Internal market: conditions and procedure by which the Commission may request undertakings to provide information

2017/0087(COD) - 02/05/2017 - Legislative proposal

PURPOSE: to facilitate the Commission's access to market information necessary for carrying out its tasks in order to achieve a smooth functioning of the internal market.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: 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.

One of the difficulties encountered in ensuring internal market rules are complied with is **timely access to reliable data**. Suboptimal information increases the risk of the emergence of difficulties to trade in the internal market resulting from uncoordinated national enforcement activities.

The proposed Regulation seeks 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 where a serious difficulty with the application of Union law risks undermining the attainment of an important Union policy objective.

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 proposal follows the same lines as the Commission communication entitled 'Upgrading the Single Market: more opportunities for people and business' and its communication 'EU Law: Better Results through Better Application' in which the Commission highlighted the importance of a robust and efficient enforcement system.

IMPACT ASSESSMENT: the chosen option was 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.

CONTENT: the proposal entrusts the Commission with the **power to request information directly from 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. It does not create an additional enforcement scheme to be applied by the Commission.

Scope: the Regulation shall apply in the following areas: the internal market, agriculture and fisheries, other than the conservation of marine biological resources; transport; environment; energy.

The **information sought** should relate to the application of relevant Union law. It may, for instance, consist of:

- factual market data, including cost structure, pricing policy, products or services characteristics or geographical distribution of customers and suppliers);
- 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.

Procedure: the proposal sets out the conditions and procedure for requesting information:

- it limits the Commission's power to act as a **measure of last resort**: 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. The Commission is obliged to notify it to the Member State or States concerned without delay;
- 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;
- it deals with the answers to the requests and the protection of **confidential information**.

Fines and penalties: the proposal 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.

Micro-undertakings are exempted from this proposal in order to avoid imposing disproportionate administrative burden on them.

BUDGETARY IMPLICATIONS: it is estimated that the Commission could incur annual data collection and analysis costs of between EUR 120 000 and EUR 430 000, assuming five information requests are made per year.

The Commission costs indicated above would not require any **new budgetary needs**, only the redeployment of existing staff and infrastructure.