



EUROPEAN COMMISSION

*Brussels, 12.12.2017  
C(2017) 8491 final*

*Dear President,*

*The Commission would like to thank the Bundesrat for its Opinion on the 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}, also referred to as the Single Market Information Tool.*

*The Single Market Strategy of October 2015 is the Commission's plan to unlock the full potential of the Single Market. The Single Market is at the heart of the European project, enabling people, services, goods and capital to move more freely, offering opportunities for European businesses and greater choice and lower prices for consumers. Sometimes, however, these benefits do not materialise because Single Market rules are not known or implemented or they are undermined by other barriers.*

*When the Commission is alerted to cases where the Single Market may not be working properly, evidence is needed to accurately find and define any problem. The current regulatory framework as regards the Commission's means to obtain information for addressing difficulties to the establishment and functioning of the Single Market works efficiently in a great majority of cases. However, challenges arise in specific situations where detailed, comparable, up-to-date, specific market data are necessary within a limited time frame. Such information may be particularly important for assessing complex cases with a cross-border dimension, as well as cases relating to fast-moving markets, new economic activities or new business models challenging existing economic assumptions.*

*As the Bundesrat points out, information requests under this draft Regulation would be used as a measure of last resort. In the Commission's view, the conditions by which the Commission may exercise its powers to request that undertakings and associations of undertakings provide information are clearly set out in Articles 4 and 5 of the proposal. They guarantee that the Single Market Information Tool would only be used in instances where*

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*firm-level data, necessary for enforcing Single Market rules, are not easily available through other means. It would be a narrowly defined, case specific, succinct request for information addressed to a narrow subset of usually large firms, in a cross-border context. It would not be a re-occurring reporting obligation and should not be confused with statistical data collection or routine open public consultations.*

*However, this high threshold for issuing information requests does not mean that the added value of the initiative would be limited. In particular, as the Bundesrat mentions in its opinion, the examples listed in the Impact Assessment demonstrate that access to timely and relevant information could generate billions of euro in benefits (e.g. the potential savings in one public procurement concession case discussed in the Impact Assessment could exceed EUR 3 billion annually), with the corresponding administrative costs to responding companies ranging in the thousands of euro. The administrative burden is kept to the minimum and duly monitored (cf. also below), and it should not cloud the potential benefits of this initiative: swifter enforcement and better regulation.*

*In this context it is pertinent to mention a comparable instrument available in State aid control. Even if applied only on two occasions since its introduction in 2013, addressed to a handful of large market players, it allowed the Commission to collect indispensable firm-level information in two large impact cases, resulting in a recovery of unpaid taxes to the tune of nearly EUR 50 million<sup>1</sup>. This experience is very useful for estimating the anticipated impact of this initiative: although addressing issues in a different domain, the objectives of the tools are similar, they involve the same stakeholders (the Commission, Member States, and market participants), and would be used for collecting a similar type of information. Therefore, it is realistic to anticipate an appreciable positive impact of the use of the tool.*

*Experience from the domains of competition law and State aid in addition showcases the role for sanctions. Namely, they certainly do not imply that a responding firm's underlying business practice is infringing any rules. Instead, the proposal allows sanctions only for non-compliance with the request for information. In particular, the proposal establishes fines and periodic penalty payments if a respondent supplies inaccurate or misleading information or if, in response to request made by formal Commission decision, it provides incomplete information or no information at all. Moreover, sanctions have hardly ever been relied upon in the competition policy context. Nevertheless, the presence of sanctioning regimes increases the speed of collection and has a positive impact on the general level of accuracy of data collected. The proposal also establishes the maximum level of fines, similarly to what has been established for example in the area of State aid field. A simple invitation to submit information without an obligation to reply may precede a Commission Decision (compelling the addressee to provide the information). In the latter case sanctions for late replies are theoretically available. In any case, any Commission Decision (whether requesting information or imposing sanctions) would be subject to judicial review by the Court of Justice of the European Union.*

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<sup>1</sup> Information requests were issued in the FIAT case (SA.38375) and the Starbucks case (SA.387340).

*As the Bundesrat points out, small and medium-sized enterprises may theoretically be asked to reply to information requests under this proposal (e.g. in specific sectors or markets where they may have a strong position). However, in view of the volume of their economic activity, it is anticipated that this would probably not happen. Nevertheless if it is necessary to send a request to a small or medium-sized enterprise, the proposal would minimise its compliance costs: the Commission is specifically required to take due account of the principle of proportionality when considering the scope of the information requests to small and medium-sized enterprises (Article 5(3)). The estimated cost of replying for an individual small or medium-sized enterprise ranges from EUR 300 to EUR 1,000 per request, with an additional potential legal advice cost of EUR 1,000, roughly 25 % of the estimated response cost for a large undertaking.*

*As clearly set out in Article 6, micro-undertakings are exempted from this proposal in order to avoid imposing a disproportionate administrative burden on them, considering in particular that they are unlikely to be in a position to provide sufficiently relevant information.*

*The Commission hopes that these clarifications address the issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Elżbieta Bieńkowska  
Member of the Commission*