

INCEPTION IMPACT ASSESSMENT			
TITLE OF THE INITIATIVE	Single Market Information Tool		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	GROW 01/B4 [AP 2017/GROW/014]	DATE OF ROADMAP	01/08/2016
LIKELY TYPE OF INITIATIVE	Legislative proposal		
INDICATIVE PLANNING			
ADDITIONAL INFORMATION			
<p style="text-align: center;">This Inception Impact Assessment is provided for information purposes only and can be subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.</p>			

A. Context, Subsidiarity Check and Objectives

Context
<p>The October 2015 Single Market Strategy (SMS) announced, in its enforcement chapter (entitled "Ensuring Practical Delivery"), a Single Market Information Tool (SMIT) to collect quantitative and qualitative information directly from selected market players. The goal is to enable the Commission to better target its cooperation with Member States and use the information to improve its ability to enforce EU rules in priority areas, as well as to be able propose improvements where evidence reveals significant regulatory failures. The SMS also indicated that any such tool would be used only once a proper screening of all available evidence had been conducted and that the value added of gathering information directly from market players (i.e. comprehensive and reliable information on companies' market behaviour) is assessed in addition to conventional stakeholder consultation tools and has been clearly established.</p>
Issue
<p>The smooth functioning of the Single Market is undermined when artificial segmentation either remains or is re-introduced. Businesses rather than Member States are often responsible for this behaviour, as for example in the case of unjustified geo-discrimination; inadequate cross-border parcel delivery; cross-border insurance; customer segmentation through unjustified territoriality of copyright licensing; or financial market fragmentation.</p> <p>A lack of reliable and comprehensive information about the market (or market segment) may hinder effective enforcement action by the Commission. In order to address this issue and to fulfil its role in ensuring a well-functioning Single Market, the Commission needs a sufficiently solid evidence base. The Council has also repeatedly called on the Commission to prioritise smart and firm enforcement actions, focused on targeting the most economically significant cases. To achieve this, the Commission needs relevant quantitative and qualitative information about the functioning of the market, such as factual market data (e.g. market size) or data on market participants' conducts (e.g. cost structure, profits and pricing policies). Access to such information would allow the Commission to identify and appropriately address instances of Single Market malfunctioning and tackle flaws in the implementation and application of existing legislation. Furthermore, it would make it easier for the Commission to determine cases where significant regulatory failures exist and improvements are needed.</p> <p>When it comes to enforcing the Single Market <i>acquis</i>, Member States are the Commission's primary information source, pursuant to the Treaty principle of sincere cooperation between EU institutions and Member States. However, Member States often cannot provide the necessary information. First, they do not always have information related to the implementation and application of certain Single Market rules and their impact on the market at hand. Second, in the cross-border context a coordinated effort in requesting information from several Member States would be required. Third, many data are collected by public authorities, trade associations and statistical offices at national and EU level but do not share them with the Commission services or the data is not relevant.</p> <p>In addition, where evaluation of existing legislation shows that enforcement deficits are due to flaws in the relevant sectoral legislation, developing initiatives will be accompanied by a range of stakeholder consultations and other activities to establish a solid evidence base for policy making. However, these may not always be sufficient because: (i) stakeholders cannot be compelled to participate in Commission-led consultation activities; (ii) the reliability or accuracy of information provided by particular stakeholders is often difficult to assess; (iii) there is often a time-lag in the production of official statistics; and (iv) official statistics are often insufficiently detailed/disaggregated.</p>

Subsidiarity check
<p>According to Article 5(2) of the Treaty on the Functioning of the EU (TFEU), the Union shall act within the competences conferred upon in the Treaties to obtain the objectives set out therein. The achievement of a functioning Single Market is an objective to reach by the Union in strong cooperation with the Member States.</p> <p>The Commission is often best placed to collect targeted firm level information in the Single Market domain, given the cross-border context of such data requirements. This is particularly important as gathering information on EU level would:</p> <ul style="list-style-type: none"> • ensure the same geographical coverage (EU territory), • eliminate jurisdictional issues (accessing information about situation in another Member State) • circumvent methodological problems that arise for instance from using different definitions of, for example, cost and combining the information with a risk of, for example, double counting • facilitate efficient collection of information in situations with a strong cross-border context as it would not require complex and lengthy coordination efforts between Member States. <p>In addition to this, Member States have varying administrative capacities to request market information from relevant firms needed for addressing Single Market malfunctioning, or Member States may legally not be able to share the information with the Commission or other Member States for the purpose of addressing flaws in EU legislation.</p> <p>A targeted EU level action applying the "Think Small Principle" and focusing on economically significant cases would minimise the burden on companies themselves (as they would only have to reply once when information is requested by several Member States) and coordination cost (EU initiated call for information as opposed to initiating calls by each country concerned, consolidating information and sending to the Commission). This would lead to a more effective and efficient information gathering process.</p>
Main policy objectives
<p>The general objective of the initiative is to improve the functioning of the Single Market based on targeted and timely access to improved, reliable and accurate information that facilitates (1) ensuring compliance with EU law related to the Single Market; and (2) identification of possible significant regulatory and market failures, feeding in the necessary information and evidence for the preparation of proposals for policy interventions.</p> <p>In particular in the context of fast moving innovative markets, timely access to information directly from the market may help the Commission to ensure a better functioning Single Market. This will contribute to more finely calibrated Single Market policies, timely regulatory intervention and better-informed proposals.</p> <p>The initiative also contributes to providing the necessary information on the way legislation is implemented and applied across the Single Market and thus contributes to the Better Regulation agenda of the Commission by better integration of enforcement aspects into policy design.</p>
B. Option Mapping
Baseline scenario – no EU policy change
<p>In the baseline scenario, the ability to request information from firms remains limited to the domain of competition law. Therefore, the Commission will continue to rely on current information sources based on voluntary submissions through a number of (open or targeted) tools, such as open public consultation, targeted surveys, reports by stakeholders, commissioned studies, voluntary requests for information, and ad hoc submissions and complaints. These sources (particularly stakeholder consultation mechanisms and the Enterprise Europe Network) may be further improved over time.</p> <p>In line with Better Regulation guidelines, impact assessments consider dedicated monitoring and evaluation arrangements, but identified <i>ex ante</i> core monitoring indicators for the main policy objectives cannot in all cases address very specific problems that may arise in the course of application of legislation nor can they adequately foresee future market developments. Furthermore, monitoring arrangements cannot be designed to fully cover all issues beyond the scope of existing regulations. Therefore, this option would only partially alleviate the identified problems.</p>
Options of improving implementation and enforcement of existing legislation or doing less/simplifying existing legislation
N/A

Alternative policy approaches

Option 1: Introduce reporting obligations on companies in selected sectorial legislation

The Commission could modify reporting obligations on companies in respective sectorial legislation, for example by amending the Accounting Directives. The companies would be obliged to present extra information, depending on data needs, as part of their annual financial reporting. The scope of potentially relevant information might include cost structure, profits, pricing policies, cross-border transaction costs, volumes, supply contracts, employment contracts, etc. The non-compliance would be dealt by default Directive rules. Audit of this additional information (as specified in the Accounting Directives) would be maintained.

Option 2: Enhance the coverage of Eurostat statistics

Coverage of official statistics gathered by Eurostat could be enhanced by introducing new questions to the official statistical surveys, which would cover Single Market issues related, for example, to market behaviour, cross-border trade and operations, and business models. Furthermore, access to Eurostat's disaggregated data could be facilitated in order to allow for firm-level analysis. With regard to the collection of business statistics, the proposal for a new "Framework Regulation Integrating Business Statistics" (FRIBS) will be taken into account. The non-compliance would be dealt by default national statistics rules.

Option 3: Introduce a Single Market Information Tool (SMIT)

The Commission could introduce a new tool allowing it to request quantitative and qualitative information in the Single Market domain directly from selected market players. The information would be used for obtaining an adequate factual basis for safeguarding and improving the functioning of Single Market. SMIT would not be used as a matter of routine, but only in special circumstances and on a case by case basis, after having concluded that all other information sources are insufficient or inefficient. The use of the tool would be adequate and proportionate to the objectives to be reached, taking into account the cost for responding firms and limiting administrative burden to the justified minimum by precise targeting and one-off nature. The information requests should be targeted to cover data that is readily available to the responding firms, thus minimising the firms' cost of replying to such requests. The requested information would typically cover factual market data (e.g. market size, geographical distribution of consumers and suppliers), firm data (e.g. cost structure, profits, pricing policy, volumes, new products, ownership structure or supply contracts, geographic location of headquarters, warehouses and distributors, employment contracts) and overall market functioning data (e.g. regulatory and entry barriers, costs of cross-border operations, growth rate of the market or overcapacity). Market players would be under a duty to provide timely, complete and accurate information that is in their possession. In order to achieve the desired results, a regulation seems most appropriate legal instrument. Several parameters of the market information tool would be considered and analysed in depth:

- **Triggers for launching a request for information**
The analysis could include questions such as: What initial evidence of the existence of a Single Market failure would be needed to start the procedure? Which objective criteria should be met for justifying the use of the tool in a targeted way, focusing on economically significant cases with a cross-border dimension?
- **Selection criteria of the firms affected by requests**
The analysis could include questions such as: What criteria would be used for the selection of the market players covered by the request for information?
- **Sanctions**
The analysis could include questions such as: how to sanction submission of incorrect, incomplete or misleading information within the prescribed time limit? How high would the sanctions be?
- **Transparency**
The analysis could include questions such as: What level of transparency should be ensured and how (reporting obligations versus confidentiality)?

Option 4: Introduce Single Market information tools at the national level

Often, Single Market legislation provides for the creation of bodies vested with safeguarding the functioning of selected sectors of economy, for instance the European Supervisory Authorities in financial markets. The Commission could thus encourage Member States to vest national bodies with the ability to request information from companies operating within their territories, in order to safeguard the functioning of the Single Market. Some Member States already possess the powers for requesting information from companies, beyond the

narrow remit of competition law. This option would lead to similar information gathering as Option 3, but would combine action at Member State level with action at the EU level. It would in addition define clear rules for coordination of information requests and sharing the collected information between Member States and the Commission. In any case clear rules for coordination would be required.

Alternative policy instruments

A non-regulatory alternative to the proposed initiative would imply access only to information provided voluntarily by market players, which would lead to a similar outcome as the baseline option.

Alternative/differentiated scope

Micro-enterprises would not be covered by an obligation to provide information. This would not lead to a reduction in effectiveness of the initiative as micro-enterprises are unlikely to be among those companies creating barriers in the Single Market and from which information would be needed. In addition to this, lighter regimes or an exemption from potential obligations under the initiative for SMEs could be considered.

Options that take account of new technological developments

The provision of information by secure digital means should be possible under any of the options, which would limit the administrative burden on companies and safeguard confidentiality. The impact assessment will investigate if currently available infrastructure could be used for this purpose.

Preliminary proportionality check

While options 1 and 2 would involve requests for information periodically and indiscriminately from all market participants, options 3 and 4 would result in the issuing of information requests only on a case-by-case basis, solely targeting complex individual cases that require in-depth assessment. Under the latter two options, the Commission would first analyse whether already available data are sufficient to address the issues at stake. Furthermore, information requests would only be addressed to the most affected firms. Finally, the data sought would normally be readily available to the concerned market players. This would ensure that the requests are adequate and proportionate to the intended objectives.

C. Data Collection and Better Regulation Instruments

Data collection

Impact assessment will identify systemic infringement case cohorts in which further access to comprehensive firm information would have resulted in more effective and efficient enforcement of the Single Market *acquis*. The impact assessment will also apply the Think Small Principle and look at the administrative burden incurred by the different options, for instance by gathering information (to the extent possible) in terms of the cost of replying to information requests.

Consultation approach

The consultation will include an open online public consultation running for 12 weeks, allowing a wide range of stakeholders (firms, trade organisations, public authorities, research institutions, citizens) to express their views. The initiative has been discussed with Member States in the Council's preparatory bodies. The launch of stakeholder consultations related to this initiative will be announced in Your Voice in Europe during the course of 2016.

Will an Implementation plan be established?

Yes No

D. Information on the Impact Assessment Process

The Impact Assessment work will start in August 2016 with the creation of an ISSG. Invitations will be sent by the SG to the Legal Service, DG GROW, DG COMP, DG FISMA, DG MOVE, DG CNECT, DG JUST, DG TAXUD, DG ECFIN, DG ESTAT, DG SANTE, DG CLIMA, DG ENV and the EPSC.

E. Preliminary Assessment of Expected Impacts

Likely economic impacts

Options 1 and 2 would likely have a more limited economic impact, as requests for information would not be targeted to particularly complex cases, but, depending on the outcome of the application of the Think Small Principle, to all companies within a sector. Therefore, these options would likely collect less specific, high-level information compared to other options. On the other hand, they may significantly increase compliance costs (i.e. administrative burden) for companies requested, as they would be questioned on a relatively regular basis and across the board (i.e. not only a small subset of companies).

Under option 3, information requests would be limited to particularly complex and economically significant cases. Requests would only be launched after analysing whether already available data is insufficient to address the issues at stake and would thus require a further in-depth assessment. Companies targeted by the information requests might face certain compliance costs from the obligation to reply to information requests. Option 4 would have similar economic impacts, although it may require significant coordination efforts and may therefore increase administrative burden for the Commission and the national authorities. Under both options 3 and 4, access to comprehensive and reliable information directly from the market may help the Commission to ensure a better functioning of the Single Market, in particular in fast-moving innovative markets. This contributes to more finely calibrated Single Market policy, faster regulatory intervention and enforcement response, and more comprehensively evidenced proposals for consideration by the European Parliament and Council. It might also imply no corrective intervention, when representative and reliable information shows that no Single Market failure exists or that divergent national regulations do not impair its functioning.

Likely social impacts

A better evidence base would allow for better enforcement of social policy as well as a more effective and efficient social policy design.

Likely environmental impacts

A better evidence base would allow more effective and efficient environmental policy design and enforcement.

Likely impacts on simplification and/or administrative burden

All options would impose to some degree additional costs (administrative burden) for businesses targeted by information requests, as well as for public authorities and statistical organisations involved in collecting and processing the information which is sought. The magnitude of these costs depends on the number of companies from which the information is requested, the frequency of such requests, and the time and effort it takes to provide the information in each case. Option 1 and 2 would, impose continuous additional data obligation covering 7 or 21 million enterprises respectively (subject to exemptions). Other options would introduce *ad hoc* and one-off requests for information to a limited group of companies only in complex cases requiring in-depth analysis, as a matter of last resort, after having ensured that the information could not be obtained from publicly available sources. The information sought would solely be the one readily available, i.e. companies should not be forced to undergo considerable efforts to produce the replies to requests. The likely increase in administrative burden due to this initiative and possible options to minimise it will be assessed in the Impact Assessment.

Likely impacts on SMEs

Administrative burden may present a larger obstacle for SMEs compared to large enterprises. Nevertheless, information requests would mostly be targeted towards large market players having significant market power or involved in complex infringement cases with a cross-border context. SMEs would benefit from the resulting better functioning of the Single Market and could be exempted from potential obligations under the initiative. These impacts will be analysed in detail in the Impact Assessment.

Likely impacts on competitiveness and innovation

Better functioning of the Single Market should lead to a greater competitiveness and innovation in the medium and long term. Although firms that are addressed by information requests would incur some compliance cost, overall the effect on competitiveness and innovation is expected to be positive as all companies would be able to expand cross-border more easily and exploit the economies of scale and scope across value chains.

Likely impacts on public administrations

National authorities may face certain administrative costs depending on their role in the overall process. In particular, option 4 and, even more, option 2 may have an impact on national administrations.

Likely impacts on third countries, international trade or investment

Third countries would only be affected directly in those cases that involve international trade (for example where the Commission would benefit from acquiring information on the cost structure of EU companies and the

relevance of input from third countries for their production).