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SWD(2017) 217 final

## **Compliance Package**

### **COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT**

*Accompanying the document*

**Proposal for a**

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**setting out the conditions and procedure by which the Commission may request  
undertakings and associations of undertakings to provide information in relation to the  
internal market and related areas**

{COM(2017) 257 final}  
{SWD(2017) 215 final}  
{SWD(2017) 216 final}

<b>Executive Summary Sheet</b>
Impact assessment on Proposal to introduce a Single Market Information Tool
<b>A. Need for action</b>
<b>Why? What is the problem being addressed?</b>
<p>EU citizens and companies are frustrated that barriers to the single market are not being addressed quickly enough. When they alert the Commission or Member States to a problem in the single market, they must provide evidence to show it is caused by a breach of EU rules. This information can be hard to obtain, especially in cross-border cases. This is because the information is often:</p> <ul style="list-style-type: none"> <li>• detailed, sensitive non-public firm-level information that cannot be obtained from third party data providers</li> <li>• available to national authorities in only a few Member States</li> <li>• not comparable across Member States.</li> </ul> <p>Market participants who have this confidential information currently lack incentives to share it and there is no system in place to ensure the veracity of shared data. At present, EU and national tools for collecting information are not sufficient to get this information from firms, citizens, or national authorities.</p>
<b>What is this initiative expected to achieve?</b>
<ul style="list-style-type: none"> <li>• Improve the functioning of the single market through more effective enforcement of rules.</li> <li>• Make it easier for the Commission and Member States to access firm-level data, if needed to detect and correct misapplication of EU law or non-compliance with single market rules.</li> <li>• Help Member States to better enforce single market rules at national level.</li> <li>• If a Member State does not comply with its single market obligations, the Commission may use this information to support its infringement policy against it.</li> </ul>
<b>What is the value added of action at the EU level?</b>
<p>The Commission is best placed to address the issue of collecting and coordinating targeted firm-level information in the single market area, given the cross-border nature of the data needed.</p> <p>EU action would avoid complex and lengthy coordination efforts between Member States and the Commission, especially in cases where information is needed from market participants operating in more than one Member State. EU action would help both the Member States and the Commission to get the information needed and reduce the administrative burden for the firms and public authorities involved.</p>
<b>B. Solutions</b>
<b>What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?</b>
<p>A non-legislative option could involve Member States and the Commission exchanging best practice and developing guidance on collecting firm-level information. Other legislative options still being considered:</p> <ul style="list-style-type: none"> <li>• Option 2 removes national rules preventing national authorities from sharing with the Commission and other Member States firm-level information they already possess or can access under existing EU/national law.</li> <li>• Option 3 introduces investigative powers through national-level single market information tools.</li> <li>• Option 4 introduces an EU-level Single Market Information Tool (SMIT), to be used on a case-by-case basis. It would be limited to instances where it is suspected that barriers are preventing the single market from working, and where the requested information is needed for quick and effective decision-making and is not available quickly enough through other means. Information would only be requested from market participants that can easily provide it.</li> <li>• Option 5 is a hybrid option combining options 2 and 4.</li> </ul> <p>Options abandoned include expanding the coverage of European statistics and introducing regular reporting obligations under the Accounting Directive. SMIT (Option 4) is the preferred option. It scores highest in terms of subsidiarity and proportionality and is the most effective and cost-efficient option. It will help individual Member states to overcome coordination and legal jurisdiction problems in cross-border cases.</p>
<b>Who supports which option?</b>
<p>The public consultation showed that most firms prefer to share information voluntarily, so favour a non-legislative option. If SMIT is implemented, they say it should safeguard data confidentiality and be used only as a last</p>

resort. Only readily available information should be requested. Of the 10 Member States that responded, four support SMIT, and two do not. Authorities from two Member States would prefer that the Commission coordinate information requests, while two would rather be given the power to request information from firms in any Member State directly, without Commission involvement. All consumer organisations support the use of SMIT if the information is essential to resolving a breach of the rights of consumers or businesses. Half of consumer organisations support using SMIT to prepare new EU rules.

### **C. Impacts of the preferred option**

#### **What are the benefits of the preferred option (if any, otherwise main ones)?**

The cost-benefit calculation for SMIT (Option 4) is based on the assumption that it will be used yearly for four small requests, involving up to five firms, and one larger request, involving up to 50 firms. Having robust information on malfunctions in the single market would enable the Commission and national authorities to ensure greater compliance with single market law and better designed EU policies. This would strengthen consumer trust in the single market and contribute to fulfilling its potential. Better access to information should result in better-targeted single market enforcement at national level, limiting the number of formal infringement cases against Member States. In two recent cases, up to €50 million in unpaid taxes was recovered when investigative authorities in the State aid sphere allowed the Commission access to key firm-level information. In the single market area, the potential savings on an individual infrastructure procurement case exceed 3 billion euros. There could be indirect social/environmental benefits if SMIT is used to address cases of single market malfunctioning in those areas.

#### **What are the costs of the preferred option (if any, otherwise main ones)?**

Responding to SMIT request would involve cost for the targeted firms. For large firms, costs would range from €1 200 to €4 400. For small and medium-sized enterprises (SMEs) they would range from €300 to €1 000. If firms seek legal advice to comply with the information request, they would incur an additional cost ranging from €1 000 to €4 000. The total annual cost of preparing responses and legal advice for the estimated five annual requests would range from €370 000 to €610 000. Firms could also submit a non-confidential response to be shared with Member States. This could ease confidentiality concerns at a slight additional cost. A conservative estimate of the total cost of SMIT, including the cost to the Commission, ranges from €0.49 million to €1.04 million. There is no direct social or environmental cost.

#### **How will businesses, SMEs and micro-enterprises be affected?**

SMIT primarily targets large firms with a high market share and places the main administrative burden on them. Micro-enterprises will be exempt. SMEs may sometimes be asked to participate. The estimated cost of replying for an individual SME ranges from €300 to €1 000 per request with an additional potential legal advice cost of €1 000 (roughly 25 % of the response cost for a large firm). Firms of all sizes will benefit from a better functioning single market thanks to more targeted enforcement by the Commission and the Member States. They would also benefit from better-designed EU rules and a more effective regulatory environment. In addition, better evidence could prevent unnecessary rules being drawn up.

#### **Will there be significant impacts on national budgets and administrations?**

There is no cost of implementing SMIT for national authorities. The Commission would incur data collection and analysis costs ranging from €120 000 to €430 000 for the estimated five annual requests. The Commission costs will not require any new budgetary commitments, just the redeployment of existing staff and infrastructure. The Commission could save between €0.7 million and €1.6 million on external reports. National authorities could also make savings here.

#### **Will there be other significant impacts?**

Firms/consumers would benefit from a better functioning single market, through lower entry barriers, greater competition, more competitiveness and easier/cheaper cross-border (and potentially international) expansion. This initiative fully respects the legitimate interest of firms to protect their business secrets. It does not affect personal data protection rights. It also respects the right to good administration, the right of defence, the principle of proportionality of sanctions, the right to an effective solution and the right to a fair trial.

### **D. Follow up**

#### **When will the policy be reviewed?**

The policy will be reviewed five years after the adoption of the proposal.