



Council of the
European Union

Brussels, 24 March 2017
(OR. en)

Interinstitutional File:
2017/0063 (COD)

7621/17
ADD 3

RC 3
JUSTCIV 66
IA 52
CODEC 477

PROPOSAL

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

date of receipt: 23 March 2017

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

No. Cion doc.: SWD(2017) 115 final

Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY
OF THE IMPACT ASSESSMENT 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) 115 final.

Encl.: SWD(2017) 115 final



Brussels, 22.3.2017
SWD(2017) 115 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

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}

{SWD(2017) 114 final}

{SWD(2017) 116 final}

EXECUTIVE SUMMARY SHEET

Impact assessment on enhancing competition in the EU for the benefit of businesses and consumers – Reinforcement of the application of EU competition law by national competition authorities

A. Need for action

What is the problem and why is it a problem at EU level?

A decentralised system for the enforcement of the EU competition rules was put in place in 2004 by Regulation 1/2003. It sought to ensure greater enforcement by empowering national competition authorities (NCAs) to be enforcers alongside the European Commission. Although NCAs have significantly boosted the enforcement of the EU competition rules in the last decade, they could do more. Each year losses of €181-320 billion accrue owing to the existence of undiscovered cartels which typically increase prices by between 17% and 30%. Recent surveys and work in the European Semester process show that a number of sectors still suffer from a lack of competition across Europe. There is a clearly established link between the role and the ability of NCAs to act and fully enforce the EU competition rules and ensuring competition on markets.

There are four underlying problem drivers that affect the ability of NCAs to be more effective enforcers and the decentralized system put in place by Regulation 1/2003:

1. lack of effective competition tools
2. lack of effective powers to impose deterrent fines
3. divergences in leniency programmes discourage companies from coming clean across Europe
4. lack of safeguards that NCAs can act independently when enforcing the EU competition rules and have the resources they need to carry out their work.

If NCAs cannot realise their full potential, this weakens one of the main facets of the single market, namely ensuring that competition is not distorted in Europe. Less effective enforcement by the NCAs means that the conditions for efficiently functioning markets are not ensured. Businesses cannot compete fairly on their merits and face barriers to market entry. Consumers miss out on the benefits of competition enforcement, namely lower prices, better quality, wider choice and product innovation.

What should be achieved?

Making the NCAs more effective enforcers would ensure that the full potential of the decentralised system of enforcement put in place by Regulation 1/2003 is realised. This would boost enforcement of the EU competition rules by the NCAs and the functioning of markets in Europe (general objective). This requires the achievement of the following specific objectives:

1. Ensuring all NCAs have effective investigation and decision-making tools;
2. Ensuring that deterrent fines can be imposed;
3. Guaranteeing that all NCAs have a well-designed leniency programme in place which facilitates applying for leniency in multiple jurisdictions; and
4. Ensuring that NCAs have sufficient resources and they can enforce the EU competition rules independently.

What is the value added of action at the EU level (subsidiarity)?

The EU should take action to address the problems identified because the NCAs are applying EU rules which have a cross-border dimension. Enforcement action by one NCA in a Member State may impact on competition, businesses and consumers in other Member States, e.g. a national-wide cartel typically excludes competitors from other Member States. If NCAs do not have the necessary means and instruments to enforce (e.g. they lack resources), this may have direct negative consequences for business and consumers not only in the Member State of the NCA concerned but also in other Member States, as well as on the ability of NCAs to cooperate throughout Europe. Member State Y cannot address the lack of means and instruments of a NCA in Member State X, thus only EU action can tackle this problem.

B. Solutions

What are the various options to achieve the objectives? Is there a preferred option or not? If not, why?

Option 1: no EU action (the baseline scenario)

Option 2: only soft action

<p>Option 3: EU legislative action to provide NCAs with minimum means and instruments to be effective enforcers, complemented by some soft action and some limited detailed rules where appropriate</p> <p>Option 4: EU legislative action to provide NCAs with detailed and uniform means and instruments</p> <p>The preferred option is option 3.</p>
<p>What are different stakeholders' views? Who supports which option?</p>
<p>All categories of stakeholders (including companies and industry associations, law firms, consumer organisations and public authorities) consider that action should be taken to empower the NCAs to be more effective enforcers. This was confirmed by a public consultation which closed in 12 February 2016 and in meetings with stakeholders.</p>
<p>What are the benefits of the preferred option (if any, otherwise of main ones)?</p>
<p>Empowering NCAs by giving them minimum means and instruments to be more effective enforcers would lead to more effective enforcement of the EU competition rules and further spread the competition culture throughout Europe. This would result in more open competitive markets, where companies compete more fairly on their merits, enabling them to generate wealth and create jobs and making them more attractive to investors. Greater competition boosts productivity - a key driver for economic growth. More effective competition enforcement protects European consumers from business practices that keep the prices of goods and services artificially high and enhances their choice of innovative goods and services at affordable prices. Common minimum standards regarding the investigation and sanctioning tools would reduce divergent outcomes for companies and make the application of the EU competition rules by NCAs more predictable. Competition authorities in the EU would be able to cooperate better with each other. Costs for businesses involved in cross-border activities to adapt to different legal frameworks would reduce or even fall. This option is supported by the majority of stakeholders. The assessment of the benefits of the preferred option, both in qualitative and quantitative terms (for example the positive impact on Total Factor Productivity growth-a key ingredient of GDP) show that the benefits will largely exceed the costs of implementation.</p>
<p>What are the costs of the preferred option (if any, otherwise of main ones)?</p>
<p>The preferred option would largely entail implementation costs of the legislative initiative for public administrations, some costs for training and familiarisation with the changes introduced and potentially a limited increase of staff in some NCAs. Companies would face limited initial adaptation costs in terms of familiarisation with the new rules (which would vary depending on the Member State in which they operate). Overall, the costs for businesses involved in cross-border activities to adapt to different legal frameworks would reduce, reinforcing the single market.</p>
<p>What are the impacts on SMEs and competitiveness?</p>
<p>More effective competition enforcement results in more open competitive markets, in which all businesses, including SMEs and start-ups, can compete fairly on their merits and grow throughout the single market.</p>
<p>Will there be significant impacts on national budgets and administrations?</p>
<p>NCAs already have the basic framework in place for the enforcement of the EU competition rules, but they face certain gaps or limitations. Implementation costs would be variable depending on the extent to which rules empowering NCAs to be effective enforcers are already in place. Costs would also ensue for those Member States whose NCAs do not have sufficient resources to perform their tasks.</p>
<p>Will there be other significant impacts?</p>
<p>Giving NCAs more effective powers would only be done to the extent that it is necessary and proportionate and ensures due respect for fundamental rights.</p>
<p>Proportionality</p>
<p>Setting minimum standards to empower NCAs to effectively enforce the EU competition rules would ensure a balance between meeting the general and specific objectives whilst not unduly interfering in national traditions. Member States would still be able to set higher standards and adapt rules to national specificities.</p>

D. Follow up

When will the policy be reviewed?

The new EU legislation will be monitored and evaluated during the period of its implementation in national law. An ex-post evaluation would be carried out 5 years after its implementation in national law to assess whether the objectives have been met.