



Mr Jozef Sikela
Chair of the EU Competitiveness Council
Minister of Industry and Trade
of the Czech Republic
Na Františku 32
CZ - 110 15 Praha 1
Czech Republic

28 September 2022

Dear Minister,

RE: Key messages to EU Competitiveness Council of 29 September 2022

The upcoming EU Competitiveness Council will discuss a few very important legislative proposals, holding policy debates on the **Single Market Emergency Instrument (SMEI)** and the **Ecodesign for Sustainable Products Regulation (ESPR)**. We trust the Czech EU Council Presidency will push forward an open debate by the Council in order to assess far-reaching legislative provisions of the proposals and their impact on businesses.

BusinessEurope has the following key messages on each of the proposals.

SMEI

- Protection of the Single Market freedoms in times of crises and the control over crisis mitigation measures so that they meet the basic principles of necessity, proportionality and non-discrimination should have been the focus of SMEI.
- The published SMEI proposal goes beyond these objectives and addresses broader supply chain challenges. We do not support such an extended scope.
- While some of the public intervention measures might be necessary in emergency situations, many of them do not meet the proportionality and necessity criteria as drafted. Some of them pose risks to the level-playing field, such as establishment of the lists of "the most relevant economic operators" before the emergency is even announced, for example. We are concerned about the signals such lists might send to the market and the overall impact on competition. It could be even counter-productive to crisis prevention.
- Some of the crisis mitigation measures override the contract law, challenge protection of commercially sensitive information or deny the market economy



entirely. If businesses cannot meet some of the demands under the SMEI “emergency” mode, the burden of proof still lies on companies which are already stressed with the crisis management tasks. The threat of the “recommendations” to Member States “to ensure the efficient reorganisation of supply chains and production lines” adds to the uncertainty in times of crises.

- BusinessEurope would like to remind of our key messages to the last Competitiveness Council meeting. Companies are adopting their own strategies to adjust to increased uncertainty and geopolitical risks. Market diversification will be key to mitigate risks and increase resilience both in terms of supply - key components and raw materials - and demand - new customers and business opportunities.
- Diversification of suppliers can be achieved through an open, proactive and ambitious trade policy, especially by trade agreements, which can open opportunities for European companies abroad.
- BusinessEurope is currently working on the second edition of its exercise to better identify the risks companies face in their supply chains and discuss ways to address them. This year, our questionnaire takes into account the war in Ukraine (especially on access to raw materials, increased costs – including on energy, etc), as well as the impact of the COVID-19 pandemic, since it continues to affect supply chains (lockdowns in China, increased transportation costs, etc). We will soon come up with the results of the questionnaire and deliver recommendations to policy makers.
- BusinessEurope acknowledges some positive provisions in SMEI, too. SMEI details prohibited restrictions to freedoms of the Single Market in times of crises, which may be an efficient tool preventing disproportionate or unnecessarily intrusive or discriminatory measures. However, we underline that the prohibited practices are not allowed by the Treaties as a matter of principle, and the Council should not endorse any ambiguous provisions which could potentially legitimise such practices in whatever circumstances. The SMEI provisions should be very closely analysed in this respect.
- Administrative cooperation and transparency measures for Member States are introduced, though the framework seems to lack provisions on the consequences in cases when Member States do not follow the requirements.
- A SMEI-accompanying package of amendments to the sectoral legislation aims at speedier product access to the market in times of crises, facilitating the conformity assessment procedures and reinforcing market surveillance to ensure a level-playing field. These measures may indeed facilitate speedy delivery of products by companies to the crisis-hit society. BusinessEurope will carefully assess the provisions addressing the presumption of conformity, and the interplay between different situations when either standards or common specifications should apply for conformity purposes.
- BusinessEurope will further assess the proposal and revert on SMEI to the Council with our position paper as soon as possible.



ESPR

The ESPR proposal rightly maintains the principles of the current Ecodesign Directive, which has proven to be effective, including setting tailored requirements per product group and in coordination with relevant experts and stakeholders. In addition, the decision to turn the in-force Directive into a Regulation removes the current inconsistencies between the EU and the national levels, thus potentially strengthening the functioning of the Single Market and improving industrial competitiveness and resilience.

In 10 specific areas, the proposal needs further work for better enforceability and BusinessEurope invites to:

- Establish strong inclusion of key stakeholders, notably from the industry, in the policy making process, including by means of the Ecodesign Forum and appropriate consultations. Immediate set up of a dialogue with EU's major trading partners is necessary.
- Define products to be prioritised according to their environmental and economic potentials to strategically improve EU's resource efficiency.
- Set up comprehensive assessments based on impact-focused Life Cycle Assessment approach for the development of ecodesign requirements.
- Ensure policy coherency of the scope and requirements between the ESPR and other EU legislation.
- Set up a Digital Product Passport which is strictly relevant to circular economy purposes, protects confidential business information and relies on good quality, consistent, comparable and interoperable data.
- Require information on substances of concern based on their relevance, usefulness and information demand in the value chain.
- Base performance requirements and compliance methods on harmonised European or international standards. The Commission should issue common specifications only in exceptional instances.
- Avoid requiring third-party conformity assessments, as unnecessary and costly.
- Gradually implement requirements on destroyed goods.
- For legal clarity, harmonise definitions with existing legislation and initiatives.

We stand ready to discuss the two proposals further in detail.

Yours sincerely,

Markus J. Beyrer