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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Accompanying the document Proposal for a DIRECTIVE OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL to empower the
competition authorities of the Member States to be more effective
enforcers and to ensure the proper functioning of the internal market

Delegations will find attached document SWD(2017) 116 final.

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COMMISSION STAFF WORKING DOCUMENT

IMPLEMENTATION PLAN

Accompanying the document

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market

{COM(2017) 142 final}

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COMMISSION STAFF WORKING DOCUMENT

IMPLEMENTATION PLAN

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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market

1. INTRODUCTION

The proposed Directive to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (hereinafter: "the Directive") pursues the objective of achieving an effective enforcement of the EU competition rules, which are applied through a system of parallel competences by the Commission and the national competition authorities (NCAs). In order to achieve this objective, the proposed Directive sets out specific measures to ensure that NCAs have the necessary guarantees of independence and resources, and enforcement and fining powers to be able to effectively apply Articles 101 and 102 TFEU. These measures will also enable them to effectively provide each other with mutual assistance in order to safeguard close cooperation within the European Competition Network.

The proper and timely transposition of such measures may raise some implementation challenges, concerning not only the smooth incorporation of antitrust specific rules in national legal orders, but also the prompt and coherent application of those rules by NCAs. The practical effect of the provisions of the proposed Directive may also rest on the extent to which information can be successfully disseminated among stakeholders.

The Commission's services have thus laid down the present Implementation Plan, which identifies implementation challenges and suggests a set of actions aimed at targeting them. The measures, which are summarised in explanatory tables annexed to the present plan, encompass both actions by the Commission and actions by the Member States. The timeframe of the actions is structured depending on the specific needs that may arise at different stages of the transposition process and even beyond it. The actions envisaged for Member States are meant to foster cooperation with the Commission in view of easing transposition tasks and foster better compliance with their obligations. The actions envisaged by the Commission are meant to loyally assist and support the Member States in the fulfilment of their tasks, to monitor the implementation process, and to ensure the adequate dissemination of information to stakeholders.

This Implementation Plan is provided for information purposes only. It does not legally bind the Commission on whether the identified actions will be pursued or on the form in

which they will be pursued. As regards Member State actions, the present Implementation Plan does not create further legal obligations on the Member States other than those stemming from the proposed Directive, in accordance with the Treaties. It should be noted that possible adjustments and modifications of the present Implementation Plan could be necessary to reflect future developments in the implementation of the proposed Directive.

2. CONTACT POINT

The contact point for information and cooperation as regards the Implementation Plan is the Commission's Directorate-General for Competition - Unit A4 European Competition Network and Private Enforcement. In order to ensure prompt support and a unified port of call for all issues arising from the proposed Directive, the following functional mailbox has already been activated:

COMP-ECNPLUS@ec.europa.eu

3. DELIVERABLES AND IMPLEMENTATION CHALLENGES

Four main challenges arising from the implementation of the proposed Directive have been identified. These challenges are explained below alongside suggested support actions by the Commission and the Member States.

3.1. Providing full implementation within the time-frame

Member States have to ensure that national rules governing the enforcement of Articles 101 and 102 TFEU by the NCAs comply with the proposed Directive. In order to comply with their obligation, Member States may need to amend existing rules within their legal system or lay down new specific rules.

The review by the Member States of existing national rules and the clear understanding of the obligations stemming from the proposed Directive are crucial for a full and timely implementation. Firstly, this will help Member States understand which existing rules are already in line with the requirements of the proposed Directive. Secondly, they will facilitate the assessment of further amendments that will be necessary to ensure full compliance with the Directive. Following this assessment, an adequate planning for the adoption of the required measures should also be foreseen.

The Commission should loyally cooperate with the Member States to help solve specific problems and technical issues that may arise. Member States should also assist the Commission by transmitting information on the implementation measures undertaken, thus enabling it to monitor the progress of the transposition process within the time-frame. The Commission should ensure adequate exchange with Member States of best practices/ technical solutions to the implementation challenges that may arise.

3.2. Ensuring adequate training and support for NCAs on the exercise of their enforcement and fining powers

The Directive ensures that NCAs have a minimum set of core powers to investigate and take decisions, impose deterrent fines and have in place effective leniency programmes which incentivise companies to cooperate. Practical questions may arise about the actual exercise of such powers. The Commission should ensure adequate availability to provide clarifications

and, where necessary, training, in order to allow a better understanding by NCAs of the exercise of such powers.

3.3. Ensuring adequate information to businesses

Together with the implementation of the proposed Directive by Member States, actions should be put in place in order to raise awareness amongst the business community of the main changes introduced by the Directive. Increased awareness may produce benefits in terms of compliance by undertakings, while improved legal certainty, e.g. regarding leniency programmes, could increase cooperation by infringers with competition authorities.

4. SUPPORT ACTIONS

4.1. Commission's Actions

a) Providing full implementation within the time-frame

- Upon request by the relevant services within the Member States, the Commission will offer advice on technical issues arisen. To this end, the Commission has identified in section 2 a functional mailbox which will be the single contact point within its services. The Commission services will also be available to respond to such requests in bilateral meetings.
- The Commission will facilitate the exchange of best practices/technical solutions with Member States to the implementation challenges that may arise.
- If significant transposition issues would arise in several Member States, the Commission may consider issuing interpretative guidance.

b) Ensuring adequate training and support for NCAs related to the practical implementation of the directive

- The Commission may be available to provide training on issues related to the practical implementation of the directive to the NCAs that so request.

c) Ensuring adequate information to businesses

- The Commission will intensify its advocacy effort by participating in stakeholder events aimed at increasing awareness of the main changes introduced by the Directive.

4.2. Member States' Actions

a) Providing full implementation within the time-frame

- Member States may at any moment inform the Commission's services of specific technical challenges encountered and questions arising during the transposition, so as to allow the Commission to offer the available information and assistance that they may require. Member States may also informally consult the Commission's services on draft transposition measures.
- In order to make it possible for the Commission to monitor the transposition efforts made and the progress in the transposition of the Directive within the time-frame, Member States should communicate to the Commission the text of laws, regulations and administrative provisions adopted to comply with the Directive (Article 32 of the

proposed Directive), or the text of already existing provisions that they consider to be in line with it. Such provisions should contain a reference to the Directive or be accompanied by a reference to it on the occasion of their official publication, in the form chosen by the Member States.

- Member States should transmit explanatory documents showing which existing or new provisions implement the individual measures set out in the proposed Directive.
- Where efficient solutions are already in place under national law or have been introduced within the transposition of the proposed Directive, Member States should inform the Commission so as to allow it to offer specific examples to other Member States that may be facing similar issues.

b) Ensuring adequate training and support for NCAs on the exercise of its decision-making and investigation powers

- Where the Member States consider it to be necessary, they will have the possibility to ask the Commission to provide training to their **NCAs** on issues related to the practical implementation of the new provisions introduced in their national legal framework as a result of the implementation of the Directive.

c) Ensuring adequate information to businesses

- Member States and **NCAs** should update their information sources so that they reflect the changes introduced in the national legislation resulting from the Directive. They should also complement the updated information with additional explanations on the practical consequences of such changes for the business community, including small and medium-sized enterprises (SMEs).
- **NCAs** may follow the Commission's practice by intensifying their advocacy efforts, e.g. by participating at stakeholder events aimed at increasing awareness on the main changes introduced by the Directive and its consequences for the business community, including SMEs.

4.3 Timing for Support Actions

Planned actions to achieve the objectives outlined above should take place progressively before, during and after the implementation period foreseen in the proposed Directive. The steps in which such actions should take place are described below:

Step 1: Adoption of the proposed Directive

Immediately after the adoption, the Commission will offer assistance to Member States on technical issues related to the implementation of the proposed Directive.

Step 2: First six months of the transposition period

In this period, the Commission will continue with the monitoring effort of technical challenges identified by Member States in the review of national rules that fall within the scope of the Directive. Member States may facilitate this process by informing the Commission's services of questions arisen and how the main challenges have been resolved.

The Commission actions to provide support to Member States, as well as its awareness-raising efforts among stakeholders should be intensified.

Step 3: Last 18 months of the transposition period

The monitoring action by the Commission should extend to the measures that Member States start adopting to fulfil the obligations stemming from the Directive. Member States shall publish the transposition measures adopted and inform the Commission thereof. The Commission should make available such information on its website.

Step 4: After the expiry of the transposition period

The Commission will verify the completeness and conformity of the implementation of the proposed directive by Member States.

As to monitoring, the Commission should focus its efforts on issues related to the application of the Directive. The Commission should also start providing training to **NCA**s where necessary.

The Commission will perform an ex-post evaluation of the extent to which the proposed Directive has improved the effective enforcement of EU competition rules.

Annex 1

DETAILED IMPLEMENTATION PLAN

The following tables summarise the Implementation Plan, providing a detailed overview of which actions are foreseen to achieve its objectives and the envisaged time-frame.

The timing of the support actions envisaged is structured as follows:

Step 1: Adoption of the proposed Directive;

Step 2: First six months of the transposition period;

Step 3: Last 18 months of the transposition period;

Step 4: After the expiry of the transposition period.

A. COMMISSION'S ACTIONS TO SUPPORT MEMBER STATES IN THE IMPLEMENTATION OF THE DIRECTIVE

<i>Implementation challenge</i>	<i>Support action</i>	<i>Timing</i>
Providing full implementation within the time-frame	Provision of advice through the single contact point/bilateral meetings	Steps 1, 2 & 3
	Issuing of interpretative guidance, if necessary	Steps 2 & 3
	Facilitate exchange with Member States of best practices/technical solutions	Steps 2 & 3
Ensuring adequate training and support for NCAs on the exercise of its decision-making and investigation powers	Provision of training to the NCAs	Step 3 & 4
Ensuring adequate information to businesses	Intensification of the advocacy effort	Step 3 & 4

B. MEMBER STATES' ACTIONS TO ENSURE SMOOTH IMPLEMENTATION OF THE DIRECTIVE

<i>Implementation challenge</i>	<i>Support action</i>	<i>Timing</i>
Providing full implementation within the time-frame	Inform the Commission on specific technical challenges/questions. Consult the Commission on draft transposition measures.	Steps 1, 2 & 3
	Communicate to the Commission the text of laws, regulations and administrative provisions already existing or adopted	Steps 3 & 4
	Transmit to the Commission explanatory documents on the existing or new provisions implementing the Directive	Steps 3 & 4
	Inform the Commission on efficient implementation solutions, which can be useful examples for other Member States	Steps 2 & 3
Ensuring adequate training and support for NCAs on the exercise of its decision-making and investigation powers	Ask the Commission to provide training to the NCAs	Steps 3 & 4
Ensuring adequate information to businesses	Inform the business community by updating their information sources to reflect the legislative changes and providing additional explanations	Steps 2, 3 & 4
	Intensify advocacy efforts to increase awareness amongst the business community	Steps 3 & 4