



**Mr Peter Žiga**

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### **Message to the Competitiveness Council meeting on 28 and 29 November**

Dear Minister,

The European Union is faced with important and difficult challenges on several fronts. Strong political will and unity is required to address them. Making progress on different policy initiatives in order to support the competitiveness of our companies in the single market is an essential part of the answer.

A stable regulatory environment and legal certainty is essential to trigger investment in Europe and make the single market work better. This requires swift implementation of the 2015 Single Market Strategy to remove remaining obstacles to free movement and to avoid creating new ones, and better compliance and enforcement of existing single market rules.

Manufacturing industry is crucial for growth and employment in all sectors of the economy, including services. It provides the bulk of export goods and it accounts for 80% of European companies' investment in innovation. Having a structured roadmap to strengthen Europe's manufacturing industry is essential for European growth and job creation. The EU should encourage and support member states bilateral work to identify key industrial policy projects requiring concerted national actions as well as concrete EU-level deliverables to support the transition towards a smart, innovative and sustainable industry. BusinessEurope counts on the Competitiveness Council to keep this strategically important topic high up on the EU agenda.

#### **1. Geoblocking**

The proposal on geoblocking does not address the root causes that hamper buying and selling across borders, and will therefore not be a game-changer that will boost cross-border e-commerce. However, having this regulation up for discussion, it is absolutely fundamental that the text is made clearer to provide certainty to traders and customers, as legal certainty is paramount for businesses and consumers to feel encouraged to engage in the single market.

At the same time, BusinessEurope urges the Competitiveness Council not to overlook the objective of tackling remaining fragmentation in the single market, which is the real root cause of geo-blocking and differential treatment. Furthermore, the proposed regulation should clearly state that when fulfilling the de facto obligation to sell, the trader can indeed solely rely on his own home country rules, for instance in terms of contract law, labelling, product safety rules, VAT, etc. Providing legal certainty also entails that the regulation should clearly spell out that sales falling under its scope are considered as non-directed activities, and that the Rome I and Brussels I regulations do not apply.

It is of crucial importance that this proposal is not rushed, as it could have far-reaching implications for companies. According to BusinessEurope, the Council needs to take more time to find appropriate legal solutions, in particular on the fundamental article 1(5) related to applicable law.

## **2. Consumer protection rules**

BusinessEurope is in favour of measures which ensure an effective and uniform enforcement of consumer protection rules in the single market. The Consumer Protection Cooperation Regulation revision follows this approach and, importantly, focuses on the need for authorities in different countries to make comparable interpretations and coordinate their actions. However, BusinessEurope questions the need for detailed lists of the powers of national authorities. In most jurisdictions they are in the hand of national courts, not the public administration. Giving these powers (e.g. closing down of websites) to administrative authorities might undermine fundamental rights of companies provided under national law. A list of powers will not necessarily ensure more uniform enforcement and, in addition, it might become disproportionate as there are no guarantees foreseen, such as the right to appeal, against the extra powers given.

## **3. SME Envoy Network and EU SME policy**

SMEs are a strategic asset for growth and job creation. BusinessEurope welcomes the 2016 report of the SME Envoy Network to the Competitiveness Council. It rightly underlines that SME aspects need to be taken into account in all legislative and policy initiatives both on EU and Member States' level.

BusinessEurope calls on the Competitiveness Council to create more space in its discussions for the issue of treating SMEs as a strategic asset for a return to growth, in line with the vision of the Small Business Act adopted in 2008. The Commission Communication on "The Single Market Strategy: helping SMEs and Start-ups to grow" should make a difference on the ground in terms of supporting all growth-oriented SMEs.

#### **4. Single Market strategy one year on**

The Single Market Strategy rightly focuses on removing remaining barriers and practical difficulties undermining free movement in the single market.

BusinessEurope supports the **Single Digital Gateway** proposal. We believe this gateway should be more than just an information page and actually assist businesses that are willing to operate across borders. It should provide valid and reliable contact points for follow-up enquires, and be designed so as to be easily used for businesses of all sizes. The Gateway's data should be continuously updated and information should be provided in at least one other foreign language. It is fundamental to lay down quality standards to ensure minimum performance and ensure stakeholder involvement in its development. For the uptake of the Gateway, it is crucial that it meets the needs and expectations of its intended users, namely businesses, start-ups and entrepreneurs throughout Europe.

While services represent the largest share of the EU economy, cross-border service provision is still underdeveloped. This is due to remaining and newly generated administrative and regulatory obstacles that hamper companies and in particular small and medium sized enterprises to operate across borders. In this context, BusinessEurope is closely following the **European Services Card** initiative as it is a novel approach that could help businesses to go out into the single market. However, it will only work if it is well-designed and if the targeted companies in the construction and business services sectors really see the added value. With the card, companies should be able to skip certain administrative procedures and requirements already fulfilled in the *home* Member State, thereby saving time and costs both for businesses and public authorities, also through better communication between different national authorities. Furthermore, the initiative should also lead to regulatory simplification as Member States become more aware of each other's procedures and share best regulatory practices.

At the same time, it is essential to ensure that Member States do not introduce unnecessary additional requirements to be able to provide services in their country. BusinessEurope therefore supports the introduction of a **legal instrument to improve the current notification procedure for services** announced in the Single Market Strategy. It should ensure that extra national requirements are always notified and can only be kept if proportional and in line with EU legislation and single market principles.

Regarding the **Single Market Information Tool (SMIT)**, allowing the Commission to collect information directly from selected market players, BusinessEurope is opposed to the creation of another mandatory administrative tool burdening companies with extra reporting obligations and possible sanctions. We could however support a voluntary tool, where businesses cooperate, provided that any sensitive information is treated as confidential and is not be used for other purposes than what it has been collected for (unless prior consent is given).



Finally, BusinessEurope urges the EU to deliver on **making digital solutions available** throughout a company's lifecycle and to continue the work towards **company law** solutions to facilitate cross-border operations (e.g. mergers and divisions) as insufficient progress has been witnessed so far.

Our single market is the basis of our prosperity and is not yet living up to its full potential. Businesses still suffer from insufficient Member State compliance with single market rules. Action on remaining barriers is an absolute priority to deliver more growth and more jobs for our citizens. The Competitiveness Council has a crucial role to play in making this happen.

Yours sincerely,

Markus J. Beyrer