



Mr Timo Harakka
Minister of Employment
Ministry of Economic Affairs and Employment
Aleksanterinkatu 4
PO Box 32, FI - 00023 Government
FINLAND

25 November 2019

Dear Minister,

Message to the Competitiveness Council meeting on 28-29 November 2019

My last letter to you before the September Competitiveness Council stressed the need to mobilise four main drivers of our prosperity in order to ensure economic growth over the long-term as a precondition to generate investment needed for social development and environmental protection. BusinessEurope called on the Competitiveness Council to take the leadership and concrete economic decisions so that this precondition is met.

While there are delays with the new Commission's appointment and its political management is in transition, we have been noticing extremely worrying trends in what concerns exactly the decisions affecting economic growth and our competitiveness, where the Competitiveness Council plays its overarching role of the competitiveness guardian in the Council.

Jeopardising Single Market fundamentals

First, the fundamental principles of the Single Market are put in doubt in different fora discussing various policy or legislative choices at present. For example, the freedom to provide services rests on Articles 56-57 TFEU guaranteeing also a right for businesses established in one Member State to operate without establishment in the other. However, this basic Treaty principle is put into question in exchanges – even if provisional - on the planned review of the E-Commerce Directive (already labelled as the Digital Services Act). In addition, Member States need to respect the Treaty provisions on the free provision of services when applying the rules on posting of workers at the national level, and the Commission must take vigorous action to ensure this is the case in all Member States.

Failing to address fragmentation

Second, the policy choices in consumer protection seem to be moving further away from two important objectives of the Single Market, notably the reduction of fragmentation and guaranteeing a level playing field. The current negotiations on the Representative Actions Directive brought a considerable shift from the original proposal whereby the main intent is now to keep the already existing national systems largely unaffected. Not



only this is contradictory with the chosen legal basis, but we also risk missing the opportunity to develop common minimum EU standards on procedural safeguards, which are essential gatekeepers against abusive litigation. Ensuring a minimum standard for domestic or cross-border representative bodies (entities litigating on behalf of consumers) is fundamental to the effectiveness of and trust in any collective redress system. As a minimum, the impact of this radically altered approach should be fully assessed using the available better regulation tools.

Public country-by-country reporting

The third point relates to our shared objective to fight tax fraud and evasion. We support the OECD's recommendations regarding the reporting of financial information to tax authorities by companies on a country-by-country basis and the sharing of that information between tax authorities. However, the Commission's proposal to unilaterally require public country-by-country reporting would not help to address tax evasion as it would undermine the role of tax authorities who have the expertise, and - supported by the OECD agreement - the information to properly enforce tax rules. By requiring disclosure of country-by-country reporting information (CBCR-information), the EU may jeopardise the willingness of other countries - who have signed up to the OECD proposal - to share taxpayers' CBCR-information. Public CBCR could also put EU companies at a competitive disadvantage vis-à-vis third country operators and damage the attractiveness of the EU as an investment location.

Hindering innovation

Another striking policy choice example relates to digitalisation of our economy and society at large. The negotiations in the Council on the e-Privacy proposal have been moving towards a general approach, unfortunately taking a completely wrong direction. In its current shape, the e-Privacy proposal will make Europeans innovation takers rather than makers. The toxic mix of disproportionate and legally uncertain provisions will make machine learning non-existent in Europe. This is vital to compete in the AI revolution and will harm our competitive abilities as a result. Furthermore, in its current shape, the e-Privacy proposal contradicts and confuses the GDPR just as the latter becomes fully understood in Europe and internationally influential. We believe the Competitiveness Council should uphold quality law-making across all Council configurations to promote a competitive Single Market. Our full digital potential will not be achieved without the correct legal framework and incentives to invest. Europe faces a choice: get the balance between open innovation and protection of societal interests correct or have a future where it will be a common place to buy superior AI solutions from 3rd countries to achieve our ambitions.

More generally, we expected that exchanges by ministers through the competitiveness check-up, as originally designed, could deliver on the competitiveness mainstreaming, including the Competitiveness Council opinions on decisions negotiated under other Council formations. The new political cycle will start in full with the new Commission



taking office in a few days, and Europe needs leadership that ensures consistency across all administrative set-up in maintaining the competitiveness and economic sustainability of EU.

Last but not least, the external dimension of the EU's competitiveness is all the more important with unilateralism and protectionism on the rise. The EU needs to remain a strong supporter of multilateralism and free rules-based trade. Maintaining an ambitious bilateral trade agenda by concluding ongoing negotiations, like with Australia and New Zealand, and implementing agreements that were concluded such as with Vietnam and Mercosur, is crucial to ensure the EU retains global competitiveness and leadership in setting global rules in key areas like intellectual property, subsidies, sustainability or digital trade.

Yours sincerely,

Markus J. Beyrer