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## **Compliance Package**

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**

{ SWD(2017) 215 final }

{ SWD(2017) 216 final }

{ SWD(2017) 217 final }

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

Europe is home to the world's largest single market<sup>1</sup> where citizens and businesses benefit from the right to work, study, travel, establish a business, and provide goods and services across borders. All this comes with the guarantees of health, safety, and environmental and consumer protection granted by EU legislation. For citizens and businesses to fully enjoy these rights and to ensure they retain confidence in the single market, it is essential that EU rules are complied with. Therefore, in its Communication 'Upgrading the Single Market: more opportunities for people and business' the Commission announced that it would set up a smart enforcement strategy. This strategy pursues *'a holistic approach, covering all stages of policy-making from policy design, implementation, to information, in line with the Better Regulation approach. This includes better integration of evaluation and enforcement aspects in policy design, better assistance and guidance to Member States in the implementation of Single Market rules and a more consistent and efficient enforcement policy aimed at improving overall compliance with Single Market rules and EU law in general'*<sup>2</sup>.

One of the difficulties encountered in ensuring internal market rules are complied with is timely access to reliable data. For this reason, the Commission announced that *'it will propose a regulatory initiative allowing it to collect reliable information directly from selected market players, with a view to safeguarding and improving the functioning of the Single Market'*<sup>3</sup>.

In the same line, in its communication 'EU Law: Better Results through Better Application', the Commission highlighted the importance of a robust and efficient enforcement system and outlined that enforcement supports and complements the delivery of policy priorities. It explained that its *'current enforcement policy involves monitoring how EU law is applied and implemented, solving problems with Member States so as to remedy any possible breaches of the law, and taking infringement action when appropriate'*<sup>4</sup>. However, ensuring the correct and full application of EU law remains a challenge. Therefore the Commission has proposed a series of measures to strengthen the enforcement system to benefit citizens and businesses and ensure their rights in the single market are respected. *'Effective enforcement of EU rules [...] matters to Europeans and affects their daily lives'*.

In certain specific instances, access to reliable information about the conduct of market participants is needed to enforce internal market rules, in particular market information concerning private firms. This proposal does not aim at creating new enforcement powers for the Commission such as the powers to pursue infringements of Union law in the internal market area against individual market participants. This Regulation aims to help the Commission monitor and enforce internal market rules by enabling it to timely obtain comprehensive and reliable quantitative and qualitative information from selected market players through narrowly targeted information requests. The proposed Regulation will help the Commission ensure that the single market rights of citizens and businesses are respected, and will help strengthen cooperation with Member States. It will also *'help the Commission to propose improvements where evaluation shows that enforcement deficits are due to flaws in*

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<sup>1</sup> In this Explanatory Memorandum the expressions 'single market' and 'internal market' are used interchangeably.

<sup>2</sup> COM(2015)550, 28.10.2015, p. 16

<sup>3</sup> *Ibid.*, p. 17.

<sup>4</sup> C(2016)8600, OJ C18, 19.1.2017, p.10.

*the relevant sectoral legislation*<sup>5</sup>. The proposed Regulation is intended for specific instances where the benefits of quick and precise enforcement clearly outweigh the burden and costs imposed on the undertakings or associations of undertakings involved.

This new tool will be used in areas where the EU can deliver tangible results that are most important to citizens and businesses. With more efficient enforcement tools the EU will be able to act and ensure full compliance more quickly and more effectively in its chosen priority areas.

- **Consistency with existing policy provisions in the policy area**

The proposal is consistent with Article 3(3) of the Treaty on European Union (TEU), which sets out the establishment of an internal market as one of the EU's main objectives, in cooperation with the Member States. It is also consistent with Article 26 TEU, which empowers the EU to adopt measures to ensure the internal market functions properly, and with Article 17 TEU, which entrusts the Commission with ensuring that Treaty rules and EU secondary legislation are applied and with overseeing the application of EU law. This proposal does not aim to create a new procedure for enforcing EU law. Rather, the proposed information tool may be used in the context of the existing procedures, such as the infringement procedure envisaged by Article 258 of the Treaty on the Functioning of the European Union (TFEU).

- **Consistency with other Union policies**

The Commission already has investigative powers to enforce the EU competition rules necessary for the functioning of the internal market. The use of these powers has proven very effective in ensuring that those rules are applied: for instance, in the field of State aid, the Commission was able to directly collect vital firm-level information in two high impact cases, resulting in the recovery of unpaid taxes consisting of unlawful State aid<sup>6</sup>.

In addition, this proposal is consistent with other EU legal instruments that grant EU bodies or national authorities the power to collect firm-level information and share it with the Commission in specific areas related to the internal market (e.g. consumer protection, financial services, market surveillance, network industries). The Commission will only use the proposed Regulation as a last resort if other means to obtain essential information fail.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

This proposal is based on Articles 43(2), 91, 100, 114, 192, 194(2) and 337 TFEU.

Article 337 TFEU provides for the Commission's power, within the limits and under the conditions which the Council may lay down acting by a simple majority, collect any information required for the performance of the tasks entrusted to it. The Court of Justice of the European Union (CJEU) has already held that this Article may be used as a legal basis for secondary legislation concerning the general activity of collecting information carried out by the Commission, without requiring that such collection be needed to achieve the objectives of a given EU policy<sup>7</sup>. However, the CJEU has also said that an EU act does not fall under Article 337 TFEU solely because it aims to establish a system to collect information<sup>8</sup>. It is

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<sup>5</sup> COM(2015)550, p. 16.

<sup>6</sup> Cf. Commission press release of 21 October 2015.

<sup>7</sup> Judgements in cases C-426/93, §22 and C-490/10, §64.

<sup>8</sup> C-490/10, §68.

therefore necessary to examine whether this initiative, as regards its aim and content, is needed to achieve the objectives specifically assigned to an EU policy. This initiative aims to improve the Commission's access to market information necessary to carry out its tasks under Article 17 TEU, in order to address serious problems with the application of internal market rules. This can only help to improve the Commission's work in ensuring the application of EU law in that area. Therefore, this initiative is needed to achieve the objective of ensuring the functioning of the internal market as referred to in Article 26 TFEU. For this reason, Article 337 TFEU must be supplemented by an internal market legal basis, such as Article 114 TFEU which provides for the adoption of measures necessary for the smooth functioning of the internal market. Improved Commission's work in that context would help prevent the emergence of obstacles to the functioning of the internal market<sup>9</sup>, which is one of the policy objectives envisaged by Article 114 TFEU<sup>10</sup>. Therefore, choosing Article 114 TFEU to supplement Article 337 TFEU is justified. Beyond Article 114 TFEU, the use of other Articles of TFEU as additional specific legal base is appropriate in order to cover the internal market fields that rely on specific articles in TFEU for legislative action: i.e. Articles 43 (agricultural goods), 91 and 100 (transport) or 194 (energy); or areas related to the internal market: Article 192 (environment).

Articles 114 and 337 TFEU have been jointly used as the legal basis in a previous EU legislative act entrusting the Commission with information collection powers in the internal market area: Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services<sup>11</sup>.

- **Subsidiarity (for non-exclusive competence)**

EU action is needed to strengthen the Commission's access to market information necessary to addressing serious problems with applying EU law in the area of the internal market when carrying out its tasks under Article 17 TEU. The information tool established by this initiative is a last resort measure when all other means to obtain information have failed. Thus, it will be used only for those cases where national intervention would not be successful, due to their scale or effects, and the EU would be better placed to act. In particular, the information tool will be used when those problems have impacts beyond one Member State and addressing them requires collecting information uniformly and consistently from selected market operators in more than one Member State. Such EU action would fulfil the necessity requirement and would only strengthen the Commission's ability to ensure EU law is respected in the internal market area.

In terms of added value, this tool will simplify coordination between the Commission and the Member States in cases with a strong cross-border dimension when information is needed from market participants operating in more than one Member State. Such EU action would also enable timely access to the information, ensure that the cross-border data collected is

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<sup>9</sup> The CJEU has recognised that, when enforcing EU law and in the absence of investigative powers of its own, the Commission largely relies on the information provided by complainants, public and private bodies and the Member States. Under those conditions, enforcement action must rely on the existing, imperfect, legal framework for collecting information, resulting in uneven and insufficient collection of firm-level information. As a result, such enforcement action is rendered more difficult or, in some instances, impossible, which may result in obstacles to the proper functioning of the internal market being created and not properly addressed.

<sup>10</sup> See judgments of the CJEU in cases C-380/03, §§ 38 to 42 and 80; C-434/02, §§ 31-34; and C-376/98, § 86.

<sup>11</sup> OJ L 241, 17.9.2015, p. 1.

comparable and result in more efficient enforcement, thus reducing the total administrative burden on the firms and public authorities involved.

This initiative, while respecting the Commission's obligation as 'guardian of the Treaties' to oversee the application of EU law, does not deprive Member States of their important role, alongside the Commission, in applying rules in the fields of the internal market or other related areas. They continue to have their own investigative powers and remain free to extend them. Moreover, the operation of this Regulation will involve Member States in different instances, reflecting the principle of sincere cooperation between the Commission and the Member States.

In particular, any Commission decision stating its intention to use the power to request information from undertakings or associations of undertakings under this initiative will be notified to the Member State or the Member States concerned. Furthermore, this initiative establishes mechanisms for the sharing of information between the Commission and the Member States in relation to the requests for information and the replies to such requests, without prejudice to professional secrecy obligations.

It is further consistent with the TFEU in so far as it expects the Commission to be able to collect the information required for the performance of the tasks entrusted to it, under the appropriate conditions fixed by the legislative power.

- **Proportionality**

This proposal is proportionate to the objectives pursued and does not go beyond what is necessary to achieve them. First, there would need to be a serious problem with the application of EU law in the areas covered by the scope of the Regulation. Second, this investigative tool is to be used only as a last resort, when no other alternative way of obtaining information relevant for addressing such a problem is capable of delivering results. Third, the Commission will need to demonstrate, in a formal decision, that such information is necessary to tackle the problem, that the information is likely to be readily available to the addressees of the requests and that other means to obtain the information have failed. Fourth, the information requests would be narrowly targeted, both as regards the length of information requests and the number of respondents. The Commission's compliance with these conditions would be subject to judicial review before the CJEU. Finally, the overall administrative burden is minimised, both for businesses (by excluding micro-undertakings and minimising the impact on small and medium-sized enterprises (SMEs) – see below) and public authorities (by avoiding inefficient coordination mechanisms between the Commission and the Member States, while ensuring full transparency towards them).

The proposal allows the Commission to impose penalties on undertakings or associations of undertakings that intentionally or through gross negligence fail to comply with information requests or decisions issued under the proposed Regulation. Penalties are not intended to correct any underlying market behaviour by undertakings. The threat of penalties is an incentive to ensure that addressees of information requests reply on time and in a complete, accurate and non-misleading manner. The proposal establishes the maximum level of penalties that are modelled on the rules in the State aid field where they serve as a deterrent. However, the proposal does not require the Commission to automatically impose penalties on non-responding undertakings, nor does it establish a minimum penalty amount, as the Commission needs to carry out a case-by-case assessment with due regard to proportionality, especially in the case of SMEs. Any Commission decision imposing penalties would be subject to judicial review.

- **Choice of the instrument**

A regulation is an appropriate legal instrument for establishing the rules that aim to strengthen the Commission's direct access to relevant information<sup>12</sup>. Indeed, both the procedure leading to the adoption of an information request by the Commission and the possibility of the obligations imposed on undertakings, including sanctions as the case may be, should be laid down in a Regulation. Compared with the possible harmonisation of national rules through a directive to achieve that goal, a regulation would result in more legal certainty and be liable to ensure a uniform interpretation. A standalone instrument would also avoid interfering with existing legal instruments that provide investigative powers to the Commission in other policy areas<sup>13</sup>.

### **3. RESULTS OF EX-POST EVALUATIONS<sup>14</sup>, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Stakeholder consultations<sup>15</sup>**

The Commission carried out a public consultation on this initiative, between 2 August and 7 November 2016. It received 71 responses: 44 from the business sector<sup>16</sup>; 16 from consumers, non-governmental organisations or civil societies; and 11 from public authorities. Participants came from 18 EU Member States (68), an EEA country (1) and a non-European country (2). Responses showed that firms are often reluctant to share commercially-sensitive information with public authorities, not only when responding to public consultations but even when needed to support allegations of infringements of their rights. Respondents reported that they would be willing to provide sensitive information to the Commission if confidentiality was assured and the administrative burden limited. However, several firms supported only voluntary participation in data requests.

In addition, the Commission has carried out targeted consultations with several large business associations who expressed reservations about empowering the Commission to request information from firms beyond the sphere of competition law. They raised concerns about the protection of commercially-sensitive data, the administrative burden, and possible fines for not responding to requests. Firms expressed frustration at the Commission's slow response to cases involving infringements of EU rules by Member States.

At the Council working party on competitiveness and High Level Group meetings, the Member States enquired about the conditions to be satisfied by the Commission for requesting information, their role in the process, the resulting administrative burden, and the proportionality of any sanctions.

Stakeholders' suggestions have been largely taken on board, particularly regarding the calls for the limited use of the tool (translated into the (pre-) conditions for the use of the

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<sup>12</sup> The use of Article 114 TFEU as legal basis for a regulation has already been accepted by the CJEU. See case C-270/12, §§97 and seq.

<sup>13</sup> E.g. Regulation (EU) 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, OJ L 248, 24.9.2015. This Regulation has a different legal basis with a different legislative procedure and was tailored to the specific objectives, procedural steps and powers of the Commission in the area of the State aid.

<sup>14</sup> Not applicable.

<sup>15</sup> See Annex 2 of the Impact Assessment for more detail.

<sup>16</sup> Business associations (31), including associations representing SMEs only; and firms (13), including SMEs and micro enterprises (9). Altogether, the responding business associations represented over 20 million firms.

investigative tool – including the role of the Member States) and the administrative burden (for example, the possibility of requesting only information that is readily available to the responding firms). The questions of the safeguards for protecting confidential information and of penalties for non-reply were addressed based on the established practices in the competition law domain.

- **Collection and use of expertise**

The Commission did not rely on specific external expertise for this initiative.

- **Impact assessment**

The Impact Assessment Report explained how the lack of reliable and accurate firm-level information available to the Commission and Member States creates a problem in situations when access to such information is needed to timely enforce internal market rules. The report further examined, beyond the existing baseline scenario, different policy options to address that problem, namely: (1) the voluntary exchange of best practices between Member States and with the Commission, and developing guidance on collecting firm-level information; (2) the lifting of national rules preventing Member States authorities from sharing firm-level information they already have or could get access to with the Commission and other Member States; (3) the introduction of residual investigative powers at national level<sup>17</sup> so that Member States are able to collect firm-level information in all cases and share it with the Commission; (4) the introduction of an investigative tool of last resort for the Commission to use where suspected obstacles to the functioning of the internal market may exist and the requested firm-level information is necessary for timely and effective decision-making and not readily available through other means; and (5) a combination of options 2 and 4. Options 2, 3 and 4 are of a legislative nature. Discarded options include expanding the coverage of EU statistics and introducing regular reporting obligations for firms.

The introduction of an investigative tool of last resort for the Commission (option 4) was considered the best policy choice in terms of subsidiarity and proportionality, while also being the most effective and cost-efficient option. Option 4 overcomes the coordination and legal jurisdiction problems in the event that Member States were acting alone when dealing with cases that have cross-border dimension. It should result in having more robust information on malfunctions in the internal market. In turn, this should enable the Commission and Member States to ensure a higher degree of compliance with internal market rules. This would strengthen consumer trust in the internal market and contribute to fulfilling its potential. Better access to information should result in better-informed enforcement of internal market rules at Member State level, limiting infringement proceedings against Member States. Businesses and consumers would benefit from the better functioning of the internal market: e.g. lower entry barriers, greater competition, more competitiveness and easier/cheaper cross-border (and potentially international) expansion.

The total annual administrative cost for undertakings or associations of undertakings (i.e. compiling the information for preparing replies and legal advice) is estimated at between €370, 000 and €610, 000<sup>18</sup>. A slight additional cost could result from the submission of non-confidential replies (i.e. to protect the respondent's business secrets). The costs derived from the preferred option for Member States are negligible (see below, Section 4, for the Commission). There would be no direct social or environmental cost if the preferred option is used.

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<sup>17</sup> Option 3 also integrates option 2.

<sup>18</sup> Assuming five requests per year (but several addressees per request).

The Impact Assessment Report and an Executive Summary Sheet<sup>19</sup> 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<sup>20</sup>. The board requested that the report be adjusted in accordance with its recommendations<sup>21</sup>. The report now clearly focuses on the objective of addressing the lack of relevant information needed to ensure the application of internal market rules in those specific instances in which information is necessary and otherwise not available. It also better explains the conditions the Commission must meet before it can use the investigative tool (see the above sub-heading on proportionality), including the need to demonstrate that the required information is not available from other sources (the last resort aspect). Moreover, the report better presents the views of stakeholders<sup>22</sup>.

- **Regulatory fitness and simplification**

When issuing information requests to undertakings and associations of undertakings, the Commission is required to make a careful selection of addressees of the requests, so that requests are only addressed to undertakings and associations of undertakings that are able to provide sufficiently relevant information (Article 5(3)). Normally, only large undertakings with either a strong market position or significant trade volumes will be able to provide the relevant information to the Commission. Unlike SMEs, larger undertakings usually operate at a larger scale and with corporate sophistication allowing for a relatively easy retrieval of the requested information. Thus the resulting administrative burden and impact on these undertakings would not appear disproportionate.

SMEs may theoretically be asked to reply to information requests under this proposal (e.g. in specific sectors or market where they may have a strong market position). However, in view of the volume of their economic activity, it is anticipated that this would probably not happen. Nevertheless if it is necessary to send a request to an SME, the proposal would minimise its compliance costs: the Commission is specifically required to take due account of the principle of proportionality when considering the scope of the information requests to SMEs (Article 5(3)). The estimated cost of replying for an individual SME ranges from €300 to €1, 000 per request with an additional potential legal advice cost of €1, 000, roughly 25 % of the estimated response cost for a large undertaking.

Micro-undertakings are exempted from this proposal in order to avoid imposing disproportionate administrative burden on them, considering in particular that they are unlikely to be in a position to provide sufficiently relevant information.

Firms of all sizes will benefit from a better functioning internal market, thanks to more targeted enforcement actions by the Commission and the Member States to ensure the application of EU law, inter alia in the field of the internal market.

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<sup>19</sup> <http://ec.europa.eu/transparency/regdoc/?fuseaction=ia>

<sup>20</sup> *Ibid.*

<sup>21</sup> The Regulatory Scrutiny Board noted that: *'The report is still not sufficiently clear and sometimes inconsistent with regard to the scope of the initiative. In several places the report still presents the SMIT as a solution to general problems of data availability, or as a source of information for single market related policy purposes that do not stem from specific enforcement deficiencies, while it does not provide justification to do so. (2) The report makes clear that the tool would be of last resort, but it is not clear about safeguards or the conditions that might trigger investigations. (3) The main report still does not reflect clearly enough Member States' and business interests' respective views.'*

<sup>22</sup> See the Impact Assessment Report for further explanation on the adjustments made.



The proposal does not prescribe any particular format or communication channel for processing the requests for information, being neutral as regards information and communication technology (ICT) developments.

- **Fundamental rights**

This proposal respects fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union. It includes safeguards and guarantees taking due account of the legitimate interest of undertakings to protect their business secrets: in Article 7 (protection of confidential information) and Article 16 (professional secrecy) of the proposal (see Article 7 of the Charter). The proposal also complies with the right to the protection of personal data (see Article 8 of the Charter) and is consistent with rules on access to documents held by the Commission (see Article 41 of the Charter). The proposal respects, in so far as addressees of information requests may challenge them before the CJEU, the right to an effective remedy and a fair trial (see Article 47 of the Charter). The rules on the possible imposition of fines or periodic penalty payments respect the right to presumption of innocence and the proportionality of penalties (see Article 48 and 49 of the Charter).

#### **4. BUDGETARY IMPLICATIONS**

This initiative does not create an additional enforcement scheme to be applied by the Commission. Instead, it gives the Commission a specific investigative tool of last resort, to be used as part of existing enforcement procedures and actions. It is estimated that the Commission could incur annual data collection and analysis costs of between €120,000 and €430,000, assuming five information requests are made per year<sup>23</sup>. The Commission costs indicated above would not require any new budgetary needs, only the redeployment of existing staff and infrastructure.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor the use of the Regulation with a view to assessing its effectiveness and proportionality. It will rely on the following criteria: exceptionality of the use of the Regulation, cooperation of the addressees of the request for information in providing such information and the quality of the information collected. The Commission will record the necessary data in that regard (e.g. annual use of the tool, area of the internal market concerned, undertakings or associations of undertakings covered, timeliness, comprehensiveness, accuracy and quality of responses, response rate, whether the use of the tool resulted in better enforcement by the Commission). It will carry out follow-up voluntary feedback surveys addressed to firms covered by the requests to gauge their opinion of the process. Moreover, the Commission will also monitor the usefulness of this tool (e.g. success rate of infringement proceedings, stakeholders' feedback on the issue). The results of these monitoring activities would be assessed after five years of application of the Regulation. The Commission must draw up a report on the application of the Regulation every two years.

- **Detailed explanation of the specific provisions of the proposal**

Chapter I (General provisions) presents the subject matter, scope and definitions (Articles 1 to 4). It entrusts the Commission (Article 4) with the power to request information directly from

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<sup>23</sup> The Commission is not obliged to use the investigative tool.

undertakings and associations of undertakings for addressing a serious problem with the application of Union law which risks undermining the attainment of an important Union policy objective.

Chapter II sets out the conditions and procedure for requesting information. Article 5 limits the Commission's power to act as a measure of last resort: where it cannot obtain the information from other sources in an adequate, sufficient or timely manner. The Commission must adopt a prior decision stating its intention to use the power in question, explaining the suspected serious problem, the information sought, why such information is needed, why other means to obtain such information failed, and the criteria for selecting the addressees of the requests (which cannot be micro-undertakings). The Commission is only empowered to request information that the addressee of the request is able to provide. The concerned Member State or States will be the addressees of the prior decision and the Commission is obliged to notify it to the Member State or States concerned without delay. Article 6 provides for the procedure to be followed for requesting information: the Commission may require undertakings or associations of undertakings to provide information by simple request or by decision and it must inform the Member State where the recipient of the request is situated. Where the Commission has launched a formal infringement procedure pursuant to Article 258 TFEU, the Commission is obliged to provide the Member State concerned by the procedure with a copy of all requests for information issued in the context of that procedure, irrespective of where the registered seat of the undertaking or association of undertakings is situated. Article 7 deals with the answers to the requests and the protection of confidential information. In particular, these provisions oblige the Commission to forward the answers received to the Member State concerned by the request where they are relevant for a formal infringement procedure pursuant to Article 258 TFEU against the Member State concerned. Where an answer includes information that is confidential vis-à-vis that Member State, the Commission shall only forward the non-confidential version of the submission. Article 8 restricts the use of the information collected to the purpose established in Article 4.

Chapter III (Articles 9 to 13) establishes the rules on 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. These rules follow the model of Regulation (EU) 2015/1589 applicable in the State aid area.

Chapter IV (Final provisions – Articles 14 to 19) sets out rules on extension of time-limits; publication of Commission decisions; professional secrecy obligations for the Member States; data protection (EU officials are already bound by similar obligations under Article 339 TFEU); reporting obligations for the Commission and the entry into force of the Regulation.

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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 43(2), 91, 100, 114, 192, 194(2) and 337 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,<sup>24</sup>

Having regard to the opinion of the Committee of the Regions,<sup>25</sup>

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In accordance with Article 3(3) of Treaty on European Union (TEU), the establishment of an internal market is one of the main objectives to be reached by the Union in cooperation with the Member States. Pursuant to Article 26(1) of the Treaty on the Functioning of the European Union (TFEU), the Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market. Under Article 26(2) TFEU, the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. The internal market has generated new opportunities and economies of scale for European undertakings, has created jobs, has offered greater choice at lower prices for consumers and has enabled European citizens to live, study and work in the Union. Despite all the progress made, significant difficulties in the establishment and functioning of the internal market remain and European citizens and undertakings are unable to reap the full benefits of the internal market. In certain cases, suboptimal information affecting the action by the Commission on the application of Union law in the area of the internal market increases the risk of the emergence of difficulties to trade in the internal market resulting from uncoordinated national enforcement activities or multifarious development of national regulatory solutions to those problems.
- (2) Article 337 TFEU provides for the Commission's power, within the limits and under the conditions which the Council may lay down acting by a simple majority, to collect any information required for the performance of its tasks. However, in Case C-490/10 *European Parliament v Council*, the Court has clarified that where the collection of

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<sup>24</sup> OJ C , , p. .

<sup>25</sup> OJ C , , p. .

information contributes directly to the achievement of the objectives of a given European Union policy, the act laying down the conditions for such collection must be based on the legal basis which relates to that policy. This Regulation provides not only for a framework in which the Commission can collect information from undertakings and associations of undertakings, but also for measures to enforce the requests for information. Therefore, while taking fully into account the fact that the Commission derives its power to collect information directly from the Treaty, this Regulation should be based, in addition to Article 337 TFEU, on the provisions of Articles 43(2), 91, 100, 192 and 194(2) TFEU and also of Article 114 TFEU, which provides for the adoption of measures necessary for the establishment and functioning of the internal market, including where differences between national rules are such as to obstruct the fundamental freedoms or where it is necessary to prevent the emergence of difficulties in the establishment and functioning of the internal market.

- (3) Detecting and, where appropriate, addressing such difficulties in an efficient and effective manner requires timely access to comprehensive, accurate and reliable quantitative and qualitative market information. This is particularly the case when the Commission acts as guardian of the Treaties, pursuant to Article 17(1) TEU which entrusts the Commission with the tasks to ensure the application of the Treaties, and of the measures adopted by the institutions pursuant to them, and to oversee the application of Union law. As established by the Court of Justice on numerous occasions in the context of infringement proceedings under Article 258 TFEU, it is the Commission's responsibility to place before the Court of Justice all the relevant factual information to prove the existence of an infringement. Such information may include in certain instances market information, needed to enable the Court of Justice to establish whether the Union law has been breached.
- (4) The Commission does not have general investigative powers of its own to help it enforce Union law in the area of the internal market. The existing investigative powers related to the competition rules, as prescribed by Council Regulation (EC) No 1/2003,<sup>26</sup> Council Regulation (EC) No 139/2004<sup>27</sup> and Council Regulation (EU) 2015/1589,<sup>28</sup> are limited by their legal basis to defined areas and do not allow the collection and use of the gathered information for other internal market-related policy purposes.
- (5) As recognised by the Court of Justice, when enforcing Union law, the Commission, whereas it may rely on indicia, is largely reliant on the information provided by complainants, by public and private bodies, and by the Member States concerned. Pursuant to Article 4(3) TEU, Member States are under the duty, as recalled several times by the Court of Justice, to facilitate the Commission's tasks, including in particular its role as guardian of the Treaties. However, Member States may not always have access to the relevant market information that the Commission would need to perform its tasks or their national rules on information collection may prevent them from disclosing the information collected.

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<sup>26</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

<sup>27</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 32, 5.2.2004, p. 1).

<sup>28</sup> Council Regulation (EU) 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 (OJ L 248, 24.9.2015, p. 9).

- (6) To complement the information received from Member States, the Commission relies on voluntary cooperation from interested parties, in particular complainants. However, in certain instances of complex cases with cross-border dimension, the Commission would need, in order to perform a sound analysis, to complete the information received through these channels to ensure, for instance, that it is fully accurate or that information from different Member States is in a comparable format. Moreover, the Commission may not always rely on official statistics for enforcement action, as there is a time lag in their production and they may not always be sufficiently detailed or disaggregated for the purposes of dealing with specific cases.
- (7) Although the current regulatory framework as regards the Commission's means to obtain information for addressing difficulties to the establishment and functioning of the internal market rules works efficiently for a great majority of cases, challenges arise in specific situations where detailed, comparable, up-to-date, and often confidential, specific market data are necessary within a limited time frame. Indeed, a sound economic analysis is particularly appropriate for assessing the existence of difficulties to the establishment and functioning of the internal market in complex cases with cross-border dimension, notably when those cases relate to fast-moving markets, new economic activities or new business models challenging existing economic assumptions. However, completing such assessment may turn to be difficult in the absence of sufficient and comparable information. This renders the task of the Commission to ensure the application of Union law more difficult in those specific situations.
- (8) Where detailed, comparable, up-to-date, and often confidential market information could only be obtained from market players in a timely manner, it appears therefore appropriate, as a last resort, to empower the Commission, within the limits and under the conditions laid down in this Regulation, to request undertakings and associations of undertakings to directly provide it, in a timely manner, with comprehensive, accurate and reliable quantitative and qualitative market information where other sources of information have proven unavailable, insufficient or inadequate. To this effect, the Commission should first adopt a decision stating why other means to obtain the necessary information have proven ineffective. It is understood that the notion of undertaking has the same meaning as in other areas of EU law, in particular competition law.
- (9) To ensure that the operation of this Regulation will involve Member States, reflecting the principle of sincere cooperation between the Commission and the Member States stipulated in Article 4(3) TEU, it is appropriate to provide that any Commission decision stating its intention to use the power to request information from undertakings or associations of undertakings under this Regulation shall be notified to the Member State or the Member States concerned without delay.
- (10) Such empowerment does not aim at creating new enforcement powers for the Commission such as, in particular, the powers to pursue infringements of Union law in the internal market area against individual market participants. Its purpose is rather to provide the Commission with additional fact-finding ability where this is strictly required for performing the task entrusted to the Commission by the TFEU to ensure the application of Union law in relation to the aim of establishing and ensuring the functioning of the internal market. In the interest of the establishment of a fully functioning internal market, it is appropriate to clarify that such empowerment covers also those economic sectors within the internal market for which TFEU has foreseen

common policies: agriculture and fisheries (excluding the conservation of marine biological resources), transport, environment and energy.

- (11) For this investigative tool to be effective, the information sought should relate to the application of relevant Union law. This may consist, for example, of factual market data, including cost structure, pricing policy, products or services characteristics or geographical distribution of customers and suppliers. It may also consist of undertakings' or associations of undertakings' fact-based analysis of the functioning of the internal market, such as in relation to perceived regulatory and entry barriers or to costs of cross-border operations. In order to minimise costs of replying to requests for information, such requests should only cover information that is likely to be at the disposal of the undertaking or association of undertakings concerned.
- (12) When issuing requests for information to undertakings and associations of undertakings, the Commission is required to undertake a careful selection of addressees of the requests, so that requests are only addressed to undertakings and associations of undertakings that are capable of providing sufficiently relevant information, notably larger undertakings in the relevant Member States. These requests for information are aimed at solving a presumed, i.e. based on the available information, serious problem with the application of Union law in the areas of the internal market, agriculture and fisheries (excluding the conservation of marine biological resources), transport, environment and energy. Their aim is not to prosecute undertakings for the underpinning behaviour, if any. Accordingly, sanctions provided for in the instrument are designed to address exclusively two instances. They only cover an intentional or through gross negligence lack of a response to a request for information and an intentionally or through gross negligence incorrect, incomplete, or misleading reply. The collected information, if relevant, could also be used to provide insight into situations where undertakings find it difficult to comply with the legislation, with a view to improving the proper application of the internal market rules. With a view to avoid disproportionate administrative burden for micro-undertakings, which are anyway unlikely to be in a position to provide sufficiently relevant information, the Commission should be precluded from issuing requests for information to this category of undertakings. When issuing requests for information to small and medium-sized undertakings, the Commission should take due account of the principle of proportionality. While SMEs are unlikely to operate at a larger scale enabling them to significantly affect market outcomes, the information gathered from SMEs could prove valuable in informing the Commission on difficulties in establishment and functioning of the internal market. Information readily available to SMEs might be of anecdotal nature but it could still alert the Commission about single market difficulties SMEs might suffer from. SMEs would normally not and should not incur any significant additional costs of data gathering in response to this tool. Given their relatively weaker bargaining position in value chains, SMEs might be more forthcoming with information when granted a procedure duly respecting confidentiality and anonymity. Resolving a difficulty in the single market establishment and functioning could in particular benefit SMEs as it is often the small innovative firms which face the greatest barriers when trying to start up and scale up across the single market. For reasons of consistency and legal certainty, the definitions

of ‘micro-undertaking’, ‘small undertaking’ and ‘medium-sized undertaking’ of Directive 2013/34/EU of the European Parliament and of the Council<sup>29</sup> should apply.

- (13) In the interest of the consistency in the application of Union law in the area of the internal market as well as agriculture, fisheries (excluding the conservation of marine biological resources), transport, environment and energy, it is necessary to establish mechanisms for the sharing of information between the Commission and the Member States in relation to the requests for information and, where appropriate, to the replies to such requests, without prejudice to professional secrecy obligations.
- (14) The investigative tool provided for in this Regulation is particularly useful for ensuring the application of Union law in the area of the internal market by the Commission. It is also useful, for any subsequent enforcement action by the Member States concerned that would require the use of the relevant information collected using this power and disclosed by the Commission to the Member States concerned. Moreover, where difficulties in the application of existing rules are experienced, including situations where undertakings are not able to comply with the legislation due to lack of legal clarity, this investigative tool could also be useful after the use of other tools and sources of relevant information have proven inadequate, for contributing to the conception or design of regulatory solutions. It is also appropriate not to allow the use of such information for other purposes, in particular the application of the competition rules of the TFEU, without prejudice to the reuse of information made public.
- (15) The Commission should be able to enforce compliance with the requests for information it addresses to any undertaking or association of undertakings, as appropriate, by means of proportionate fines and periodic penalty payments imposed by way of decision. In setting the amounts of fines and periodic penalty payments, the Commission should take due account of the principle of proportionality (including the aspects of appropriateness), in particular as regards small and medium-sized undertakings. The rights of the parties requested to provide information should be safeguarded by giving them the opportunity to make known their views before any decision imposing fines or periodic penalty payments is taken.
- (16) Taking due account of the principle of proportionality (including the aspects of appropriateness), the Commission should be able to reduce the periodic penalty payments or waive them entirely, when addressees of requests provide the information requested, albeit after the expiry of the deadline. For reasons of legal certainty, it is also appropriate to provide for limitation periods for the imposition and enforcement of fines and periodic penalty payments.
- (17) The Court of Justice should, in accordance with Article 261 TFEU, have unlimited jurisdiction in respect of decisions by which the Commission imposes fines or periodic penalty payments under this Regulation, which means that it may cancel, reduce or increase the fine or periodic penalty payment imposed by the Commission.
- (18) In the interests of transparency and legal certainty, it is appropriate to give public information on Commission decisions. The Commission, when publishing and

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<sup>29</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p.19).

handling such information, should respect the rules on professional secrecy, including the protection of all confidential information, in accordance with Article 339 TFEU.

- (19) The disclosure of information about an undertaking's business activity could result in a serious harm to the same undertaking. Therefore, the Commission should take due account of the legitimate interests of undertakings, in particular the protection of their business secrets. To ensure that business secrets and other confidential information provided to the Commission are treated in compliance with Article 339 TFEU, any undertaking or association of undertaking submitting information should clearly identify which information it considers to be confidential and why it is confidential. The Commission should not be able to disclose confidential information provided by such respondents to the Member State concerned by the request unless it has previously obtained their agreement to disclose that information to that effect. The respondent concerned should be required to provide the Commission with a separate non-confidential version of the information that could be disclosed to the relevant Member State. In cases where information marked as confidential does not seem to be covered by obligations of professional secrecy, it is appropriate to have a mechanism in place according to which the Commission can decide the extent to which such information can be disclosed. Any such decision to reject a claim that a piece of information is confidential should indicate a period at the end of which it may be disclosed, so that the respondent can make use of any judicial protection available to it, including any interim measure. The rights of the respondent should be safeguarded by giving it the opportunity to make known its views before any decision to reject the confidentiality claim is taken.
- (20) Given the exceptionality of the investigative tool provided for in this Regulation and with a view to monitoring the proportionality of its use, the Commission shall draw up a report every two years on the application of this Regulation and shall submit it to the European Parliament and to the Council.
- (21) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full respect for the right to respect for private and family life, the right to protection of personal data, the right to good administration, in particular the access to files, while respecting business secrecy, the right to an effective remedy and to a fair trial, the right of defence and the principles of legality and proportionality of penalties.
- (22) Where the measures provided for in this Regulation entail the processing of personal data, they should be carried out in accordance with Union law on the protection of personal data, in particular Directive 95/46/EC<sup>30</sup>. With regard to the processing of personal data by the Commission and within the framework of this Regulation, it shall comply with the provisions of Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>31</sup>.

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<sup>30</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, (OJ L 281, 23.11.1995).

<sup>31</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, (OJ L 8, 12.1.2001, p. 1).



- (23) Since the objectives of this Regulation, namely facilitating the Commission's access to market information necessary for carrying out its tasks in order to achieve a smooth-functioning of the internal market cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (24) This Regulation should not affect the investigative powers of the Member States. This Regulation does not aim to amend, restrict or annul the investigative powers that the Commission or bodies, offices or agencies of the Union have already received pursuant to other Union legal instruments. In particular, this Regulation should not affect the investigative powers of the Commission related to the application of the competition rules necessary for the functioning of the internal market.
- (25) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) 45/2001 of the European Parliament and of the Council and delivered an opinion on [...].

HAVE ADOPTED THIS REGULATION:

## **Chapter I**

### **General Provisions**

#### *Article 1*

##### *Subject Matter*

1. This Regulation lays down rules on the following:
  - (a) the conditions under which the Commission may request undertakings and associations of undertakings to provide information required for the performance of tasks entrusted to the Commission in relation to the areas referred to in Article 2;
  - (b) the procedure to be followed for requesting such information.
2. This Regulation shall apply without prejudice to other provisions allowing the Commission or bodies, offices or agencies of the Union to gather or request information.

#### *Article 2*

##### *Scope*

This Regulation shall apply in the following areas:

- (1) the internal market, as referred to in Article 26(2) of the Treaty;
- (2) agriculture and fisheries, other than the conservation of marine biological resources;
- (3) transport;
- (4) environment;

- (5) energy.

### *Article 3*

#### *Definitions*

For the purpose of this Regulation, the following definitions apply:

- (1) ‘micro undertaking’ means an undertaking as defined in paragraph 1 of Article 3 of Directive 2013/34/EU;
- (2) ‘small undertaking’ means an undertaking as defined in the first subparagraph of paragraph 2 of Article 3 of Directive 2013/34/EU;
- (3) ‘medium-sized undertaking’ means an undertaking as defined in paragraph 3 of Article 3 of Directive 2013/34/EU.

### *Article 4*

#### *Power to request information from undertakings and associations of undertakings*

Where a serious difficulty with the application of Union law risks undermining the attainment of an important Union policy objective, the Commission may request information from undertakings or associations of undertakings, as provided for in Chapter II, for the purpose of addressing the above-mentioned difficulty.

## **Chapter II**

### **Conditions and procedure for requesting information**

#### *Article 5*

##### *Conditions*

1. The Commission shall only use the power to request information from undertakings and associations of undertakings provided for in Article 4 where the information available to the Commission, required for the purpose referred to in Article 4, is not sufficient or adequate and cannot be obtained in a timely manner due to the following reasons:
  - (a) the information is not contained in a publicly available source; and
  - (b) the information has not been provided by a Member State upon request by the Commission; or
  - (c) the information has not been provided by a legal or a natural person.
2. Prior to requesting information in accordance with Article 6, the Commission shall adopt a decision stating its intention to use the power to request information from undertakings or associations of undertakings under this Regulation.

This decision shall include the following:

- (a) a summary description of the alleged serious difficulty of a cross-border dimension with the application of Union law and why such difficulty risks undermining the attainment of an important Union policy objective;
- (b) a summary description of the information to be requested;
- (c) a reasoned explanation of why such information is necessary for the purposes referred to in Article 4;
- (d) a reasoned explanation of why other means to obtain such information have proven insufficient or inadequate or cannot be obtained in a timely manner to date;
- (e) the criteria for selecting the addressees of the requests for information.

The decision shall be addressed to the Member State or Member States concerned. The Commission shall notify the Member State or Member States concerned without delay.

3. The undertakings or association of undertakings concerned by the request as referred to in Article 4 are obliged to provide only information that is at their disposal.

The Commission shall take due account of the principle of proportionality, in particular with regard to small and medium-sized undertakings.

## *Article 6*

### *Request for information made to undertakings and associations of undertakings*

1. In the cases provided for in Article 4 and under the conditions laid down in Article 5, the Commission may, by simple request or by decision, require undertakings and associations of undertakings to provide information.

When selecting the recipients of the requests for information, the Commission shall aim at ensuring that such requests are only addressed to undertakings and associations of undertakings that are capable of providing relevant information.

The Commission shall not issue requests for information in accordance with this Regulation to micro-undertakings, unless they are part of a group of undertakings which qualifies at least as small group as defined in Article 6(5) of Directive 2013/34/EU.

2. The simple request referred to in paragraph 1 shall state the legal basis and its purpose, specify what information is required and prescribe a proportionate time limit within which the information is to be provided. It shall also refer to the fines provided for in Article 9(1) for supplying incorrect or misleading information.
3. The decision referred to in paragraph 1 shall state the legal basis, the purpose of the request, specify what information is required and prescribe a proportionate time limit within which the information is to be provided. It shall also indicate the fines provided for in Article 9(1) and the periodic penalties payments provided for in Article 9(2), as appropriate.

In addition, it shall indicate the right of the undertaking or association of undertakings to have the decision reviewed by the Court of Justice of the European Union.

The undertaking and association of undertakings concerned may request an extension of the time-limit, in accordance with Article 14.

4. The Commission shall simultaneously provide a copy of the simple request or of the decision referred to in this Article to the Member State in whose territory the registered seat of the undertaking or association of undertakings is situated.

Where the Commission has launched a formal infringement procedure pursuant to Article 258 TFEU, the Commission shall provide the Member State concerned by the procedure with a copy of all simple requests or decisions referred to in this Article issued in the context of that procedure, irrespective of where the registered seat of the undertaking or association of undertakings is situated.

5. The decisions referred to in paragraph 1 shall be addressed to the undertaking or association of undertakings concerned. The Commission shall notify the decision to the addressee without delay.

### *Article 7*

#### *Answers to requests for information and protection of confidential information*

1. The undertakings or associations of undertakings providing information following a Commission's request for information based on Article 5 shall submit their answers to the Commission in a clear, complete and accurate manner.
2. The Commission shall give the addressee the opportunity to indicate which information it considers to be covered by the obligation of professional secrecy.

The undertaking or association of undertakings submitting information pursuant to Article 5 shall clearly indicate which information it considers to be confidential, stating the reasons for such confidentiality claim, and provide the Commission with a separate non-confidential version of the submission. When information is to be provided by a certain deadline, the same deadline shall apply for providing the non-confidential version.

3. The Commission shall forward the answers received to the Member State concerned by the request where they are relevant for a formal infringement procedure pursuant to Article 258 TFEU against the Member State concerned. Where an answer under this article includes information that is confidential vis-à-vis that Member State, the Commission shall only forward the non-confidential version of the submission.
4. The Commission shall verify whether the confidentiality claim of the information transmitted made by the respondent undertakings or associations of undertakings under subparagraph 2 of paragraph 2 is well-founded and proportionate.

After giving the undertaking or association of undertakings concerned the opportunity of making known its views, the Commission may take a decision finding that the information claimed to be confidential is not protected, and setting a date after which the information is to be disclosed. That period shall not be less than 1 month.

That decision shall be notified to the undertaking or association of undertakings concerned without delay.

## Article 8

### *Use of the information collected by the Commission*

The Commission shall only use the information collected pursuant to Article 5 for performing the purpose set out in Article 4.

The Commission may only include confidential information provided by undertakings or association of undertakings in documents to be transmitted to other parties or to be made public, in the following 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.

The information that has already been made public may be used by the Commission for a purpose other than the one set out in this Regulation.

## Chapter III

### Fines and periodic penalty payments

#### Article 9

##### *Fines and periodic penalty payments*

1. The Commission may, by decision, where deemed necessary and proportionate, impose on undertakings or association of undertakings fines not exceeding 1 % of their total turnover in the preceding business year where they intentionally or through gross negligence:
  - (a) supply incorrect or misleading information in response to a request made pursuant to Article 6(2);
  - (b) supply incorrect, incomplete or misleading information in response to a decision adopted pursuant to Article 6(3) or do not supply the information within the prescribed time limit.
2. The Commission may, by decision, impose on undertakings or associations of undertakings periodic penalty payments where an undertaking fails to supply complete, accurate and not misleading information within the prescribed deadline as requested by the Commission by a decision adopted pursuant to Article 6(3).

The periodic penalty payments shall not exceed 5 % of the average daily turnover of the undertaking or association concerned in the preceding business year for each

working day of delay, calculated from the date established in the decision, until it supplies the information requested or required by the Commission.

3. Where the undertaking or association of undertakings provides no or incomplete information, the Commission shall prior the imposition of a fine or penalty, set a final deadline of two weeks to receive the missing information.
4. The Commission shall take into account the nature, gravity and duration of the breach of Article 6(1), as well as the principle of proportionality in particular with regard to small and medium-sized undertakings when fixing the amount of the fine or periodic penalty payment.
5. Where the undertakings or associations of undertakings have satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may reduce or waive the amount of the periodic penalty payment.
6. Before adopting any decision in accordance with paragraph 1 or 2, the Commission shall give the concerned undertakings or associations of undertakings the opportunity of making known their views.

#### *Article 10*

##### *Limitation period for the imposition of fines and periodic penalty payments*

1. The powers conferred on the Commission by Article 9 shall be subject to a limitation period of three years.
2. The period provided for in paragraph 1 shall start on the day on which the infringement referred to in Article 9 is committed. However, in the case of continuing or repeated breaches of Article 6(1), the period shall begin on the day on which the breach ceases.
3. Any action taken by the Commission for the purpose of investigating or pursuing a possible breach of Article 6(1) shall interrupt the limitation period for the imposition of fines or periodic penalty payments, with effect from the date on which the action is notified to the undertaking or association of undertakings concerned.
4. After each interruption, the limitation period shall start running afresh. However, the limitation period shall expire at the latest on the day on which a period of six years has elapsed without the Commission having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which the limitation period is suspended in accordance with paragraph 5.
5. The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.

#### *Article 11*

##### *Limitation period for the enforcement of fines and periodic penalty payments*

1. The powers of the Commission to enforce decisions adopted pursuant to Article 9 shall be subject to a limitation period of five years.
2. The period provided for in paragraph 1 shall start on the day on which the decision taken pursuant to Article 9 becomes final.

3. The limitation period provided for in paragraph 1 shall be interrupted:
  - (a) by notification of a decision modifying the original amount of the fine or periodic penalty payment or refusing an application for modification;
  - (b) by any action of a Member State, acting at the request of the Commission, or of the Commission, intended to enforce payment of the fine or periodic penalty payment.
4. After each interruption, the limitation period shall start running afresh.
5. The limitation period provided for in paragraph 1 shall be suspended for so long as:
  - (a) the respondent is allowed time to pay;
  - (b) the enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union.

#### *Article 12*

##### *Addressees of decisions*

The decisions taken pursuant to Article 9(1) and (2) shall be addressed to the undertaking or association of undertakings concerned. The Commission shall notify the decision to the addressee without delay.

#### *Article 13*

##### *Review by the Court of Justice*

The Court of Justice of the European Union shall have unlimited jurisdiction within the meaning of Article 261 TFEU to review fines or periodic penalty payments imposed by the Commission. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

## **Chapter IV**

### **Final provisions**

#### *Article 14*

##### *Extension of time-limits*

Time limits shall be specified in months or in working days.

Any request for the extension of a time-limit shall be duly substantiated and submitted in writing to the service and address designated by the Commission at least five working days before expiry. The Commission may decide to extend the time-limit, to the extent that it is justified and proportionate.

## Article 15

### *Publication of decisions*

1. The Commission shall publish in the *Official Journal of the European Union* a summary notice of the decisions which it takes pursuant to Article 5(2). The summary notice shall state that a copy of the decision may be obtained in the authentic language version or versions.
2. The Commission shall publish in the *Official Journal of the European Union* the decisions which it takes pursuant to Article 9(1) and (2).

## Article 16

### *Professional secrecy*

Without prejudice to Articles 7 and 8, the Member States, their officials and other servants, shall not disclose information which they have acquired through the application of this Regulation and which is covered by the obligation of professional secrecy.

## Article 17

### *Protection of personal data*

With regard to the processing of personal data within the framework of this Regulation, Member States shall carry out their tasks for the purposes of this Regulation in accordance with the national laws, regulations or administrative provisions transposing Directive 95/46/EC. With regard to the processing of personal data by the Commission within the framework of this Regulation, it shall comply with the provisions of Regulation (EC) No 45/2001.

## Article 18

### *Reports*

The Commission shall draw up a report every two years on the application of this Regulation and shall submit it to the European Parliament and to the Council.

## Article 19

### *Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.



Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*