



NOTE

October 2016

Danish response to the public consultation on a Single Market Information Tool (SMIT)

General remarks

The Danish Government agrees that there is a need for an evidence-based and targeted approach to ensure compliance with EU law. Member States are responsible for the implementation and enforcement of EU law and the Commission should therefore focus its efforts on enhancing Member States' compliance with the rules governing the Single Market.

The Danish Government is not convinced that the introduction of a Single Market Information Tool is proportionate with the aim when taking into account the implications for businesses and the existing data sources. There are already a number of data sources available to the Commission that could be used more systematically and businesses should not be required to provide information which is already available.

The need for and purpose of the Single Market Information Tool is not sufficiently substantiated. As the Single Market Information Tool is a new instrument, there is a need for a thorough assessment of the actual need for such a tool as well as concrete examples of how it will be used.

Comments and suggestions

The investigative powers of the Commission should not be extended

The Commission is proposing that its extensive powers to investigate violations of EU rules in the field of competition law are extended to the Single Market. In the area of competition law, the Commission has the power to conduct investigations and sector inquiries and for this purpose request information from undertakings. However, in the area of competition law, it is clearly defined for what purposes the Commission may request information from businesses; that is to assess whether there is an infringement of Article 101 in the TFEU which prohibits restrictive agreements and Article 102 TFEU which prohibits the abuse of a dominant position. Considering that the specific purpose and the practical implementation of the Single Market Information Tool remain unclear, the Danish government is sceptical towards strengthening the Commission's investigative powers.

By enabling the Commission to request information with a broad aim of improving the functioning of the Single Market, the proposal on a Single Market Information Tool seems to strengthen the Commission's investigative powers even beyond its powers in other policy areas. If the Commission chooses to proceed with a proposal on a Single Market Information Tool, the purpose of the tool should be clearly confined to the assessment of whether there is an infringement of the Single Market acquis.

The added-value of a Single Market Information Tool is questionable

There are already a number of data sources available to the Commission that could be used more systematically. The Commission ought to make use of the data available in the complaint system to strengthen and focus its enforcement measures. It is also important to collect available data from the problem-solving tools such as SOLVIT, the ODR platform and EU-pilot to identify structural problems as well as other information channels including evaluations, the European Enterprise Network, TRIS, IMI and the REFIT-platform. The data should to a larger extent feed directly into policy making procedures, thereby linking practice and policy closer together.

Furthermore, companies already provide a vast amount of information to national authorities, statistical offices and the public. Such information is accessible to the Commission and ought to be used when analysing the functioning of the Single Market.

Unnecessary administrative burdens on businesses should be avoided

Businesses already provide information in annual reports, to business registers, to statistical offices and to public authorities. These information requirements are an administrative burden, taking away resources from the core business activities of the companies.

To avoid double reporting requirements the Commission should make sure, that the data is not already available through national authorities. Moreover, the Single Market Information Tool should only be used as a last resort, on a case by case basis, after having concluded that all other information sources are insufficient.

Ensuring confidentiality of business sensitive information is crucial

The Commission suggests that the Single Market Information Tool should be used to request information from firms such as cost structure, pricing policy, profits or employment contracts.

Some of the information is already available in the annual accounts of companies, in the databases of national statistical offices and in business

registers, including information on global profits. Other information such as cost structure, pricing policies and employment contracts is very business sensitive and may even include sensitive personal data.

Ensuring confidentiality of business sensitive information and personal data is an absolute necessity.

Sanctions in case of incorrect information would be disproportionate

The Commission is suggesting that businesses would be obligated to provide the information requested by the Commission and that businesses would face sanctions if they submit incorrect information.

In many cases, the requested data may not be readily available. Businesses would therefore need legal counselling before providing the Commission with the information. In cases of potential rule-breaking this might be proportionate; however, if the aim with the Single Market Information Tool is policy-making, it would be disproportionate to impose legal sanctions on businesses in case of incorrect, incomplete or misleading information.