



27 April 2023

Competitiveness check in EU policy- and law-making

BusinessEurope supports the European Commission's initiative to introduce a competitiveness check as announced by President von der Leyen in October 2022. It is important that it is designed and applied as soon as possible with full support of the EU Council and the European Parliament in joint efforts to enhance long-term competitiveness of the companies operating in Europe and prevent de-industrialisation of the continent in the mid- to long-term.

With the following comments BusinessEurope contributes to the discussion on how such a check should be designed and how it would complement the existing tools under the EU's better regulation agenda.

Context – political will

BusinessEurope supports the **Commission President's [statement](#)** made at the Plenary session of the European Parliament in October 2022, announcing the introduction of the competitiveness check.¹

In its **communication [Long-term competitiveness of the EU: looking beyond 2030](#)** of 16 March 2023, the Commission committed “*To complement it ... on how to better assess the cumulative impacts of different policy measures at the EU level with a view to develop a methodology.*”

It follows the [recommendations](#) of the **Conference on the Future of Europe** of May 2022 (proposal 12(21)) stating that “New EU policy initiatives should undergo a “competitiveness check” to analyse their impact on companies and their business environment ... in accordance with the Paris Agreement, the Sustainable Development Goals, including gender equality, ...”, which also included a call for reinforced governance to assess the cumulative impact of legislation and improve the framework conditions for competitiveness of EU companies.

We welcome the **Swedish EU Council Presidency** who put the long-term competitiveness on its priority list and is advancing policy debates on the competitiveness check at the Council [meetings](#) of February and March 2023. It builds up on the preceding Czech EU Council Presidency's request to the **European Economic and Social Committee** for the [opinion](#) adopted by EESC in December 2022 and spelling out some of the elements of the competitiveness check.

¹ “*We live in times of high economic uncertainty. And, as I said, I am concerned about the competitiveness of our economy – not only concerning the Single Market, but also concerning the global competitiveness of our economy. So, all our actions must take this into account, all our actions have to take the competitiveness of our SMEs and our industry into account. This includes that we will introduce a standard competitiveness-check in our regulation. I think it is time to do that.*”



BusinessEurope is also encouraged by the **European Council's [conclusions](#)** of 9 February 2023, stating that *“it is essential for the European Union to enhance its long-term competitiveness and productivity”* and that *“the European Union will act decisively to ensure its long-term competitiveness, prosperity and role on the global stage”*, as well as a certain follow-up in the conclusions of 23 March 2023.

The EU should build on this momentum and improve available tools under the better regulation framework and beyond it, to make the competitiveness check a standard for any policy and law making processes as follows hereunder.

Competitiveness check elements – existing and new

Key suggestions in a nutshell:

- The competitiveness check should be **applied beyond individual legislative proposals, as it is the case under the present better regulation tools**, and bring the competitiveness considerations into all policy- and law-making processes (see part I below)
- The competitiveness check requires **significant governance improvements** which are necessary across the European Commission, the EU Council and the European Parliament (see part II below)
- The **substance of how competitiveness is assessed** and methodologies require only **small adjustments**, like for example more focus on Europe’s international competitiveness and effects on digitalisation (see annex 1)

The suggestions take into consideration the existing better regulation tools which are available under the impact assessment system of the EU as well as some recently taken steps by the European Commission to improve it.

Currently there is **no clear over-arching framework for the competitiveness check at political level**, to be applied by **all EU institutions** in any policy- or law-making processes. The following more detailed suggestions for the competitiveness check could both reinforce the existing tools of better regulation, notably the analysis in impact assessments, and build a more comprehensive system safeguarding the environment conducive to the long-term competitiveness.

I. **Objectives and scope.**ⁱ

1. Set a **clear political objective to improve competitiveness**, not only avoid losses in competitiveness. The competitiveness check should ensure an in-depth discussion by the Commission, co-legislators and social partners on how strategies, programs, action plans or individual regulatory initiatives of the EU enhance our productivity, capacity to grow and create jobs, innovate and compete internationally.

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2. The competitiveness should **cover not only *individual* legislative initiatives** (i.e. secondary, such as delegated acts), but **also strategies and programmes in their entirety** (including the Commission Annual Work Programs), fiscal measures, as well as international agreements. Due analysis of available alternative choices, including possibilities of self-regulation, sharing of best practices and codes of conduct, should be provided.
3. The cumulative burdens of different policy and regulatory measures at the EU level, both in terms of administrative and adjustment costs, should be assessed and addressed in order to reduce them as much as possible.
4. The competitiveness check should also be used for ***implementation strategies*** (drawn up by the Commission) so that compliance costs are kept to the minimum possible also at the implementation phase of the regulatory framework in question.
5. Special attention to competitiveness in relation to development of EU products and services that are **competitive in the global market (*external competitiveness*)** should be paid.
6. The **competitiveness check** should consist of two levels:
 - **Technical level**, that of impact assessments informing how individual policy and regulatory initiatives affect competitiveness (better regulation)
 - **Political level**, that of decision-making when shaping new strategies and entire policies for the future

II. Governance.

Political level

7. An **Executive VP of the Commission** in charge of the competitiveness check should be appointed. He/she should be granted a strong mandate regarding the application of the check by the Commission as well as the engagement in a regular political dialogue on the overall long-term competitiveness objectives with the EU Council, the European Parliament and social partners.
8. **The mission letters to all Commissioners** should oblige them to systematically assess impacts on competitiveness in the impact assessments accompanying their initiatives, so that it becomes a clearly cut political responsibility.
9. The political **dialogue on the IIA application** should be reinvigorated.ⁱⁱ

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10. In the preparation of individual initiatives, the Commission's Explanatory Memoranda should be supplemented by a **separate summary of results of the competitiveness check**.ⁱⁱⁱ
11. Analytical support and oversight of the competitiveness check could be provided by the European Commission's in-house think-tank **European Political Strategy Centre (EPSC)**. It could prepare **overall assessments on the Commission annual work programs and strategies** which entail packages of measures going beyond the policy area of one directorate-general.^{iv}
12. The competitiveness check applied to entire packages of initiatives such as strategies or programs (including the Commission work programs) should be performed on **the annual policy cycle basis**: better focus of the Strategic Foresight Report on competitiveness could be beneficial together with EPSC assessments of how the Commission's work programmes affect competitiveness.
13. The EU-wide **Foresight Network** with "Ministers for the Future" of the Member States should include **competitiveness among the main strategic priorities** for the Commission's strategic foresight agenda.^v
14. Open process and **further Council involvement**: EPSC assessments could also serve as basis for Council discussions on the Commission annual work programs' impact on competitiveness: Council's **High-level Working Group on Competitiveness and Growth** providing input to the **Competitiveness Council's** regular exchange 2x a year in February and September meetings, with a dedicated debate at the **March European Council** for its oversight. Like the Commission services do impact assessments on individual proposals, the EPSC would do the competitiveness check on the whole annual program or a package of initiatives.
15. The **Council Presidency** should keep an indicative and non-exhaustive overview of current and upcoming EU initiatives that are likely to have a significant impact on competitiveness, including initiatives falling within the remit of other Council formations.^{vi}
16. The **EU Council Presidency Trio** should ensure the continuity of political assessments of the Commission programs as well as take-up of individual impact assessment findings in legislative negotiations. The Trio should produce their concise report on the **effects of the accomplished Trio deals on competitiveness**. It could potentially "close the loop" in the discussion that originates around the annual Commission work programs when they are published.

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17. The **European Parliament** should introduce an exchange of views on the competitiveness check in its **‘Structured Dialogue’ with the Commission**, dedicating specific sessions to discuss implications of the initiatives by different commissioners on long-term competitiveness.^{vii}

Technical level

18. The Regulatory Scrutiny Board’s (RSB) **independent oversight of IAs should be reinforced** to ensure the quality of the competitiveness check in individual impact assessments of legislative proposals; there should be RSB members with good competitiveness and SME-specific expertise.^{viii}
19. The **Council and the EP should finally establish a thorough impact assessment procedure** backed with resources for their own substantive amendments affecting competitiveness (Inter-institutional Agreement on Better Law-making to be implemented), for the assessment to be done just before respective mandates for trilogue negotiations are voted.
20. All the three EU institutions should develop common criteria **defining what constitutes a “substantive” amendment** by the co-legislator, in order to effectively apply impact assessments when such amendments are introduced.
21. The European Parliament should hear its Parliamentary Research Service (EPRS) assessments of impacts on competitiveness on a regular basis when debating the initiatives at the committee level.^{ix}

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Annex 1: competitiveness check – questions of substance to be addressed (indicative non-exhaustive list)

- The competitiveness check should always consider at least the following questions, many but not all of which are covered in the better regulation toolbox for *individual* initiatives:^x
 - 1) Overall costs (full compliance and indirect costs including) of the decisions in question, short-mid-long term
 - 2) Available alternative non-legislative choices, and whether self-regulation, sharing of best practises and codes of conduct may be the desired catalysts for attainment of policy targets instead of prescriptive legislation
 - 3) Room for reducing bureaucracy (removing administrative complexity, including cross-border business operations)
 - 4) Easing the access to markets, including assessment of accelerated economic integration or, on the contrary, risks of the single market fragmentation
 - 5) Identify the multiplier impacts in supply&value chains, such as the impacts on the availability of energy and raw materials
 - 6) How different parts of supply&value chains and in different markets, including geographic spill-overs, would react
 - 7) Effects on the uptake of digital technologies, the scale-up of companies through digital innovation, and the overall digitalisation pace of businesses taking into consideration international competition
 - 8) impact on creation of sustainable employment and labour market inclusiveness
 - 9) investment opportunities created (facilitator factors rather than speculations, and to which players in the European market)
 - 10) effects on the innovation capacity and room for experimentation + barrier-free innovation roll-out across the Single Market (the issue of access to markets, just focusing on innovative goods and services specifically)
 - 11) impacts on / availability of access to finance and funding
 - 12) expected productivity changes
 - 13) effects on foreign trade facilitation and improvements in external competitiveness, both at individual product/service group and company/sector levels

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- 14) links to and perspectives with high-level talent and research excellence, risks and sourcing of skills
 - 15) whether the decision's impact is company-size-neutral (identification of whether size matters in the case concerned in principle, and then a thorough SME test)
 - 16) effects on the level playing field for companies inside vs outside of scope of the initiative
 - 17) changes in various business sectors and ecosystems not necessarily *directly* linked to the decision in question
 - 18) whether enterprises with different business models are affected differently and how
 - 19) effects on potential numbers of disputes (litigation aspects as these are costly for enterprise)
 - 20) offsetting the existing regulatory or administrative burden and how (how the 1in-1out approach can be instrumentalised)
 - 21) assessing the overall cumulative burdens on companies (including the multiplier impacts across the value and supply chains as per point 4) above) and considering options to reduce them
- The Commission's ex-post regulatory fitness check and evaluation questions should also include the competitiveness check more comprehensively in terms of how existing initiatives have contributed to or hampered competitiveness.^{xi}
 - Cost and benefit assessment methods applied by the Commission should be beefed up with the explanations on the underlying relevance of the competitiveness check.
 - Economic (including SMEs and competitiveness) impacts should be a *mandatory* part of impact assessments; the existing full discretion of individual Commission DGs to judge when such impacts are significant or not should be restricted, because these judgements decide the competitiveness element in the impact assessment. To maintain proportionality, clear criteria on "significant" impacts deserving assessment should be established.^{xii}



Annex 2: endnotes on the state of play regarding certain elements

ⁱ **State of play:** the EU has a **Treaty obligation** to ensure “an area without internal frontiers” and that “the conditions necessary for the competitiveness of the Union’s industry exist (...) in accordance with a system of open and competitive markets.” (Articles 26 and 173(1) TFEU).

The **Inter-Institutional Agreement on Better Law-Making** (IIA, 2016) sets a competitiveness strengthening objective with regard to the proposed legislation:

“The three Institutions recognise their joint responsibility that legislation is designed with a view to facilitating its transposition and practical application and to strengthening the competitiveness and sustainability of the Union economy.” (2)

IIA focuses on impact assessments for *individual* initiatives, stressing that they “should also address, whenever possible, the “cost of non-Europe” and the impact on competitiveness and the administrative burdens of the different options, having particular regard to SMEs (“Think Small First”), digital aspects and territorial impact.” (p. 12).

The Commission’s approach to assessing impacts on competitiveness is defined in its **policy communications on better regulation** ([last one](#) of April 2021) and the supporting technical [guidelines and toolbox](#) (last updated in November 2021).

As mentioned, there is no clear over-arching framework for the competitiveness check at political level across all EU institutions, apart from fragmented attempts by the **Council to “mainstream competitiveness”** some 8 years ago in 2014-2015:

“...industrial competitiveness concerns should be systematically mainstreamed across all EU policy areas” ... and “... the Commission to focus its work programme from 2015

onwards on initiatives that enhance competitiveness and innovation and do not create disproportionate regulatory burdens for European businesses. ... that the Council in its Competitiveness formation should hold regular debates about the implementation of industrial competitiveness mainstreaming...” (EU Competitiveness Council [conclusions](#), 2014, followed by policy debates in some subsequent Council meetings).

ⁱⁱ **State of play:** last call by the Commission regarding the IIA dialogue among the 3 institutions: “A relaunch of our political dialogue will facilitate the exchange of ideas, so that all parties can deliver on their commitments under the Interinstitutional Agreement.” (Better Regulation communication, 2021) No tangible progress known.

ⁱⁱⁱ **State of play:** a description of the main impact categories is required at present; the Commission is taking steps on the above, to make such separate summaries a practice from March 1, 2023.

^{iv} **State of play:** EPSC has a mandate to engage in foresight and anticipatory governance; to outreach to policy-makers and the society at large. It should suffice for the new function to be performed.

^v **State of play:** in the strategic foresight agenda setting, “ministers for the future” led by VP Sevcovic informally meet once a year to feed into the EU strategic programming. Only ministers of foreign affairs, European affairs, constitutional affairs and justice form the group.

^{vi} **State of play:** Competitiveness Council used to establish “competitiveness mainstreaming lists” of initiatives having effects on competitiveness of companies, however this initiative was not supported for long. To facilitate the Competitiveness Council’s monitoring role regarding the integrity and the well-functioning of the Internal Market, initiatives with an Internal Market legal basis (Article 114 TFEU) were pointed out specifically on the list. (e.g. see [competitiveness check-up](#) agenda point, Competitiveness Council, 30 November 2015).

^{vii} **State of play:** the established Structured Dialogue between the European Parliament and the Commission is a formal political engagement between the two institutions, allowing for an exchange of views on the key topics under the Commission’s commitments on a regular basis at committee level.

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Annex VII of the EP Rules of Procedure (Approval of the Commission and monitoring of commitments made during the hearings), Article 6:

“The commitments made and priorities referred to by Commissioners-designate during the hearings shall be reviewed, throughout his or her mandate, by the committee responsible in the context of the annual structured dialogue with the Commission undertaken in accordance with paragraph 1 of Annex IV to the Framework Agreement on relations between the European Parliament and the European Commission.”

Annex IV to the Framework Agreement on relations between the European Parliament and the European Commission: “... .. The Commission Work Programme covers the next year in question and provides a detailed indication of the Commission’s priorities for the subsequent years. The Commission Work Programme can thus be the basis for a structured dialogue with Parliament, with a view to seeking a common understanding. The Commission Work Programme shall also include planned initiatives on soft law, withdrawals and simplification..... ..In the first semester of a given year, Members of the Commission shall undertake an ongoing regular dialogue with the corresponding parliamentary committees on the implementation of the Commission Work Programme for that year and on the preparation of the future Commission Work Programme. On the basis of that dialogue each parliamentary committee shall report on the outcome thereof to the Conference of Committee Chairs.”

^{viii} **State of play:** the Commission has recently created two additional positions at RSB, it seems also reinforcing its mandate to check impacts on competitiveness; still to be checked in terms of delivering results.

^{ix} **State of play:** the EP Directorate of Impact Assessment and European Value Added has the mandate to perform ex-ante and ex-post impact assessment scrutiny, do the EU added value checks and the oversight of implementation of the European Council conclusions, as well as engage in some foresight functions.

^x **State of play:** many of these elements are already present under the Better Regulation Toolbox (impact assessment) or are taken, with certain adjustments, from the European Economic and Social Committee opinion of December 2022.

^{xi} **State of play:** “A fitness check should determine the coherence of the various measures and seek to quantify any synergies (e.g. improved performance, simplification, lower costs, reduced burdens) or inefficiencies (e.g. excessive burdens, overlaps, gaps, inconsistencies, implementation problems, and/or obsolete measures) over time. This will help identify the cumulative impact of the interventions, in terms of costs and benefits. (Better Regulation Guidelines, 2021).

^{xii} **State of play:** the Better Regulation Guidelines are non-binding internal instructions for the Commission staff. Moreover, it is required to analyse the “identified relevant impacts, with a particular attention to those that always have to be reported in the impact assessment”, meaning also the economic (including SMEs and competitiveness) impacts. However, there is a footnoted disclaimer “where significant impacts on companies are expected.” (footnote 98, Better Regulation Guidelines, 2016). The Toolbox of 2021 also presents only guidance, tips and best practice. “Users are not expected to read and apply each individual tool but to use the toolbox selectively”, which tries to strike the common sense/proportionality principle, however leaving too much discretion to the services.

In general, relevant better regulation tools available are, as numbered in the Toolbox: Sectoral competitiveness #21, Research and innovation #22, SME Test #23, Competition #24, Internal Market #25, External trade and investment #27, Employment, working conditions, income distribution, social protection and inclusion #30, Compliance promotion and verification tools #38, Methods to assess costs and benefits #57.