

EXPLANATORY MEMORANDUM ON EUROPEAN UNION LEGISLATION

**8765/17
COM(2017) 257 final
8765/17 ADD 1
SWD(2017) 215 final
8765/17 ADD 2
SWD(2017) 216 final
8765/17 ADD 3
SWD(2017) 217 final**

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on setting out the conditions and procedure by which the Commission may request undertakings and associations of undertakings to provide the information in relation to the internal market and related areas

COMMISSION STAFF WORKING DOCUMENT STAKEHOLDER CONSULTATION - SYNOPSIS REPORT Accompanying the document 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

COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document 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

COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document 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

Submitted by the Department for Business, Energy and Industrial Strategy on 10th July 2017

SUBJECT MATTER

1. On 2 May 2017, the European Commission released a package of legislative and non-legislative proposals on compliance (the "Compliance Package"). The package is designed to improve the compliance and enforcement of Single Market rules – a commitment made in the Commission's Single Market Strategy in 2015.

2. As part of the Compliance Package, the European Commission published a proposal for a Regulation to allow the Commission to collect otherwise unavailable, firm-level information directly from selected market players through targeted information requests.
3. The overarching objective of the proposal is to ensure enforcement of Single Market rules in cases of serious Single Market malfunctioning by creating a new investigative power, namely the Single Market Information Tool (SMIT). The Commission does not have general investigative powers specific to the functioning of the Single Market of its own and has previously cited the lack of sufficient and reliable data as one of the key obstacles to better enforcement of Single Market rules.
4. The proposal comprises the following provisions:
 - The Regulation would grant the Commission the power to obtain information from undertakings or associations of undertakings for the purposes of identifying any serious difficulty with the application of Union law in the areas of the internal market (the free movement of goods, persons, services and capital), agriculture and fisheries (excluding the conservation of marine biological resources), transport, environment and energy.
 - The Regulation sets out the conditions and procedure for requesting information. The Regulation states the Commission can only request information in circumstances where the information cannot be obtained in a timely manner through existing means and where the difficulty with the application of Union law risks undermining the attainment of an important policy objective.
 - The Regulation includes measures to protect confidential information.
 - The Regulation subjects the use of the SMIT to safeguards against overuse and to ensure the Tool is used proportionately:
 - Recital 8 states that the SMIT is to be used only as a “last resort”, so the Commission must ensure that the information they request is not available publicly and has not already been provided by a Member State upon request by the Commission;
 - A formal decision would be required from the Commission to demonstrate that any requested information is necessary and that other means to obtain the information have failed;
 - Information requests must be narrowly targeted, both as regards the amount of information requested and the number of respondents; and
 - The Commission’s compliance with these conditions would be subject to judicial review before the Court of Justice of the European Union (CJEU).
 - The Regulation would grant the Commission the discretionary power to impose fines or periodic penalty payments on undertakings or associations of

undertakings, where they either do not supply a response to a request for information or they supply incorrect or misleading information. The CJEU has unlimited jurisdiction to review fines or periodic penalty payments.

SCRUTINY HISTORY

5. The Department for Business, Innovation and Skills submitted an Explanatory Memorandum (EM) on 12 November 2015 relating to 'Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Upgrading the Single Market: more opportunities for people and business'. The Commons European Scrutiny Committee considered it and cleared it (report 24, session 15/16). The Lords Select Committee on the European Union cleared it (sift 1601, session 15/16).

MINISTERIAL RESPONSIBILITY

6. The Secretary of State for Business, Energy and Industrial Strategy (BEIS) has primary responsibility for this proposal. Ministers in other Departments (including Her Majesty's Treasury, the Department for Transport, the Department for Environment, Food and Rural Affairs, the Department for Work and Pensions, and the Department for Exiting the European Union) also have an interest because the remit of the proposal will cover undertakings in each of their areas.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

7. The Scottish Government, Welsh Government, and Northern Ireland Executive have an interest where areas covered by the Regulation are devolved, for example agriculture and fisheries, transport, and environmental issues. The Devolved Administrations have been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

Legal basis

8. The legal basis are Articles 43(2), 91, 100, 114, 192, 194(2) and 337 of the Treaty on the Functioning of the European Union (TFEU). There is a question of compatibility of these legal bases, which will impact on the parliamentary and voting procedures and we will raise this in the course of negotiations. The Justice and Home Affairs opt-in is not a consideration.

European Parliament Procedure

9. Different Parliamentary procedures apply under the various Articles. Ordinary Legislative Procedure applies under Articles 43(2), 91, 100, 114, 192 and 194(2), whereas Article 337 does not provide for European Parliament involvement.

Voting procedure

10. Qualified Majority Voting applies under Articles 43(2), 91, 100, 114, 192 and 194(2).
11. Article 337 provides that the Commission may act, within limits and under conditions laid down by the Council acting by a simple majority.

Impact on United Kingdom Law

12. This is a proposal for an EU Regulation. Whilst it will be directly applicable in the UK if it enters into force prior to EU exit, amendments to national legislation may be needed to the extent current legislation is inconsistent with the proposed regulation, or if necessary to make the Regulation workable and enforceable in the UK. However, our preliminary view is that it is unlikely to require any changes to UK legislation.
13. Given the cross-cutting nature of this proposal, this will need to be explored further. In particular, we need to consider the interaction with the Competition and Market Authority's investigatory powers.

Application to Gibraltar

14. In so far as the Regulation applies to free movement of goods and agriculture and fisheries, it would not be applicable in Gibraltar. In so far as the Regulation applies to the other areas of the internal market, transport, environment and energy, it would be applicable in Gibraltar.

Fundamental rights analysis

15. It may be argued that there is an impact on the rights of economic operators to conduct a business (Article 16 of the Charter of Fundamental Rights). However, the measure includes various safeguards and guarantees taking due account of the legitimate interest of undertakings to protect confidential information.
16. The Commission is of the view that the proposal is in compliance with the right to protection of personal data (Article 8), the right to protection of confidential information (Article 7) and the right to good administration, in particular the access to documents held by the Commission (Article 41). Where the measure requires the processing of personal data it must be processed in accordance with Union data protection law, which is compatible with the Charter.
17. The right to an effective remedy and a fair trial (Article 47) and respecting the right to presumption of innocence (Article 48) are engaged. These are respected since information requests may be challenged before the CJEU.
18. The rules on possible imposition of fines or periodic penalty payments engage the proportionality of penalties (Article 49). However, the proposal does not require penalties to be imposed. The Commission must carry out an assessment on a case by case basis and only impose a penalty where it considers it to be

necessary and proportionate. In light of this, the Government is of the view that the proposal is consistent with Charter rights.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

19. The proposed Regulation is not applicable to the EEA.

SUBSIDIARITY

20. The Commission loses one in twenty of the Single Market cases it brings before the CJEU due to the lack of sufficient company-level information. The Commission's assessment is that EU action is needed to strengthen its access to market information in order to address serious problems with applying EU law in the area of the internal market, which is a shared EU competence.

21. The Commission argues that Member States may not always have access to relevant market information that the Commission would need to perform its tasks; particularly when issues involve two or more Member States. Given the proposal is aimed at fixing Single Market breaches, it follows that action at EU level is appropriate, particularly where breaches involve more than one Member State.

22. The SMIT would be an exceptional 'last resort' tool; Member States shall remain the first channel source for such data collection. However, there is a question of proportionality in terms of the precise circumstances in which information can be obtained and this will be explored in negotiations.

POLICY IMPLICATIONS

23. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The Government respected the result and triggered Article 50 of the Treaty on European Union on 29 March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation.

24. The Government supports, in principle, the Commission's enforcement agenda as set out in the 2015 Single Market Strategy. The Commission has cited lack of sufficient and reliable data as one of the key obstacles to better enforcement of Single Market rules. The UK has repeatedly called on the Commission to prioritise enforcement and this tool could help them in strengthening their enforcement regime. The Government also recognises that the SMIT could be used to support evidence based policy-making by ensuring that the Commission can collect the data it needs to determine whether action is required and how best to design future policy.

25. The scope of the proposal is extensive, giving the Commission powers to request information concerning the internal market (the free movement of goods, persons, services and capital) but also in the areas of agriculture and fisheries (excluding the conservation of marine biological resources), transport, environment and energy. We will be seeking clarification on the Commission's justification for this extensive scope.
26. For the SMIT to be an effective tool, it follows that the Commission should have the ability to take enforcement action against companies which do not comply. The proposal does not require the Commission to impose a penalty. In each case, they will need to assess whether it is necessary and proportionate to do so. Fines should be proportionate, and imposed only once the Commission has been unable to ensure compliance by other means.
27. The Government welcomes the inclusion of measures to protect confidential information, although the terms and scope of the exemptions will need to be examined carefully.
28. In practice, the proposal will extend the power of the Commission to request potentially sensitive information from undertakings or associations of undertakings operating from within the Single Market. The current drafting does not explicitly exclude Third Country undertakings operating in the Single Market. The Government will seek to clarify the Commission's intention.
29. The proposal is not clear on the details of the conditions that must be met before the SMIT can be used and how the safeguards would work in practice. The UK Competition and Markets Authority (CMA) already collects a significant amount of information, so we would want to ensure this information was not requested twice. It is a Government priority to ensure that sufficient safeguards are in place so that the SMIT is only used when absolutely necessary and that the proposal is framed in such a way as to minimise the burden it places on businesses. The Government, therefore, will seek clarification from the Commission at the earliest opportunity and negotiate for appropriate amendments to this effect if required.
30. It is possible, subject to the outcome of the withdrawal negotiations, that the proposal could still apply to UK businesses following our withdrawal from the EU. Throughout negotiations, we will continue to consider the proposal in light of our possible future relationship with the EU.

CONSULTATION

31. The Commission carried out a public consultation on the proposal between 2 August and 7 November 2016. There were additional targeted consultations with the following business representatives in the course of 2016: BusinessEurope, EuroCommerce, UEAPME and PostEurop. UK business interests are represented through membership of the consulted groups. The results of these consultations were used for the preparation of the proposal and accompanying impact assessment.

32. The Government will seek to engage with key UK stakeholders on this proposal.

IMPACT ASSESSMENT

33. The Commission's Impact Assessment Report and an Executive Summary Sheet were submitted to the Regulatory Scrutiny Board. The Board initially issued a negative opinion on 20 January 2017, followed by a positive opinion with reservations on 23 March 2017.

34. A checklist Impact Assessment is attached as an annex (Annex 1) to this EM.

FINANCIAL IMPLICATIONS

35. The Commission estimates that the annual Union-wide cost of the proposal ranges between €0.37m (£0.32m) and €0.61m (£0.53m) for businesses, and between €0.12m (£0.10m) and €0.43m (£0.38m) for the Commission. There is no cost for Member States. Since the UK CMA already collects a significant amount of information, it can be assumed that instances where SMIT would be used to request information from UK businesses would be limited. Costs incurred by UK business would therefore be towards the lower end of the spectrum.

36. According to the Commission, the expected benefits of the proposal range from €50m (£43.68) to €6bn (£5.24m) for enforcement cases and around €9bn (£7.86m) and more in cases where firm-level information collected is used for informing legislative initiatives, with a high likelihood that they will materialise.

TIMETABLE

37. The Regulation was published on 2 May 2017. The Maltese Presidency held an introductory Working Group on 9 June. The Estonian Presidency is expected to hold monthly working groups during their Presidency.



Lord Prior of Brampton
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

Annex 1: Checklist for analysis on EU proposals

<p>Title of EU proposal: 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</p> <p>Lead dept/agency: Department for Business, Energy and Industrial Strategy</p> <p>Other depts/agencies with an interest:</p> <p>Date: 26.06.2017</p>	<p>Lead policy official: John Maiden, john.maiden@beis.gov.uk, 020 7215 5062</p> <p>Lead lawyer: Louise Dobrin</p> <p>Lead economist: Massimiliano Verri, massimiliano.verri@beis.gov.uk, 020 7215 2591</p> <p>Lead UKRep desk officer: Gerald Weldon, Gerald.Weldon@fco.gsi.gov.uk, +32 (0)2 287 8218</p>
<p>What are the potential impacts of the Commission proposal on the UK?</p> <p>Each UK large firm would incur costs of between €1,200-4,400 to comply with a potential Commission's request for firm-level information (€300-1,000 for SMEs), increasing by €4,000 if legal advice is needed. Since the UK CMA already collects a significant amount of information, it can be assumed that instances where SMIT would be used to request information from UK businesses would be rather limited. Costs incurred by UK business would therefore be towards the lower end of the spectrum. The UK Government would not face significant cost; it would only need to confirm that the information requested by the Commission isn't available at Member State level. Overall, UK market participants would benefit from a better functioning Single Market thanks to more targeted enforcement actions by the Commission and the Member States.</p> <p>Background</p> <p>The Commission's proposal aims at improving the functioning of the Single Market by enabling the Commission to directly request specific firm-level information when this is deemed necessary to investigate potential breaching of Single Market rules. Driving greater compliance with Single Market rules will result in a more competitive and fair Single Market, to the benefit of both businesses and consumers.</p> <p>At present, when the Commission or Member States are alerted to Single Market malfunctioning, evidence is needed in order to proceed and identify whether the underlying cause constitutes a breach of Single Market rules. Obtaining such evidence is challenging as it usually involves collecting specific firm-level information, which is often sensitive and sometimes only available to national authorities in some Member States. When information is available, it is usually difficult to compare it across Member States.</p> <p>Member States are currently the only source of information. However, firms have little incentive to share it with them and there is no mechanism in place to ensure its veracity. To complement information available to national authorities the Commission relies on voluntary cooperation from interested parties, but it's difficult to ensure that information is unbiased, reliable, complete, comparable or timely.</p>	

Policy options (POs)

The Commission identified 5 POs on top of the baseline scenario, in which the Commission would continue relying on current sources to gather required information – i.e. voluntary submissions through complaints, open public consultation, targeted surveys, reports by stakeholders, commissioned studies, commercial databases, voluntary requests for information, and ad hoc submissions as well as Member States submissions.

These are:

Option 1: Exchange of best practices between Member States and with the Commission.

The Commission would recommend Member States exchange best practices on collecting specific firm-level information. Member States would then be encouraged to implement these best practices.

Option 2: Lifting regulatory limitations to the sharing of firm-level information between Member States and the Commission.

This option consists of a Directive lifting national rules that currently prevent authorities at national level from sharing with the Commission and other Member States firm-level information they already possess or could access on the basis of EU or national law. This option doesn't foresee special investigation powers being granted to Member States, or a specific framework for the Commission's requests to Member States.

Through Option 2 the Commission would have easier access to specific firm-level information Member States already collect. Member States and the Commission would ensure collected information is treated confidentially. The Commission would only be allowed to use such information to enforce Single Market rules relating to the specific subject matter invoked by the Commission when submitting a request.

Option 3: Introducing residual investigative powers through national level Single Market information tools

Building on Option 2, Member States would be required by Union legislation to entrust an authority or several authorities with the power to request quantitative and qualitative firm-level information directly from market participants operating within their territories, where such information is needed for proving the existence of serious obstacles to the functioning of the internal market. Member States would be free to decide which natural authority to entrust with the residual investigative powers.

As with Option 2, the Commission would be able to request firm-level information from the Member State concerned and would need to show that the requested information is necessary for taking timely and informed decisions in relation to possible obstacles to the functioning of the internal market. Under Option 3 the Commission would coordinate requests for information from different Member States when these are necessary for taking such decisions in order to ensure that the national information requests address the same issues and that the addressees of the requests are comparable.

Large firms with market power would be the primary addressees, small and medium-sized enterprises (SMEs) could occasionally be concerned, while micro-enterprises would be exempted. The Commission and the Member States would take into account the cost for responding parties and would request information only from targeted market participants.

Option 4: EU-level Single Market Information Tool (SMIT)

Union legislation would empower the Commission to use a Single Market Information Tool (SMIT) for requesting quantitative and qualitative firm-level information directly from market participants. SMIT would be used when such information is needed for proving the existence of serious obstacles to the functioning of the internal market or for calibrating the Commission's response to such obstacles. SMIT would remain an exceptional, 'last-resort' tool.

The Commission would need to formally adopt a Decision stating an intention to use SMIT and prove that: (1) there is enough evidence available suggesting the existence of a serious problem with application of Union law undermining the attainment of important Union policy objectives in relation to the Commission's aim of establishing and ensuring the functioning of the internal market; (2) the information to be requested is necessary to perform the tasks conferred on the Commission as per the Treaties; (3) the information isn't available elsewhere; (4) the Decision should detail the criteria for selecting the addressees.

Requests can only be addressed to market participants the Commission expects to have the required information already available. Finally the Commission would only be able to use the information collected in disaggregated form, and only for the purpose for which it was required.

Option 5: A 'hybrid' approach combining Options 2 and 4

Option 5 would combine options 2 and 4. Through option 5 national investigation powers are primarily used for the targeted enforcement of Union law at national level while SMIT would be available to the Commission for collecting the information required in instances with a specific cross-border dimension.

Discarded options

Two options contemplated in the inception impact assessment were subsequently discarded as they didn't appear suited for obtaining specific confidential information, as protection of sensitive information (which is crucial for stakeholders) could not be guaranteed. Option 6 aimed at enhancing the coverage of European statistics, while option 7 would introduce reporting obligations via the Accounting Directive.

Analysis of impacts

Option 1: Exchange of best practices between Member States and with the Commission.

At present only the UK has a designated authority (CMA) empowered to collect the kind of information required. Other Member States would face a considerable hurdle if they were to start collecting such information. Moreover, Option 1 builds on a voluntary exchange between Member States and with the Commission; therefore it is not certain that all Member States would grant these information collection powers to one of their authorities. Even if all Member States were to voluntarily participate, this option would require a lengthy and costly coordination effort given the fragmented nature of authorities. Finally, national authorities could use these powers more often than for a few cases envisaged in this proposal, thus significantly increasing the burden on companies.

The annual Union-wide cost of this option could range from €0 (if no Member State chooses to participate) up to €0.59m for firms and €0.44m for national authorities (in case all Member States will follow the recommendation). The lower bound for the potential benefits of this option

is estimated at €50m, but the benefits are unlikely to materialise in the short to medium run.

Option 2: Lifting regulatory limitations to the sharing of firm-level information between Member States and the Commission.

This option could give the Commission *de jure* access to firm-level information gathered by national authorities. However, the effectiveness of the option largely depends on Member States' capacity to cooperate with the Commission, which is limited for the following reasons:

- Authorities will often not be able to obtain the kind of firm-level, disaggregated data that would be needed to address Single Market malfunctioning cases;
- Authorities often store collected data only for a limited period of time; therefore data may not be available when the Commission requests it;
- Member States' incentives to share information with the Commission might be eroded, given that firms provided the information being unaware that it would later be shared with the Commission for a different purpose;
- Member States could be hesitant or unwilling to provide sensitive information in certain instances (e.g. when it could be used for infringement proceedings concerning them) and could potentially be inclined to challenge the need for providing the information.

Finally, data from different authorities may not be comparable across Member States.

The annual cost of this option is calculated under an assumption that between 0% and 50% of Commission's information needs could be met by the national authorities. For firms the cost is then between €0 (in case they are not asked) and €0.29m. Expenses of the Member States range from €0.006m to €0.27m and of the Commission - from €0.01m to €0.15. The total cost is between €0.02m and €0.72m. The lower bound for the potential benefits of this option is estimated at €50m. The benefits are moderately likely to materialise due to uncertainty whether information could be provided by national authorities.

Impacts common to Options 3, 4 and 5

In the public consultation, two fifths of the firms and authorities and three quarters of the citizens and consumer organisations agreed that authorities at the Union or national level should have the right to ask for confidential firm-level information when it is crucial for solving breaches of citizens' or firms' rights under Union law.

Market participants

Those market participants having to comply with the obligation to provide information under Options 3 to 5 would incur costs of approx. €1,200 – 4,400 for extracting and compiling the requested information, increasing by €4,000 for the cost of legal advice. Additional administrative burden may arise if market participants are requested to provide information in a specified format. However, the benefits of having data in a more standard format and avoiding methodological shortfalls could outweigh these costs.

Market participants would benefit from a better functioning Single Market thanks to more targeted enforcement actions by the Commission and the Member States. They would also benefit from better designed Union rules and a more fitting regulatory environment.

Public authorities

The impact of Options 3 to 5 on the national authorities would be equally positive, as enhanced access to information should result in better single market enforcement at Member State level.

This could limit the instances of formal infringement proceedings against Member States.

Citizens

The Commission would be able to ensure a higher degree of compliance with Single Market laws, better Union policies, and a more frictionless functioning of the Single Market. This would enhance consumer trust in the Single Market, resulting in wider participation in and use of the Single Market possibilities.

Option 3: Introducing residual investigative powers through national level Single Market information tools

Collecting information may in some situations require complex and lengthy coordination efforts between Member States and the Commission. This would particularly happen in instances with a strong cross-border dimension involving many stakeholders from several Member States.

Compliance with information requests remaining within the competences of Member States could lead to potential problems:

- Lack of sanctions for non-compliant firms in some Member States could reduce the effectiveness of the initiative as market participants may have no incentive to provide the requested information;
- Timely supply of information and its completeness and reliability could be difficult to ensure;
- Unfair treatment of market participants, particularly in cross-border cases where information is requested from firms in different Member States and therefore, under different regimes of potential sanctions;
- National authorities may abuse their power of requesting information, as no Union legislation would limit them.

The estimated annual Union-wide cost of this option for firms ranges between €0.36m and €0.59m. The projected cost to Member States ranges from €0.35m to €0.52m and to the Commission – from €0.07m to €0.26m. Total cost ranges between €0.78m and €1.37m. The expected benefits of the option range from €50m to €6bn for enforcement cases and around €9bn and more in cases when firm-level information collected is used for informing legislative initiatives, with a high likelihood that they will materialise, subject to the limitation described above.

Option 4: EU-level Single Market Information Tool (SMIT)

Through the SMIT:

- Full geographical coverage of the issue under investigation would be ensured;
- Information collection would be facilitated in situations with a cross-border dimension;
- Methodological problems arising from uncoordinated action would be avoided;
- Required information would be accessed in a more coordinated manner;
- The Commission would access required information in a timelier manner.

SMIT would be particularly effective in instances where its usage is necessary to collect the information required. However it should be noted that SMIT remains an exceptional, 'last resort' tool; Member States shall remain the first channel source for such data collection.

When SMIT is used, the Commission will face an administrative burden when issuing requests for information. On the other hand, hardly any burden will be placed on Member States. SMIT would, nevertheless, allow Member States, in the context of infringement procedures, to have access to information necessary for backing up economically significant enforcement cases.

Thus, the role of Member States in securing that Single Market rules are correctly applied.

Overall, Option 4 is likely to result in a more efficient process and less cumulative administrative burden for the Commission and Member States.

The sanctions proposed in Option 4 are not intended to correct any underlying firm behaviour. Instead, they would only be issued for the failure to provide the relevant information.

The annual Union-wide cost of Option 4 ranges between €0.37m and €0.61m for firms, and between €0.12m and €0.43m for the Commission. There is negligible cost for Member States. The total cost ranges between €0.49m and €1.04m. The expected benefits of the option range from €50m to €6bn for enforcement cases and around €9bn and more in cases where firm-level information collected is used for informing legislative initiatives, with a high likelihood that they will materialise.

Option 5: A 'hybrid' approach combining Options 2 and 4

Option 5 builds on both Options 2 and 4. The described ineffectiveness of Option 2 would remain, as well as the proportionality concerns. The possibility to use SMIT would diminish as the Commission would have access to information collected by Member States. SMIT would continue to allow the Commission to collect the necessary firm-level information when national tools come short, such as when: (1) national authorities do not possess or are not able to obtain the necessary information using their existing powers; (2) data collected by authorities is not timely or complete; and (3) Member States are hesitant or unwilling to provide sensitive information to the Commission.

However Option 5 would be less effective than Option 4 due to:

- Issues of comparability of data collected by different Member States;
- Additional coordination effort to determine whether investigative powers should be used at national or Union level. As existing national tools are mostly sectorial and differ significantly across the Union, selecting the most appropriate tool on a case-by-case basis may be burdensome and slow.

The annual Union-wide cost of this option is between €0.37m and €0.6m for firms; between €0.01m and €0.27m for the Member States; and between €0.13m and €0.36m for the Commission. The total cost ranges between €0.51m and €1.23m. The expected benefits of the option range between € 50m to € 6bn for enforcement cases and around €9bn and more in cases of informing legislative initiatives. The likelihood of these benefits materialising is high.

Legal implementation of the proposal:

On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

The proposed Regulation will not require transposition if it enters into force prior to EU Exit as it will be directly applicable in the UK. However amendments to national legislation may be needed to the extent current legislation is inconsistent with the proposed Regulation, or if necessary to make the Regulation workable and enforceable in the UK. However, our

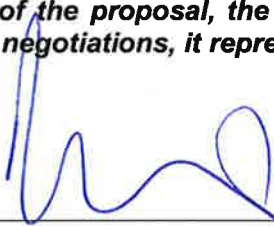
preliminary view is that it is unlikely that any changes to UK legislation will be required.

Given the cross-cutting nature of this proposal, this will need to be explored further.

Ministerial sign-off:

I have read the analysis above of the potential impacts of this proposal and I am satisfied that, given the significance of the proposal, the time and evidence available, and the uncertainty of the outcome of negotiations, it represents a proportionate view of possible impacts.

Signed by the responsible Minister:

A handwritten signature in blue ink, consisting of several loops and a long tail, positioned over the signature line.

Date: