



Mr Pedro Siza Vieira

Minister of State for the Economy
and the Digital Transition of Portugal,
Chair of the EU Competitiveness Council

21 May 2021

Dear Minister,

RE: key messages to EU Competitiveness Council of 27-28 May 2021

Before the Competitiveness Council discussion on 27-28 May 2021, BusinessEurope would like to share the key European business community messages in relation to the main agenda items.

Updated industrial strategy and the Single Market

- BusinessEurope supports the Commission's innovative analysis in the updated Industrial Strategy that stresses the intrinsic links of industrial policy, trade policy and the Single Market, and the fact that it underlines central importance of the Single Market to a range of EU policies.
- The updated Industrial Strategy rightly stresses that in order to recover from the crisis, enhance the open strategic autonomy of the EU and realise the green and digital transitions, continued support and increased public-private co-operation are essential. It is not enough to establish targets, the key policy questions are about how to realise them.
- To fully grasp benefits of the unprecedented financial resources put in place for a solid recovery, it is crucial that Europe avoids putting disproportionate extra burdens on companies' shoulders.
- We must keep the EU open to trade and investment, secure industrial competitiveness in the "Fit-for-55" package, and ensure that EU standards, indispensable for the success in digital and green transitions, are driven by stakeholders. The Council should also endorse the Commission's recommendation that "*existing tools to address the risks of carbon leakage of globally exposed energy-intensive industries should continue to be used until fully effective alternative arrangements are in place*".
- It is crucial to further clarify and improve the state aid rules for important projects of common European interest (IPCEI), to support public and private investment, ensure transparency and a level playing field for companies. It is also important that the IPCEI instrument is used only when there is a clear market failure.



- BusinessEurope agrees with the focus on implementation and enforcement of the Single Market rules which would make our industry basis stronger and expects the Commission acting strong in this regard.
- To build up the resilience of the Single Market, we are ready to discuss the proposed measures, including the Single Market Emergency Instrument. However, they should aim at keeping the Single Market solid, removing barriers and creating ease of access to markets in the EU, rather than imposing additional requirements which translate into burdens.
- The updated Industrial Strategy rightly highlights the strategic role of harmonised standards and, most importantly, confirms the need to fix the bottlenecks in the European standardisation processes.
- BusinessEurope welcomes the proposal made by the sixteen Member States on EU industry competitiveness and effective harmonised standardisation, inviting the Commission to recover confidence in the system, establish efficient procedures to develop European harmonised standards that are according to the state of the art, and meet the deadlines that the market demands. It is crucial that the Council remains closely involved in addressing the mentioned bottlenecks.
- Ensuring that the EU remains open to trade and investment is a prerequisite for achieving resilience. The review of our “strategic dependencies” is important, but the EU will remain dependent on imports of raw materials, goods and services, as well as on attracting investments.
- The first pillar of the EU’s Raw Materials Partnership is specifically dedicated to access to markets and has brought positive results, for instance the completion of bilateral raw materials agreements between the EU and a number of trading partners, as well as the inclusion of specific provisions on access to non-energy raw materials in the EU’s FTAs.

Proposals embracing the digital economy

Digital Markets Act (DMA)

- We agree with the intentions of the DMA to harmonise rules to ensure contestable and fair markets in the digital space where gatekeepers are present.
- There is a need to ensure that no contradiction with the DMA and ex-ante rules enacted by Member States exist, it should also remain without prejudice to existing EU Competition Law. Due to the globalised nature of the digital economy, we also agree that the DMA should apply extraterritorially to digital services located outside of Europe but offering to business users and consumers based within it.



- Appropriate and clear criteria are needed to legally define what a gatekeeper is to legally understand who is and who could potentially become a gatekeeper. We support qualitative and quantitative designation in this regard.
- We believe that Article 5 obligations should apply immediately without a Commission dialogue. Article 6 obligations that are susceptible of being further specified should have the option of an efficient Commission dialogue.
- In order to address challenges of implementation and enforcement, the European Commission should ensure necessary resources are available to take efficient decisions and where possible seek support of national competition authorities.

Digital Services Act (DSA)

- We support the goals of the DSA to ensure a safer, more predictable and trusted online environment.
- Upholding the “country of origin” principle throughout the application of the DSA is of paramount importance.
- The DSA should focus on intermediaries disseminating public information to ensure a safer and more transparent online environment.
- We agree that the current limited liability scheme of the eCommerce Directive should continue to be upheld and that authority orders should be harmonised to efficiently remove illegal content rapidly. We support harmonisation of the notice and action and trusted flagger mechanisms to ensure efficient removal of illegal goods and content online.
- While codes of conduct could curtail “systemic risks” that are harmful but not necessarily illegal, we agree that the DSA should focus on the removal of illegal goods and content online.
- We support no general obligation to monitor and the ability for platforms to be encouraged to carry out their own investigations to actively remove illegal content online.
- We support the Know Your Business Customer (KYBC) provision to apply to online platforms that allow consumers to conclude distance contracts with 3rd party traders for the sale of goods or content.

Artificial Intelligence Act (AIA)

BusinessEurope also invites the competitiveness ministers to thoroughly consider a recently published proposal for the *Artificial Intelligence Act (AIA)* that will have enormous implications on Europe’s industry.

- At this stage, we would like to highlight that the scope of the AIA is considerably expanded compared to the White Paper on AI. The list of harmonisation legislation that is covered by this proposal is indeed very broad.



- While the proposal provides for a risk-based approach and introduces requirements for “high-risk” AI systems, BusinessEurope will closely analyse if the categorisation of high-risk and the detail of requirements do not hinder the uptake of industrial AI.

Better Regulation at the core of successful recovery

- In the face of the ongoing crisis, businesses cannot absorb additional burdens anymore. Consistent and vigorous application of better regulation principles is at the core of successful recovery.
- We support the Presidency steps in promoting the application of data technologies for better regulation, as negotiated in the draft Council conclusions. As next immediate step, we stress the necessity that the Council thoroughly assesses the recently published communication ‘Better Regulation: Joining forces to make better laws’.
- As provisional assessment of the Communication, BusinessEurope draws the Council’s attention to our concern that the Commission might not be keeping the better regulation principles policy-neutral. Instead, it appears to gear the better regulation guidelines and tools, most notably impact assessments, towards supporting specific policy outcomes. This may jeopardise the evidence-based policy and law making.
- The Communication lacks a clear goal of reducing the regulatory burden on business. BusinessEurope furthermore expresses its concern that the Commission will only start to apply the “1-in, 1-out” principle as of 2022, in the Commission mandate’s second half, which is a significant delay. This means that it will not be applied with regard to the major policy initiatives with far-reaching impacts on the economy, to be published still in 2021. The economic recovery requires that the Commission limits new burdens on businesses to the absolute minimum necessary and applies the “1-in, 1-out” principle to all policy initiatives immediately.

BusinessEurope stands ready to constructively discuss these issues further.

In addition, you may also find attached full position papers on the DSA and the DMA, as adopted by BusinessEurope today.

Yours sincerely,

Markus J. Beyrer