



Mr Héctor José Gómez Hernández
Minister
Chair of the EU Competitiveness Council
Ministry for Industry, Trade and Tourism
Paseo de la Castellana, 160
28071 Madrid, Spain

Cc: Deputy Permanent Representatives of
Member States, COREPER 1

15 September 2023

Dear Minister,

RE: more discussion on impacts of regulations on competitiveness needed

As the Spanish EU Council Presidency has the steering wheel of the Council at the moment when Europe runs a high risk of de-industrialisation and loss of its competitiveness globally, BusinessEurope would like to take this opportunity and draw the attention of the Presidency to the role of impact assessments and their handling in the Council. **Thorough discussions and understanding of implications on competitiveness of the adopted EU laws are imperative to preserve growth and jobs in Europe.**

In this respect, BusinessEurope took a good note of **the Council's annual report on impact assessment within the Council adopted in June** (10082/23, hereinafter referred to as "the 2023 Report"). In our view, the report sends a strong signal to the policy makers, and the business community would like to share the following comments in this regard.

1. It is welcome that the 2023 Report takes a look at the developments in the Council preparatory bodies over the past years and underlines the political commitment to ensure a "proper follow-up and implementation of the provisions of the Inter-Institutional Agreement on Better Law-Making (IIA) of 13 April 2016."
2. The 2023 Report rightly points to the European Council mandate of 23 March 2023 to pursue a growth-enhancing regulatory environment, including the application of competitiveness checks. The latter are a key element in impact



assessments of legislative proposals and should be considered by the Council independently of which Council formation leads the legislative work concerned. Moreover, BusinessEurope has a number of suggestions on the Council role in a thorough competitiveness check governance system, which you may find [here online](#) and attached for your consideration.

3. Having said that, we are deeply concerned about the trends in terms of handling impact assessments in the Council. The 2023 Report states that out of 61 legislative proposals tabled by the European Commission with the supporting impact assessments, only 31 impact assessments were discussed in working parties and only 21 of these were discussed using the recommended technical “checklist” that aids the impact assessment consideration. It means that roughly only 1/3 of the received impact assessments are considered according to the Council’s own guidelines. It is crucial to improve the situation, inter alia by adhering to the Council guidelines that the Presidencies give delegations sufficient time to examine impact assessments.
4. BusinessEurope is also concerned about the Council scrutiny of the legislative, non-legislative (delegated) acts and implementing measures of the Commission *unaccompanied* by an impact assessment. It is worrying to observe that only in 2 cases out of the total 37 legislative proposals without an impact assessment some (or may be only one, as there are no figures presented) Member States raised concerns. The lack of scrutiny from the Council in this regard may leave significant flaws in understanding the impacts of legislation and hence undermine its quality.
5. The above-mentioned issue leads to another point of concern, the Council’s impact assessments on its own substantial amendments. We are deeply concerned that speed prevails over quality in negotiations, the number of adopted general approaches or final acts being the main measurement of merit for the Council presidencies. The 2023 Report states that there were no requests by Member States made to carry out a Council impact assessment on its substantial amendment. As there has been a massive flow of legislation with far-reaching impacts under this legislature, it is extremely difficult to believe that all the Council’s amendments were insignificant. Such a situation raises doubts as to how the IIA commitments are upheld.
6. BusinessEurope takes note of the fact that, given the negative developments mentioned above and impact assessment services never used by the Council, the Council lost its structural back-up of resources for impact assessments and the respective framework contracts could not be extended or newly concluded. It means that a systemic approach to impact assessments in the Council is cracking at a crucial moment when it is most needed.



7. The 2023 Report states that there were “no instances of a Commission impact assessment being presented in other Council preparatory bodies other than the ones in the lead on their specific proposals”, which is a prerogative of the Council Presidency or COREPER to call for. It is extremely worrying, as many legislative acts considered by the Council formations other than the Competitiveness one, do have significant impacts on European businesses and their competitiveness.

In light of this assessment of the Council’s annual report on impact assessment within the Council 2023, **BusinessEurope urges the Spanish EU Council Presidency and the entire Presidency Trio to reinvigorate the application of impact assessment procedures in the Council preparatory bodies as well as consider major impacts of legislation and strategies or policy programmes on competitiveness at political level.**

We stand ready to discuss these issues further.

Yours sincerely,



Markus J. Beyrer