



Mr Pierre-Yves DERMAGNE
Vice-Prime Minister, Minister of Economy
and Labour
Chair of the EU Competitiveness Council
Rue Ducale 61
1000 Brussels, Belgium

1 March 2024

Dear Minister,

Key messages to EU Competitiveness Council of 7 March 2024

The upcoming EU Competitiveness Council meeting will exchange views on the state of play of the Single Market and competitiveness, on the basis of the recent annual report by the European Commission and its KPIs in 9 areas, as well as address an extremely important legislative proposal for Late Payments Regulation.

Taking an objective look at the developments over the last year before the two important reports, by Mr Letta and Mr Draghi, are released and the strategic agenda for next political cycle shaped is key.

Annual Single Market and Competitiveness Report (ASMCR)

The ASMCR analysis and broad future priorities which the annual report outlines must be as comprehensive as possible and take account of the challenging realities. Our economic engine stalled regardless of the public aid related to the crises we had: compared with the same quarter of the previous year, seasonally adjusted GDP increased only by 0.1% in the euro area and increased by 0.3% in the EU in the fourth quarter of 2023, after a stagnation in both zones in the previous quarter compared to the previous year.¹ The number of greenfield projects stagnated in Europe in 2022, where the 1% increase includes a 13% rise in the UK, home to the largest number of new projects, compared to growth of 19% in North America.² BusinessEurope's members agree that the top challenges of the investment and trade climate in Europe are the energy costs and regulatory burdens.

While BusinessEurope is still having a closer look at the report, we can generally support seven priority areas identified in the ASMCR chapter regarding the future direction: focus on the implementation of agreed rules, energy costs, the Capital Markets Union, public investment and timely implementation of Union funds, research and its practical application in the economy, fair and open trade, addressing the skills and labour gaps. **However, there are two crucial areas related to regulatory burdens and requiring urgent action which are missing.**³

¹ Eurostat (14/02/2024), [GDP and employment flash estimates for the fourth quarter of 2023](#)

² The fDi report (2023), *Global greenfield investment trends*

³ See also [BusinessEurope's 37 recommendations on the future of the Single Market](#)



- First, the ASMCR's key future priorities do not mention the removal of existing regulatory barriers for cross-border business operations in the Single Market, which has the potential for providing up to €713 billion at no cost to taxpayers by 2029. Removal of barriers is not solely a matter of implementation of the already agreed rules but also that of how the EU-level legislation is being designed. So, **the Commission as the initiator of proposals, the Council and the EP as co-legislators should also prioritise removal and prevention of market fragmentation at EU level as called in the Joint Statement by the European business organisations.**⁴
- Second, we regret to see that while the Communication refers to the reduction of regulatory burdens under "A functioning Single Market" chapter, it is not even mentioned among the 7 key priorities for the future. Instead, it is mentioned that regulatory burdens have started to decrease in the EU and that the focus should be on simplification of the already agreed rules. European businesses do not share the opinion that regulatory burdens are decreasing. Therefore, **by 2025 BusinessEurope urges to introduce concrete reduction targets on compliance costs and design a dedicated programme with the timetable for regular evaluations to achieve this.**

Late Payments Regulation

BusinessEurope supports a culture of prompt payment, actions to curb payment delays and misconduct in all commercial transactions. However, **we do not support the proposal of the European Commission to fully remove freedom of contract in B2B transaction**, which is fundamental and crucial in allowing the flexibility to capture business-to-business specific circumstances.

- The removal of freedom of contract could potentially have a negative impact on the competitiveness of companies, since payment deadlines are one of several negotiation parameters on which businesses compete, besides price, terms of delivery, payment, etc.
- As EU policymakers debate how to strengthen Europe's competitiveness and improve the business environment, in particular by reducing regulatory burden and administrative complexity, it is imperative to avoid negative impacts on well-functioning business models by introducing new impracticable rules, limitations, and unjustified exemptions. Besides, it is important to have in mind the distinction between late payments and contractually agreed longer payment periods and the fact that late payment differs substantially across Member States and the diverse range of European businesses.

⁴ [Joint call for a comprehensive long-term Single Market integration agenda - 29 February 2024](#)



- In view of your policy debate on 7 March, we call on you to **maintain contractual freedom in all B2B relations**, and the flexibility deriving from it, which is a key point of the current directive and must be preserved. The right to freely negotiate contractual relations, including longer payment terms when justified, should be maintained, as it is a key element of the business environment and its multi-faceted ecosystems.

Corporate Sustainability Due Diligence (CS3D)

As we understand that there are still ongoing discussions around the Corporate Sustainability Due Diligence proposal (CS3D), we would like to reiterate that the EU is far from a balanced and workable compromise.

BusinessEurope has consistently advocated for an EU due diligence framework that can realistically be put in practice by European companies of all sizes (due to likely spillover effects), underpinned by balanced, harmonised and workable provisions.

We appreciate all the work done during the trilogue phase but fear that the combination of elements that will likely be presented for endorsement by Member States will not meet the goals of legal certainty, proportionality, and efficiency. We call on the Council to take account of the following concerns and suggestions before agreeing to the new rules:

- The targeted **single market clause introduced must be meaningful**. We are very concerned about wording in recitals that diminishes the effect of this clause and therefore must be avoided. It is important that future due diligence rules create a level playing field for companies and are not undermined by unproductive legal fragmentation.
- **Civil liability rules** are still unbalanced because they overestimate the leverage and influence European companies have in their chain of activities (made of indirect relationships throughout many layers) whilst underestimating the asymmetries and gaps of information companies face when mapping their risks. In addition, the **open litigation powers** attributed to certain entities and **lenient international private law rules** will be ingredients for making Europe a hub for massive litigation.
- **Stakeholder involvement** is important for the due diligence process, but it should not be imposed in a way that disrupts decision-making in national corporate governance systems. It should be organised in a way consistent to how the roles and responsibilities should be attributed to each company stakeholder (e.g. boards, management, shareholders and others) in our market economy system.
- Provisions around climate change plans must **not go beyond the recent Corporate Sustainability Reporting Directive** and respective standards. This includes provisions around corporate governance (e.g. incentives under the form of remuneration of directors) that have never been supported by a convincing impact assessment.



The **obligation to terminate contracts** should be truly a last resort measure. Council should stand behind its earlier position which granted exceptions to termination in cases where **stopping a relationship would be worse than the impact to avoid** or **where no available alternative to that business relationship, that provides a raw material, product, or service essential** to the company's production of goods or provision of services, exists and the termination would cause substantial prejudice to the company. Any other solution would jeopardise Europe's aim to secure access to essential raw materials for its transition and security.

Yours sincerely,

Markus J. Beyrer