BUSINESSEUROPE

ANNEX

Comments on the Single Market Information Tool (SMIT) initiative

The Single Market Strategy (2015) announced legislative action to improve the functioning of the single market. The Single Market Information Tool (SMIT) is one of them. With this instrument, it would be possible to collect information directly from selected market players that could not be collected otherwise. Following the publication of the Commission's Inception Impact Assessment (IIA) on the SMIT, as well as the questions of the relevant consultation on SMIT, BusinessEurope would like to outline its initial comments on this initiative, as various policy options are now being considered by the Commission.

BusinessEurope fully agrees that better implementation, correct application and stronger enforcement of agreed rules are essential to make the single market work better. This starts with guidance and assistance to Member States in transposing and implementing the rules. For comprehensive pieces of legislation, such as the 2006 Services Directive, a more institutional process such as the Mutual Evaluation Process can greatly help Member States by offering a platform to share best practices and find solutions to better implement legislation. Such structured dialogues are also a valuable source of information for the Commission. Enforcement is equally important, where the Commission has to play a stronger role to ensure that all players play by the rules. If not, the Commission should not hesitate to launch EU pilots or infringement procedures.

As guardian of the Treaties, the Commission already has power to collect information and take action where the single market is not working properly. In fact, we understand that the Commission is currently reviewing its EU Pilot procedure also to make the process more transparent. BusinessEurope has always emphasised the importance of the single market and therefore supports the Commissions' efforts to combat infringements of single market rules. This could be a good opportunity to ensure that these processes offer more insight into specific sectors and markets.

Moreover, through comprehensive public consultations, targeted surveys, the REFIT exercises, stakeholder events, commissioned studies and reports, EUROSTAT and direct contacts with market players, the Commission already has access to a wide variety of detailed information which is useful to address remaining obstacles to free movement and thoroughly prepare new initiatives.

Valuable information can also be collected from companies that provide their information to business portals such as Points of Single Contact, Product Contact Points, the (to be set up) Digital Single Gateway or via the Enterprise Europe Network.

BusinessEurope agrees that Member States should be more helpful and comprehensive in sharing national market information with the Commission, such as the information collected through TRIS or the Internal Market Information (IMI) system. This might be an additional source of information to help paint a detailed bigger picture.

For example, Member States already have access to data of companies in a number of cases, like the ownership structure/beneficial ownership that is stored in a central register.

It is clear that all the above avenues to better collect information should be fully exhausted before considering a new instrument such as the SMIT, which would pose additional obligations on companies, **under the threat of sanctions**. The above sources improve knowledge and data collection among policy-makers in a less intrusive manner. Future initiatives such as the Quick Assessment Procedure could also support this through a revision of the Mutual Recognition Regulation.

We also remind the Commission that existing procedures also exist to collect information directly from businesses. For example, under EU competition law, the Commission has the power to conduct sector specific enquires even when no suspicion of wrong-doing exists.

BusinessEurope, therefore, questions the introduction of an information tool essentially based on the possibility to force companies to reply to information requests under the threat of sanctions. While the business community fully stands behind stronger enforcement of single market rules and believes that the thorough preparation of new proposals is a worthy goal, we doubt that the SMIT as currently devised is the appropriate approach to achieve these goals. Businesses should not be overburdened with further reporting obligations when the real reason behind single market fragmentation is predominantly insufficient Member State accountability in the implementation and application of EU legislation. Overburdening companies with extra reporting obligations in this manner would also take away resources that could otherwise be allocated to growing in order to scale up and operate across the single market. Such growth would benefit various stakeholders (employees, customers, owners, public finances and Member States) and offer a wider variety of goods and services at better prices.

The Commission needs stronger and better enforcement powers over Member States to take swift action to address single market barriers which can cause substantial damage to business that operate in different Member States. More transparency is needed to identify these barriers and create certainty for businesses and customers. Therefore, we welcome smart and firm enforcement actions. However, we do not agree that this initiative should target businesses as the main responsible side for single market barriers. In fact, it is often the case that practices such as geo-blocking exist essentially because companies often have no other choice than to operate in a more targeted manner in a fragmented single market.

As businesses already attempt to cooperate with authorities to send requested market information, the SMIT should not place sanctions on businesses who submit incorrect, incomplete, or late information. The spirit of information sharing should remain cooperative. Companies cannot begin to be penalised for administrative errors when taking part. Further to this, much information may already be in the hands of the public sector. It is important that such initiatives as the *'once only' principle* are prioritised so

that cooperation between authorities to use information available takes place before another request is made. Double reporting requirements should be avoided.

It is of utmost importance to state that the SMIT could also lead to **unacceptable risks regarding highly sensitive core company information**. With a view to the catalogue of sensitive information mentioned in the consultation on the SMIT, any mandatory information requests regarding highly sensitive data such as business strategy, pricing policy and contract details would not be acceptable at least as far as companies are not yet obliged to deliver these data according to already existing law. A binding obligation to disclose such sensitive company information may be justified in concrete court proceedings where a company is suspected of an infringement of law, but not vis-a-vis any kind of economic operator outside of an investigation or proceeding.

If the Commission decides to move ahead with the SMIT initiative, it would be logical that not only companies, but also Member States and other market players would be targeted by the tool to get the complete picture.

Moreover, if the SMIT becomes available, there should be strict control as to the frequency and appropriateness of its use - even the need for authorisation by the College of Commissioners is not per se an assurance, since there is a fundamental disagreement about the need and appropriateness of the tool in its current description.

Should the Commission decide to move forward with this initiative in spite of the concerns mentioned in this letter, it would be absolutely necessary to **put in place clear, specific and strict safeguards** to determine if the exercise of the SMIT is appropriate in a specific case and if there is indeed no other way to collect the information. Extra inquiries - in addition to existing reporting obligations - are indeed a burden and therefore a cost on companies.

In any case, commercially sensitive information should only be processed following the explicit consent of businesses that own it. Any centralised database holding this information must remain sufficiently protected and be held accountable for breach. The Commission will need to guarantee the confidentiality of the information collected and explain how it will ensure legal certainty for companies.

The information requested should relate to the purpose of the investigation and no further. Requests should not be made routine but instead on the basis of a well understood case-by-case basis. In the spirit of cooperation between the public and private sector, the operational abilities of businesses to take part in such requests should not be forgotten. Any envisaged procedure should remain voluntary for businesses to take part in.

For businesses to see the practical benefit of voluntarily taking part in the envisaged SMIT procedure, it is vital that they are kept informed of the Commission's follow-up actions as a result of the information received. This includes actions to improve existing rules; their enforcement or design new legislative initiatives.

On an annual basis, the Commission should make the use and effectiveness of the SMIT public. In no way should this disseminate confidential business information and findings from the original request.

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