



EUROPEAN COMMISSION

Brussels, 12.12.2017

C(2017) 8461 final

*Dear Chair,*

*The Commission would like to thank the Országgyűlés 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 European 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 demonstrate if and where European Union laws were 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, 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.*

*At present, when safeguarding the functioning of the Single Market, the Commission has no powers to request information directly from market players other than in the domain narrowly prescribed by very specific rules, mostly contained in Union competition law (rules on state aid, restrictive agreements, abuse of dominant position, or mergers). However, such rules constitute only a small subset of all instances of potential difficulties with the application of Union Single Market law.*

*Richárd HÖRCSIK  
Chair of the European Affairs Committee  
of the Országgyűlés  
Kossuth Lajos tér 1-3.  
HU – 1357 BUDAPEST*

*cc*

*László KÖVÉR  
President of the Országgyűlés  
Kossuth Lajos tér 1-3.  
HU – 1357 BUDAPEST*

*Ensuring compliance with the commonly agreed Union rules faster and more effectively would benefit all citizens and companies who will be able to exercise their Single Market rights in a better and quicker way. The purpose of this initiative is therefore to achieve the objective of establishing and ensuring the functioning of the internal market. In order to cover the internal market fields that rely on specific articles in the Treaty on the Functioning of the European Union for legislative action and areas related to the internal market, the proposal stipulates that the Regulation shall also apply to agriculture and fisheries (other than the conservation of marine biological resources), transport, environment and energy.*

*The proposed instrument is generic in nature and does not target up front any specific sector or practice. At the same time, enforcement experience gained in areas like public procurement or the digital single market has been important for the design of the Single Market Information Tool and its principal features.*

*The proposal is 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, the Single Market Information Tool would be a measure of last resort, meant for cross-border instances where firm-level data necessary for enforcing Single Market rules are not easily available through other means. Third, given the targeted nature of the tool, requests for information under this proposal would be narrowly defined, case specific, most likely succinct, and addressed only to a subset of usually large firms. It would not be a re-occurring reporting obligation and should not be confused with statistical data collection or routine open public consultations.*

*The criterion of "a serious difficulty with the application of Union law [that] risks undermining the attainment of an important Union policy" in Article 4 of the draft Regulation is a demanding requirement, ensuring that the instrument is used only in exceptional instances. At the same time, this criterion ensures the horizontal nature of the proposal, encompasses possible future problems with the application of the Single Market rules, and is therefore not overly prescriptive. Broad concepts are applied in other areas of European Union law, where required by the diversity of possible situations (e.g. prevention, restriction or distortion of competition within the internal market in antitrust, impediment to effective competition in the common market or in a substantial part of it in merger control, effect on trade in state aid control or significant market power in network industries regulation). It is also to be noted that this requirement is just the first of a series of conditions that need to be met before an information request under this proposal can be issued. Last but not least, the existence of a serious difficulty with the application of Union law is not exclusively left for the appreciation of the European Commission because the compliance with this condition, as well as with other conditions specified in Article 5 of the proposal, would be subject to judicial review before the Court of Justice of the European Union.*

*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 power granted to the Commission to take a decision not to protect information claimed to be confidential already exists in the State aid field. In fact, the wording of Article 7, paragraph 4, of the proposal is based on Article 9, paragraph 9, 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. In any case, any decision adopted by the Commission under Article 7, paragraph 4, would be subject to judicial review before the Court of Justice of the European Union. As far as the protection of confidential information is concerned, the Commission would apply its well proven administrative best practices from the Union competition and State aid law.*

*In the same way, experience from the domains of competition law and State aid 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.*

*As noted above, Single Market Information Tool requests would be launched when other avenues of obtaining the relevant information have been exhausted. Ensuring that 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) will minimise the administrative burden on the firms and public authorities involved. To this end, since larger firms are more likely to possess information relevant to issues regarding the functioning of the single market, they 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, the administrative burden is kept to a minimum and it should not cloud the potential benefits of the Single Market Information Tool: a better functioning single market through more effective application of single market rules and principles. A comparable instrument available in state aid control (Market Investigation Tool) has only been applied on a few occasions since its introduction in 2013 and, in practice, concerned merely a handful of (larger) market players. It enabled a significant difficulty with the application of the single market law to be corrected leading to the recovery of 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 Országgyűlés and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice President*

*Elżbieta Bienkowska  
Member of the Commission*