



Position Paper

18 November 2016

POSITION PAPER ON SINGLE MARKET INFORMATION TOOL: FIRST REACTION OF EUROCHAMBRES TO THE EUROPEAN COMMISSION'S CONSULTATION

EUROCHAMBRES is taking note of the European Commission's initiative on potentially introducing a Single Market Information Tool (SMIT). This short position paper should be considered as EUROCHAMBRES' contribution to the consultation on the subject.

On the objective of the initiative: better enforcement

EUROCHAMBRES is generally in favour of initiatives that contribute to the good functioning of the Single Market and that have the potential to make it easier for companies to trade across borders within the EU.

Member States still too often fail to properly comply with Single Market rules. As a consequence, the extensive legal framework of the Single Market is not perceptible to traders in their day-to-day activities. EUROCHAMBRES therefore encourages the European Commission to redouble efforts to ensure the fast adoption and proper transposition and implementation of EU Single Market law.

Also still too many people are not well aware enough of the possibilities available to companies with regard to having their rights respected. The objective to tackle "*significant regulatory failures*" should be a priority of policy makers.

Priorities for a well-functioning Single Market

According to the Single Market Strategy, the Commission will try to bring change and ensure better compliance of Single Market rules through the introduction of¹ :

- Compliance-promoting tools (ie networks and expert committee meetings and guidelines.);
- Better Regulation guidelines;
- The promotion of an enhanced partnership with Member States through eg implementation plans for major new legislation;
- Compliance dialogues with each Member State on a yearly basis.

EUROCHAMBRES encourages all of the above-mentioned initiative to be developed.

To ensure the good functioning of the Single Market, there are already certain instruments in place which should ensure that the rules of the Single Market *acquis* are implemented into national law and properly enforced by the individual Member States. Competition policy and infringement proceedings have been

¹ See Single Market Strategy, p16: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0550&from=EN>

introduced in order to fulfil that role. The Commission for instance indicated in its internal market scoreboard that in December 2015, the number of pending infringement cases stood at 732². Even if this figure might be lower than in the past, EUROCHAMBRES believes that more efforts should be done to further improve this situation. If the Single Market is not yet living up to its name, we should in the first place look at the behaviour of the Member States rather than the companies' behavior.

This finding is corroborated by a vote which was held during the bi-annual European Parliament of Enterprises. No less than 87% of the companies (mostly SMEs) answered "NO" to the question "*Is the Single Market sufficiently integrated, allowing your company to operate and compete freely?*"³. This result begs the question which initiatives should be prioritized to improve the Single Market. Companies are beneficiaries of the Single Market and heavily depend on the goodwill of the Member States to diligently implement Single Market rules. The claim for instance that businesses rather than Member States are responsible for artificial segmentation, as declared in the Inception Impact Assessment, remains to be verified. It is indeed difficult to conceive that SMEs with relatively little market power would be responsible for market imbalances.

The need for a new tool

The introduction of yet a new tool should be considered against its complementarity with existing tools, such as SOLVIT, EEN, or the EU-Pilot procedure, and its need should be weighed against several considerations.

The tool as described by the Commission (in its option 3 of the inception impact assessment) would give the Commission exclusive powers to investigate and access sensible information at the company level in order to detect possible infringements perpetrated by companies against Single Market rules. In addition to the fact that the instrument would have a very intrusive character, it is not entirely clear yet why exactly it would be help achieve the Commission's goal to improve the respect of internal market rules.

EUROCHAMBRES does recognize however that the "*sector enquiries*", which exist in the competition policy area, cannot address all issues of the Single Market. An example could be when a Member State introduces certain standards that no product from outside the specific country can meet. We do recognize in this sense that there is a certain window of opportunity to act on certain deficiencies of the existing toolbox. It is really essential that in its future proposal the Commission thoroughly explains what the SMIT would do what the existing tools cannot.

Alternative options are considered in the Inception Impact Assessment to reach the stated objectives. Companies, whether separately, or through their trade associations already to the best of their ability deliver relevant information to the Commission. The Commission should therefore seriously consider what the best other options are. It is understandable that the cost-effectiveness of the options should carry a significant weight in the final decision of the Commission regarding what initiative to take in order to fulfil the goals. Under no circumstances should the tool impose extra costs on companies.

The specifics of the tool

- ***Ultima ratio***

If the Commission decides to forge ahead with its initiative, a sufficient number of safeguards should be built in to ensure that the tool would not be used in a recurring way. Under no circumstances, should this tool be the prelude to the creation of new burdensome reporting obligations. Especially linked to the type of information that would be requested, the tool should remain exceptional. This should be clear from the outset and the Commission should propose a satisfactory number of conditions to ensure that the use of the tool will remain exceptional.

² http://ec.europa.eu/internal_market/scoreboard/docs/2016/infringements/2016-scoreboard-infringements_en.pdf

³ Full press release: http://www.parliament-of-enterprises.eu/upload/161013-EPE_multiscenario_FINALE_58050b458eb99.pdf

- ***The type of information and potential sanctions***

Under no circumstances, should the tool create extra costs for companies when a questionnaire is sent. Strict rules about the way how questionnaires are structured and about the type of questions that can be asked should be set out.

EUROCHAMBRES is wary of the type of information that could be requested. Information related to cost-structure for instance is for many companies very closely related to their business strategy.

- ***Data security***

Due to the type of information that would be delivered to the Commission, it should ensure that the systems used are waterproof in the strict sense. Under its competition policy, the Commission already has experience in this, however for the sake of trust the Commission should work out in its proposal convincing arguments how the system could fulfill the most stellar safety requirements. Barring this, companies could not be blamed not to collaborate.

- ***Collaboration with Member states***

The Commission, for its instrument to be legitimate, should thoroughly explain how the competences of the Member States are not infringed upon through the introduction of SMIT as normally the Member States are in charge of properly implementing and enforcing Single Market rules.

- ***SME aspect***

It is EUROCHAMBRES view that the tool should only apply in exceptional cases and on large corporations. SMEs, typically characterized by smaller market power, should, if not exempted from the scope of the tool, at least have enough guarantees that they would be excluded from some types of information requirements which would otherwise be disproportionately costly for them to provide to the Commission.

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