



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Senát 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 of cases where the Single Market may not be working properly, evidence is needed to demonstrate if and where EU law was applied incorrectly. 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 the majority of cases. However, challenges arise in specific situations where detailed, comparable, up-to-date and often confidential, specific market data are necessary within a limited time frame. Such information may be particularly important for assessing complex cases with cross-border dimension, as well as cases relating to fast-moving markets, new economic activities or new business models challenging existing economic assumptions.

At present, when safeguarding the functioning of the Single Market, the Commission already has powers to request information directly from market players in the domain of Union competition law. However, outside of this narrowly prescribed domain the Commission lacks the access to this information, which may impede on its ability to enforce Single Market rules. Union rules on State aid, restrictive agreements, abuse of dominant position, or mergers constitute only a small subset of all instances of potential difficulties with the application of Union Single Market law.

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Ensuring compliance with the commonly agreed Union rules faster and more effectively would be to the benefit of all citizens and companies who would be able to exercise their Single Market rights in a better and quicker way.

Against this background the proposed Regulation is generic in nature and does not target up front any specific sector or practice. The proposal is also proportionate to the objectives pursued and does not go beyond what is necessary to achieve them for the following reasons. First, in order to launch requests for information to companies the Commission would need to demonstrate a serious difficulty with the application of Union law that risks undermining the attainment of an important Union policy objective in the areas covered by the scope of the proposal. Second, requests for information would be a measure of last resort, meant for instances where firm-level data, necessary for enforcing Single Market rules, are not easily available through other means. Third, it would be a narrowly defined, case specific 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.

In the Commission's view, adequate confidentiality safeguards concerning the information collected are set out in the proposal, in particular in Articles 7, 8 and 16 of the draft Regulation. In particular, the Commission is obliged to give the undertakings and associations of undertakings the opportunity to indicate which information it considers to be covered by the obligation of professional secrecy. Furthermore, the use of confidential information is restricted only to three narrowly defined cases: (a) where such information is in summary or aggregated form or in any event in a form such that individual undertakings or associations of undertakings cannot be identified; (b) where the Commission has previously obtained the agreement of the respondent to disclose such information; (c) where the disclosure of such information to a Member State is necessary to substantiate an infringement of Union law within the scope of this Regulation provided that the respondent has had the opportunity to make his views known before a decision is taken and to make use of available judicial remedies before disclosure. Finally, the obligation of professional secrecy of the Commission, its officials and other servants stems directly from Article 339 TFEU. In line with Article 16 of the proposal, the obligation of professional secrecy covers also the Member States, their officials and other servants.

The experience from the domains of competition law and State aid showcases the role for sanctions. Sanctions are hardly ever used; their purpose is to serve as a deterrent and to increase both the speed and accuracy of data collected. Therefore, the Commission does not expect any unpredictable increase of cases consisting of the review of Commission's decisions imposing fines or periodic penalty payments before the Court of Justice of the European Union. As the Sénat rightly mentions in its Opinion, the Court of Justice would indeed not only have the power to cancel or reduce the fine or periodic penalty, but also to increase it. The proposed rule does not violate the elementary European standards for imposition of sanctions. On the contrary, it is based on Article 261 TFEU according to which "regulations adopted jointly by the European Parliament and the Council, and by the Council, pursuant to the provisions of the Treaties, may give the Court of Justice of the European Union unlimited jurisdiction with regard to the penalties provided for in such

regulations". The unlimited jurisdiction of the Court of Justice with regard to sanctions is recognised in the domains of competition law¹ and State aid².

As explained above, requests for information would be launched when other avenues of obtaining the relevant information have been exhausted. And even though these would only concern data easily available to the replying firms (i.e. acquiring such information would not require extended research or a major effort to retrieve), they could indeed lead to an incremental administrative burden. To this end, as more informative of the functioning of the single market, larger firms would be more likely addressees than small and medium-sized enterprises. In any case, when issuing requests for information and as explicitly recognised in the proposal, the Commission will take due account of operational abilities and the principle of proportionality, particularly in case of small and medium-sized enterprises.

Last but not least, while kept to the minimum and duly monitored, the administrative burden should not cloud the potential benefits of the information tool: a better functioning single market through more effective application of single market rules and principles. A comparable instrument is available in State aid control (Market Investigation Tool). Even if applied on a few occasions only since its introduction in 2013, and addressed to a handful of (larger) market players, it permitted correction of a significant difficulty with the application of the single market and recover close to EUR 50 million of unpaid taxes.

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council.

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

Yours faithfully,

Frans Timmermans
First Vice-President

Elżbieta Bienkowska
Member of the Commission

¹ See Article 31 of Council Regulation 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

² See Article 8(6) of Council Regulation 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.