Tool 1 introduce for regulating concentrations, especially in comparison to the EU Merger Regulation?

- close alignment in the inspection process yet separate investigations
- certain alignment in scope of application
yet differences in accordance with different objectives
- in accordance with respective objectives: different prohibition criteria

Emerging questions

- I. Is there a regulatory gap regarding concentrations and foreign subsidies?
- II. Which mechanisms does Tool 1 introduce for regulating concentrations, especially in comparison to the EU Merger Regulation?
- III. Has Tool 1 the potential to successfully tackle the regulatory gap without undue impediment to M&A-transactions?

III. Has Tool 1 the potential to successfully tackle the regulatory gap without undue impediment to M&A-transactions?

	(+)	(-)
inspection process	<ul style="list-style-type: none"> notification obligation → effectivity strict time limits → efficiency 	<ul style="list-style-type: none"> additional procedure → more red tape
scope of application	<ul style="list-style-type: none"> definition of concentration identical to EU Merger Regulation → legal certainty thresholds: EU and subsidy nexus 	<ul style="list-style-type: none"> delimitation problems regarding foreign financial contribution → legal uncertainty and superfluous procedures worst-case scenario: (two) separate investigations by (two) separate authorities with (two) contradictory decisions
prohibition criteria	<ul style="list-style-type: none"> in accordance with objective 	<ul style="list-style-type: none"> vagueness → legal uncertainty



adequate but weak spots

III. Has Tool 1 the potential to successfully tackle the regulatory gap without undue impediment to M&A-transactions? – thoughts and ideas on mitigating the impediment to M&A-transactions

large-scale solution:
joint procedure
(esp. extension of
Merger Regulation)



different objectives

small-scale solution:
internal alignment
mechanisms



*still duplication of efforts,
utopic (?)*

intermediary solution:
mandatory
consolidation in case
of phase 2-
investigation



*transferal from national
authority to EU Commission*

Thank you for your attention!

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