



2017/0087(COD)

30.10.2017

*****I**

DRAFT REPORT

on the 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
(COM(2017)0257 – C8-0140/2017 – 2017/0087(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Eva Maydell

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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

(COM(2017)0257 – C8-0140/2017 – 2017/0087(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0257),
 - having regard to Article 294(2) and Articles 43(2), 91, 100, 114, 192, 194(2) and 337 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0140/2017),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 18 October 2017¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection (A8-0000/2017),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ Not yet published in the Official Journal.

Amendment 1

Proposal for a regulation Citation 1

Text proposed by the Commission

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,

Amendment

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 43(2), 91, 100, 114, **192(1)**, 194(2) and 337 thereof,

Or. en

Amendment 2

Proposal for a regulation Recital 2

Text proposed by the Commission

(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 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),

Amendment

(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 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.

91, 100, **192(1)** 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 *serious problems* in the establishment and functioning of the internal market.

Or. en

Amendment 3

Proposal for a regulation

Recital 3

Text proposed by the Commission

(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.

Amendment

(3) Detecting and, where appropriate, addressing such *serious problems* 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.

Amendment 4**Proposal for a regulation****Recital 7***Text proposed by the Commission*

(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.

Amendment

(7) Although the current regulatory framework as regards the Commission's means to obtain information for addressing **serious problems** 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 **serious problems** 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.

Or. en

Amendment 5**Proposal for a regulation****Recital 8***Text proposed by the Commission*

(8) Where detailed, comparable, up-to-

PE612.279v01-00

Amendment

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8/34

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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.

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, *such as existing mechanisms for the sharing of information with Member States, national statistical offices, business registers, data available from sector reporting tools, Eurostat data, data shared on the Internal Market Information System (IMI), the Technical Regulation Information System (TRIS), the Commission's Regulatory Fitness and Performance Programme (REFIT) and reports available on the Commission's Online Dispute Resolution website*, have proven ineffective. *In its decision, the Commission should list all sources that it has consulted.* It is understood that the notion of undertaking has the same meaning as in other areas of *Union* law, in particular competition law.

Or. en

Amendment 6

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) Such empowerment does not aim at creating new enforcement powers for the Commission such as, in particular, the

Amendment

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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.

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 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.

Or. en

Amendment 7

Proposal for a regulation

Recital 11

Text proposed by the Commission

(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

Amendment

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disposal of the undertaking or association of undertakings concerned.

Or. en

Amendment 8

Proposal for a regulation Recital 12

Text proposed by the Commission

(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

Amendment

(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 ***functioning*** of the internal market, ***including in the areas of*** 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 Council²⁹ should apply.

²⁹ Directive 2013/34/EU of the European Parliament and of the Council of 26 June

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 use the simple request procedure provided for in this Regulation and* 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 *serious problems* 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 *internal* market *problems* 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 *problem* in the *internal* 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 *internal* market. For reasons of consistency and legal certainty, the definitions of ‘micro-undertaking’, ‘small undertaking’, ‘medium-sized undertaking’ *and* ‘*large undertaking*’ of Directive 2013/34/EU of the European Parliament and of the Council²⁹ should apply.

²⁹ 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).

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).

Or. en

Amendment 9

Proposal for a regulation Recital 13

Text proposed by the Commission

(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.

Amendment

(13) In the interest of the consistency in the application of Union law in the area of the internal market as well as ***internal market-related aspects of the*** 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.

Or. en

Amendment 10

Proposal for a regulation Recital 14

Text proposed by the Commission

(14) The investigative tool provided for in this Regulation is particularly useful for ensuring the application of Union law in

Amendment

(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.

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, *it should also be possible to use the information collected for the purposes of applying Union law in the area of the internal market to contribute to the conception or design of regulatory solutions*, where *serious problems* in the application of existing rules are experienced. 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.

Or. en

Amendment 11

Proposal for a regulation

Recital 15

Text proposed by the Commission

(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 *fin****es and*** periodic penalty payments imposed by way of decision. In setting the amounts of *fin****es 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

Amendment

(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 periodic penalty payments imposed by way of decision. In setting the amounts of periodic penalty payments, the Commission should take due account of the principle of proportionality (including the aspects of appropriateness). The rights of the parties requested to provide information should be safeguarded by giving them the opportunity to make

information should be safeguarded by giving them the opportunity to make known their views before any decision imposing *fin*es or periodic penalty payments is taken.

known their views before any decision imposing periodic penalty payments is taken.

Or. en

Amendment 12

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) The Court of Justice should, in accordance with Article 261 TFEU, have unlimited jurisdiction in respect of decisions by which the Commission imposes *fin*es or periodic penalty payments under this Regulation, which means that it may cancel, reduce or increase the *fin*e or periodic penalty payment imposed by the Commission.

Amendment

(17) The Court of Justice should, in accordance with Article 261 TFEU, have unlimited jurisdiction in respect of decisions by which the Commission imposes periodic penalty payments under this Regulation, which means that it may cancel, reduce or increase the periodic penalty payment imposed by the Commission.

Or. en

Amendment 13

Proposal for a regulation

Recital 19

Text proposed by the Commission

(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

Amendment

(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.*

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.

Or. en

Amendment 14

Proposal for a regulation Recital 20

Text proposed by the Commission

(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*

Amendment

(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, *by ... [two years after*

two years on the application of this Regulation and shall submit it to the European Parliament and to the Council.

the entry into force of this Regulation] **and** every two years *thereafter*, draw up a report on the application of this Regulation and shall submit it to the European Parliament and to the Council.

Or. en

Amendment 15

Proposal for a regulation Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) With regard to the handling undisclosed know-how and business information within the framework of this Regulation, Member States should carry out their tasks for the purposes of this Regulation in accordance with the national laws, regulations or administrative provisions transposing Directive (EU) 2016/943 of the European Parliament and of the Council^{1a}.

^{1a} **Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016. p. 1).**

Or. en

Amendment 16

Proposal for a regulation Article 2 – paragraph 1 – introductory sentence

Text proposed by the Commission

Amendment

This Regulation shall apply ***in the***

This Regulation shall apply ***to the internal***

following areas:

market as referred to in Article 26(2) of the Treaty as well as the internal market-related aspects of the following sectors:

Or. en

Amendment 17

Proposal for a regulation

Article 2 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

(1) the internal market, as referred to in Article 26(2) of the Treaty;

deleted

Or. en

Amendment 18

Proposal for a regulation

Article 2 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

*(2) agriculture and fisheries, **other than** the conservation of marine biological resources;*

*(2) agriculture and fisheries, **with the exception of** the conservation of marine biological resources;*

Or. en

Amendment 19

Proposal for a regulation

Article 3 – paragraph 1 – point 3 a (new)

Text proposed by the Commission

Amendment

(3a) ‘large undertaking’ means an undertaking as defined in paragraph 4 of Article 3 of Directive 2013/34/EU.

Or. en

Amendment 20

Proposal for a regulation Article 4 – paragraph 1

Text proposed by the Commission

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***.

Amendment

The Commission may request information from undertakings or associations of undertakings, as provided for in Chapter II, for the purpose of addressing ***serious problems with the establishment and the functioning of the internal market by means of an infringement procedure pursuant to Article 258 TFEU***.

Or. en

Amendment 21

Proposal for a regulation Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

1. The Commission shall only use the power to request information from undertakings and associations of undertakings provided for in Article 4 ***as a measure of last resort***, 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:

Or. en

Amendment 22

Proposal for a regulation Article 5 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the information is not contained in a publicly available source; and

(a) the information is not contained in a publicly available source ***or available from other channels that are at the disposal of the Commission***; and

Or. en

Amendment 23

Proposal for a regulation

Article 5 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(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***;

(a) a summary description of the alleged serious ***problem*** of a cross-border dimension with the ***establishment and the functioning of the internal market***;

Or. en

Amendment 24

Proposal for a regulation

Article 5 – paragraph 2 – subparagraph 2 – point d

Text proposed by the Commission

Amendment

(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;

(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, ***including a list of the institutions, instruments and sources of information consulted***;

Or. en

Amendment 25

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 1

Text proposed by the Commission

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.

Amendment

The undertakings or association of undertakings concerned by the request as referred to in Article 4 are obliged to provide only information that is ***already*** at their disposal ***and incurs no or limited processing costs.***

Or. en

Amendment 26

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 2

Text proposed by the Commission

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

Amendment

The Commission shall take due account of the principle of proportionality with regard to ***all requests to*** undertakings.

Or. en

Amendment 27

Proposal for a regulation

Article 6 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

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 ***large*** undertakings and associations of undertakings to provide information.

Or. en

Amendment 28

Proposal for a regulation

Article 6 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 29

Proposal for a regulation

Article 6 – paragraph 2

Text proposed by the Commission

Amendment

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 ***fin***es provided for in Article 9(1) for supplying incorrect or misleading information.

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 ***only*** to the ***periodic penalty payments*** provided for in Article 9(2) for supplying, ***whether intentionally or through gross negligence,*** incorrect or misleading information. ***The Commission shall not impose penalty payments for failure to provide information by means of simple requests.***

Or. en

Amendment 30

Proposal for a regulation

Article 6 – paragraph 3 – subparagraph 1

Text proposed by the Commission

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 ***fin******es provided for in Article 9(1) and the periodic penalties payments provided for in Article 9(2), as appropriate.***

Amendment

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 periodic penalties payments provided for in Article 9(2).

Or. en

Amendment 31

Proposal for a regulation

Article 6 – paragraph 3 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The decision referred to in paragraph 1 shall indicate that the undertaking or association of undertakings, in consultation with the Commission, has the right to demand that the request be withdrawn in cases where the requested undertaking does not possess the information or the costs for processing and compiling the information are disproportionate.

Or. en

Amendment 32

Proposal for a regulation

Article 7 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall forward the answers received to the Member State concerned by the request where they are

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.

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 *relevant parts of the* submission.

Or. en

Amendment 33

Proposal for a regulation Article 7 – paragraph 4

Text proposed by the Commission

Amendment

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.

deleted

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.

Or. en

Amendment 34

Proposal for a regulation

Article 8 – paragraph 2 – introductory part

Text proposed by the Commission

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:

Amendment

The Commission may only include confidential information provided by undertakings or association of undertakings in documents to be transmitted to other parties in the following cases:

Or. en

Amendment 35

Proposal for a regulation

Article 8 – paragraph 2 – point a

Text proposed by the Commission

(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;

Amendment

deleted

Or. en

Amendment 36

Proposal for a regulation

Article 8 – paragraph 3

Text proposed by the Commission

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.

Amendment

deleted

Or. en

Amendment 37

Proposal for a regulation Chapter 3 – title

Text proposed by the Commission

Amendment

Fines and periodic penalty payments

Periodic penalty payments

Or. en

Amendment 38

Proposal for a regulation Article 9 – title

Text proposed by the Commission

Amendment

Fines and periodic penalty payments

Periodic penalty payments

Or. en

Amendment 39

Proposal for a regulation Article 9 – paragraph 1

Text proposed by the Commission

Amendment

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:

deleted

(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.

Or. en

Amendment 40

Proposal for a regulation

Article 9 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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).

Amendment

The Commission may, by decision, *where it deems necessary and proportionate*, impose on undertakings or *association* of undertakings periodic penalty payments where *they intentionally or through gross negligence*:

(a) supply *incorrect or* misleading information *in response to a request made pursuant to Article 6(2); or*

(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.*

Or. en

Amendment 41

Proposal for a regulation

Article 9 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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

Amendment

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 *or corrects* the information

required by the Commission.

requested or required by the Commission.

Or. en

Amendment 42

Proposal for a regulation Article 9 – paragraph 3

Text proposed 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.

Amendment

3. Where the undertaking or association of undertakings provides no or incomplete information, the Commission shall prior the imposition of a penalty, set a final deadline of two weeks to receive the missing information.

Or. en

Amendment 43

Proposal for a regulation Article 9 – paragraph 4

Text proposed by the Commission

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.

Amendment

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 when fixing the amount of the periodic penalty payment.

Or. en

Amendment 44

Proposal for a regulation Article 9 – paragraph 6

Text proposed by the Commission

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.

Amendment

6. Before adopting any decision in accordance with paragraph 2, the Commission shall give the concerned undertakings or associations of undertakings the opportunity of making known their views.

Or. en

Amendment 45

**Proposal for a regulation
Article 10 – title**

Text proposed by the Commission

Limitation period for the imposition of **fin***es and* periodic penalty payments

Amendment

Limitation period for the imposition of periodic penalty payments

Or. en

Amendment 46

**Proposal for a regulation
Article 10 – paragraph 3**

Text proposed by the Commission

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 **fin***es or* periodic penalty payments, with effect from the date on which the action is notified to the undertaking or association of undertakings concerned.

Amendment

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 periodic penalty payments, with effect from the date on which the action is notified to the undertaking or association of undertakings concerned.

Or. en

Amendment 47

Proposal for a regulation

Article 10 – paragraph 4

Text proposed by the Commission

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.

Amendment

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 periodic penalty payment. That period shall be extended by the time during which the limitation period is suspended in accordance with paragraph 5.

Or. en

Amendment 48

Proposal for a regulation

Article 10 – paragraph 5

Text proposed by the Commission

5. The limitation period for the imposition of ***fin***es 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.

Amendment

5. The limitation period for the imposition of 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.

Or. en

Amendment 49

Proposal for a regulation

Article 11 – title

Text proposed by the Commission

Limitation period for the enforcement of ***fin***es and periodic penalty payments

Amendment

Limitation period for the enforcement of periodic penalty payments

Amendment 50

Proposal for a regulation

Article 11 – paragraph 3 – point a

Text proposed by the Commission

(a) by notification of a decision modifying the original amount of the ***fine or*** periodic penalty payment or refusing an application for modification;

Amendment

(a) by notification of a decision modifying the original amount of the periodic penalty payment or refusing an application for modification;

Or. en

Amendment 51

Proposal for a regulation

Article 11 – paragraph 3 – point b

Text proposed by the Commission

(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.

Amendment

(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 periodic penalty payment.

Or. en

Amendment 52

Proposal for a regulation

Article 12 – paragraph 1

Text proposed by the Commission

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.

Amendment

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

Amendment 53

Proposal for a regulation Article 13 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 54

Proposal for a regulation Article 17 a (new)

Text proposed by the Commission

Amendment

Article 17a

Protection of trade secrets

With regard to the handling of undisclosed know-how and business information 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 (EU) 2016/943.

Or. en

Amendment 55

Proposal for a regulation Article 18 – paragraph 1

Text proposed by the Commission

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.

Amendment

By ... [two years after the entry into force of this Regulation] and every two years thereafter, 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.

Or. en

EXPLANATORY STATEMENT

The rapporteur welcomes the continuous work of the European Commission in enhancing the compliance and strengthening the functioning of the single market through the Single Market Strategy, including with the presented Compliance Package.

Access to reliable data from market participants is instrumental when assessing the proper enforcement of internal market rules and for working towards ensuring compliance. To this purpose, it is of importance to develop tools that will ensure the timely delivery of information and match the developments in the digitalisation of the single market. The rapporteur, therefore, recognises the added value of a procedure by which the Commission may request undertaking to provide information in relation to the functioning of the internal market.

While seeing the benefits which SMIT could add to the existing toolbox of reporting and information tools, the rapporteur expresses some serious concerns regarding various provisions in the proposal for a regulation.

The new procedure should avoid becoming an unnecessary burden to undertakings in the EU, imposing disproportionate administrative and financial requirements. For that purpose the decision to make a request with SMIT should only be used as a last resort measure and only for limited number and narrowly targeted requests. The rapporteur is of the opinion that in order to avoid disproportionately frequent use of the tool information should only be requested in the context of initiating or substantiating infringement procedures. For the purposes of outlining new policies and legislation and for evaluation of existing policies the Commission should rely on the existing policy-making cycle.

In order to be able to gain the confidence of businesses in Europe and to utilise SMIT for improving the functioning of the internal market, it is of importance that the Commission ensures the confidentiality of sensitive information received through a request. The rapporteur would like to stress that information marked as confidential by respondents should remain confidential and should be shared with the relevant authorities only when necessary to substantiate an infringement procedure.

With regards to the imposition of fines and periodic penalty payments for respondents, while seeing the need for ensuring compliance with requests, the rapporteur finds the imposition of fines, comparable to those for violations of competition and anti-trust rules, disproportionate and makes proposal for improvements.

Considering the significant costs for data gathering which small-and medium sized undertakings may incur and their relatively limited market impact, the rapporteur suggests amendments to make the compliance with requests to SMEs quasi-voluntary.