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NOTE

From: Permanent Representatives Committee (Part 1)
To: Council

Subject: Draft Council Conclusions on Single Market Policy

1. On 8 January 2015, the Presidency presented draft conclusions on Single Market Policy which were discussed by the Working Party on Competitiveness and Growth on 14 and 23 January and 5 and 10 February 2015. These Conclusions are intended to be adopted by the Competitiveness Council on 2 March 2015 and will be part of a policy debate on Single Market issues. The discussions in the Working Party resulted in a general consensus on the text set out in Annex to this Note. However, a number of issues remained open.
2. On 18 February 2015, the Permanent Representatives Committee took note of the draft Conclusions, resolved all outstanding issues, and agreed to the draft text in its present wording and that it be forwarded to the Council with a view to adoption.
3. The Council (Competitiveness) of 2 March 2015 is invited to adopt the draft Council Conclusions set out in the Annex to this Note.

Draft Council Conclusions on Single Market Policy

THE COUNCIL (COMPETITIVENESS)

Completing the Single Market

1. EMPHASISES that the Single Market is the cornerstone of the EU's competitiveness and capacity for economic growth and job creation, and also a powerful tool to support emerging industries. NOTES that despite the successes of the Single Market, more than 20 years after its creation barriers and gaps to its full functioning remain and technological development has led to new opportunities and challenges. Therefore, CALLS on Member States and the EU institutions to take urgent and determined actions both at EU and national level to deepen Single Market integration, and thus contribute to structural reforms. STRESSES also the fundamental importance of a fully functioning and connected Internal Energy Market.

2. WELCOMES the new Commission's focus, as set out in the Investment Plan for Europe and the Work Programme for 2015, on unlocking the full potential of the Single Market, including the creation of a truly connected Digital Single Market. RECALLING its Conclusions of 2-3 December 2013¹ and the European Council Conclusions of 18 December 2014², EXPECTS the Commission's forthcoming Single Market Strategy to be presented as soon as possible in the second half of 2015 and building on two mid-2015 reports on mutual recognition and services and include proposals for concrete actions with set deadlines, targeting the most significant remaining barriers with a particular focus on SMEs; and that the forthcoming Digital Single Market Package is a genuine driver for EU growth and new jobs, and that policy actions will be presented as soon as possible. URGES all EU institutions and Member States to pursue these objectives by adopting the policy actions and guidelines proposed in these Conclusions. CONSIDERS it to be important that Council, at the appropriate level, reviews and monitors the implementation of these and previous Conclusions.

¹ Doc. 16443/13

² Doc. EUCO 237/14

3. REITERATES that a fully functioning Single Market requires the application of harmonised EU rules and mutual recognition in non-harmonised areas. UNDERLINES that the success and safeguarding of the Single Market is a shared responsibility, between the EU institutions and the Member States. RECALLS that the Single Market rests upon the “four freedoms”, operating in accordance with the rules and principles enshrined in the Treaties.

A refreshed approach to the Single Market

4. STRESSES the need for an effective Single Market regulatory framework that actively promotes competition and market integration, and the removal of all unjustified or disproportionate regulatory or non-regulatory obstacles to its full functioning. Accordingly, CALLS upon the EU institutions and Member States to ”refresh” the Single Market, by applying the approach set out below. Furthermore, CALLS upon the Commission to adopt this approach in the context of its forthcoming Single Market Strategy and Digital Single Market package.
5. UNDERLINES that EU-level action, while fully respecting subsidiarity and proportionality principles, is needed to support further integration of the Single Market. CALLS on the Commission to be fully engaged and proactive in its task of ensuring that Single Market rules are implemented and enforced properly and, where necessary, to propose new, or revise existing rules in order to address any gaps and barriers within the Single Market. INVITES the Commission to propose, where appropriate, and the co-legislators to adopt further targeted full harmonization legislation, and to effectively apply, where appropriate, mutual recognition in legislative acts not subject to full harmonization, *inter alia* by including Internal Market and/or mutual recognition clauses, where relevant, in the EU legislation. Proposals based on Article 114 of the TFEU should set out clearly, as part of an Impact Assessment, how they uphold or enhance the functioning of the Single Market. Non-regulatory measures should be used whenever Impact Assessments indicate the possibility to achieve the same integration effects.

6. RECALLING its Conclusions of 4 December 2014³, which were endorsed by the European Council on 18 December 2014, URGES the Commission to ensure that any new legislative proposals or revisions reflect smart regulation principles, always taking into account proper protection of consumers, health, the environment and employees. Emphasis should be on preventing and reducing unnecessary administrative and regulatory burdens or overly prescriptive measures, without undermining the policy goals of regulation, including the proper functioning of the Single Market. This should be done by developing and putting into place reduction targets in particularly burdensome areas, on the basis of input from Member States and stakeholders, and by carrying out integrated Impact Assessments of new proposals, including input from outside experts to enhance the work of the Impact Assessment Board, and stakeholder engagement at an early stage of the policy-making process. Particular attention should also be paid to the systematic consideration in Impact Assessment of effects on competitiveness, SMEs and the Single Market. INVITES the Commission to pursue the application of the Small Business Act in order to improve the business environment for SMEs.
7. INVITES the Commission to include within REFIT an assessment of whether there are unnecessary administrative or regulatory burdens that prevent the full functioning of the Single Market. CALLS upon the Commission to report on the results of this assessment in its annual REFIT scoreboard, including what (if any) unjustified or disproportionate restrictions have been identified and proposals for removing them. INVITES Member States to contribute to retrospective evaluations conducted by the Commission including Fitness checks on the impact of Single Market rules, identifying problems or difficulties encountered. CALLS on the Commission to review, where appropriate, the effectiveness of minimum harmonisation legislation, in terms of Single Market integration, based on Article 114 of the TFEU.

³ Doc. 16000/14

8. LOOKS forward to the Commission's report on the application of mutual recognition as called for by this Council in December 2013⁴. In the event that the Commission's analysis identifies shortcomings to the application of mutual recognition or areas where mutual recognition could be used, URGES the Commission to quickly bring forward proposals to address these shortcomings and/or to extend use of the principle, focussing on areas where mutual recognition could achieve the greatest increase in EU competitiveness and growth. URGES the Commission, working together with Member States to foster the application of mutual recognition, where appropriate, *inter alia*, through raising awareness among businesses and public administrations; and strengthening cooperation between competent authorities. INVITES the Commission to propose EU wide action plan for awareness raising of mutual recognition in 2016. UNDERLINES the importance of including mutual recognition clauses in national technical requirements legislation, in accordance with established ECJ case law. ENCOURAGES Member States to share best practice on this issue; and CALLS on the Commission to make further harmonisation efforts concerning technical requirements, where necessary. STRESSES the importance of effective and regular monitoring of application of mutual recognition in goods and services area, whilst minimising the burden on Member States.
9. NOTES the essential role European standardisation plays in facilitating and strengthening the Single Market, and reinforcing competitiveness of European industry at the international level. STRESSES the need for the European Standardisation system to remain inclusive, transparent, market-driven and efficient, and to be fit for the future. INVITES the Commission to finalize the Independent Review and analyse the impact of standardisation on the economy taking into account the interest of all the parties. CALLS ON the Commission and Member States to encourage European standardisation organisations to systematically take into account the interests of SMEs when designing new standards.

⁴ Doc. 16443/13

10. SUPPORTS the Commission and stakeholders' joint endeavours to promote, where appropriate, the position of European standards as a recognised reference point in facilitating compliance with EU legislation, including areas such as the Digital Single Market, business services, new and high-end technologies as well as e-policies (e-procurement, e-government, e-governance), and which can also influence and further advance international trade and our interests with international partners. EMPHASISES the continuous need for "state of the art" and high quality standards; STRESSES the importance of fair, reasonable and non-discriminatory terms for the licencing of standard essential patents, and the need for streamlining EU and international standardisation activities.
11. INVITES Member States to use the Public Procurement Directives to engage in reforms of their public procurement systems to help ensure that these fully contribute to economic recovery, and also by better integrating social, employment-related and environmental considerations, in line with these Directives⁵. CALLS on the Commission to support Member States in addressing public procurement issues such as: improving SME access to procurement markets including by providing guidance on the new Directives; the use of European standards; promoting innovation and pre-commercial procurement; preventing systemic failure and unfair practices in the markets; the transition to e-procurement; reducing unnecessary administrative burdens, *inter alia*, in its design of the European Single Procurement Document.

Governance of the Single Market

12. INVITES the Commission to refresh its reporting arrangements on the Single Market so as to improve future policy making, and in that regard to (1) link more closely its reporting on the Single Market and that on industry and competitiveness; (2) enhance its microeconomic analysis of the state of the Single Market, and to set out when and how it will do this in its upcoming Single Market Strategy. STRESSES the need for a continued focus on functioning of the Single Market within the framework of the European semester and CSRs.

⁵ Directives 2014/23/EU, 2014/24/EU, 2014/25/EU.

13. EMPHASISES that Member States must implement EU harmonisation legislation in a proper, coherent and consistent manner and in this context ACKNOWLEDGES the added value of participation in expert groups for newly adopted directives. CALLS upon the Commission, in its role as *the Guardian of the Treaties*, to take the necessary steps and to deploy all available tools to ensure that Single Market rules are transposed, implemented in a timely and adequate manner and enforced properly. In order to prioritise enforcement action for the most significant unjustified or disproportionate restrictions to the Single Market, INVITES the Commission to make better and more transparent use of existing data, where appropriate, e.g. generated through different Single Market tools.
14. INVITES the Commission to evaluate, within the framework of the Single Market Strategy, whether the tools designed to ensure the effective operation of the Single Market are fit for purpose, and to propose improvements, where appropriate. In this context, INVITES the Commission to have a more integrated approach with a specific remit to prioritise, pursue and resolve breaches of Single Market rules. CONSIDERS that the Commission should also set out in its Single Market Strategy a strong enforcement agenda, introducing a mechanism for regular planning of enforcement actions and setting priorities, based on transparent and objective criteria of economic significance.
15. STRESSES the importance of the notification procedure and the ‘standstill period’ to the effective functioning of the Single Market for goods, as set out in Directive 98/34/EC, and URGES Member States to step up efforts to comply with this procedure. NOTES the benefits of requiring Member States to notify new requirements on services and service providers, *inter alia*, such as for legal form and shareholding and authorisation schemes so as to highlight any restrictions that may be disproportionate or unjustified, and with a view to the phasing out of all such restrictions as soon as possible. CALLS upon the Commission, working with Member States, to increase the effectiveness of the notification procedure under Directive 2006/123/EC, including by providing clear guidance as to the notification obligations and making notifications public and transparent as is the case for goods. INVITES the Commission to address this issue, and to propose the necessary action, in its forthcoming Single Market Strategy.

16. INVITES the Commission, in the context of its forthcoming Single Market Strategy, and the Member States to strengthen and streamline Single Market tools, such as Points of Single Contact (PSCs), Product Contact Points (PCPs), the SOLVIT system, the IMI and YourEurope, in order to better meet the needs of businesses and citizens in their cross border activities. UNDERLINES the importance of Member States and the Commission ensuring adequate support for the effective operation of these tools.

The Single Market for goods and services

17. RECOGNISES the increasing importance of services to economic output and growth, including through the ‘servitization’ of manufacturing industries and interconnection between goods and services; and therefore RECOGNIZES the need to ensure that the current approach and tools that underpin the effectiveness of the Single Market reflect this new reality. RECALLING the necessity to improve the competitiveness of EU industry and services, CALLS upon the Commission in the Single Market Strategy to propose necessary action for removing obstacles, for example, in areas of marketing, maintenance and after-sales.
18. INVITES the Commission to develop in its upcoming Single Market Strategy a more comprehensive and integrated approach to EU policy for goods, including measures for enhancing market surveillance. NOTES that trade integration for services is significantly lower than for goods, and that SMEs, who predominate in services, face more difficulties in cross-border activities than larger firms. Therefore, CALLS upon the Commission to identify and examine unjustified or disproportionate regulatory and non-regulatory restrictions, including those national rules that unfairly restrict competition, and with special attention to be paid to sectors that are important for EU competitiveness and cross-border trade, for example professional and business services, construction and retail services; and on this basis CALLS upon the Commission to use its forthcoming Single Market Strategy to present concrete and ambitious proposals for completing the Single Market in services, including new EU legislation, where necessary.

In parallel, the complete horizontal enforcement of Directive 2006/123/EC, as set out in the Commission Communication - *A partnership for new growth in services 2012-2015*⁶, should continue. WELCOMES the ongoing mapping of national services standards by CEN, which, in close cooperation with stakeholders, should identify areas where national standards might add to the fragmentation of the Single Market and could discover, together with the Member States, topics with a potential for developing European service standards.

19. INSISTS on the need to pursue a strict enforcement of Directive 2006/123/EC and other Single Market rules, while prioritising cases where the evidence base indicates the economic impact is highest and in accordance with principles set out in paragraphs 13 and 14 and CALLS on the Commission to reiterate this in its forthcoming Single Market Strategy. STRESSES the importance that the unjustified and disproportionate obstacles for consumers and businesses to purchase services abroad should be eliminated, and RECALLS that discrimination on the basis of nationality or place of residence is prohibited. Accordingly, CALLS on the Commission and the Member States to take further action to ensure the effective application of Article 20 of Directive 2006/123/EC. CALLS on the Commission to continue its assessment of practical difficulties for service providers seeking to obtain indemnity insurance for cross-border activities. URGES the Commission to identify Member States' best practices in this area and to address any obstacles.
20. REITERATES its previous invitation to the Commission to take action on the proportionality assessment in the context of Directive 2006/123/EC. CALLS on Member States to step up efforts to remove remaining unjustified or disproportionate requirements on service providers. CALLS on the Commission to provide guidance, *inter alia*, based on ECJ case law and case studies, on how Member States should conduct proportionality assessment, by the end of 2015. INVITES the Member States to use this guidance for the assessment of existing and new requirements imposed to the Single Market in services. Where restrictions are disproportionate or unjustified, Member States should take effective corrective action and the Commission should take firm enforcement action, where necessary.

⁶ Doc. 11145/12, COM(2012) 261 final

21. URGES Member States to engage fully with the mutual evaluation of regulated professions, conclude assessment of regulation of professions in priority sectors as a matter of urgency and present concrete follow-up actions for structural reform, where necessary. INVITES the Commission, as announced in its Communication of October 2013⁷, to consult in parallel stakeholders and professionals, and to present to the Member States its findings as soon as possible.

The Digital Single Market

22. RECOGNISES the benefits of a stronger Digital Single Market and its potential for higher growth and new jobs, and increasing global competitiveness. NOTES that these are dependent upon establishing a more coherent regulatory framework and the development of the skills that spur digitisation and innovation while ensuring high protection of intellectual property rights and taking into account cultural diversity. UNDERLINES that the Digital Single Market and EU privacy and data regulations should provide a coherent and stable framework for data flows and facilitate trade while ensuring adequate implementation of data protection rules.
23. CALLS on the Commission to ensure that its forthcoming Digital Single Market Package assesses whether the existing Single Market framework is fit for purpose in the digital age, and proposes concrete action with set deadlines to address barriers and gaps therein. Particular attention should be paid to issues that prevent consumers and businesses from benefiting from the full range of products and services in the Single Market, whether digital or those offered through digital channels in the EU, and prevent businesses from starting and scaling up, operating across borders and innovating.

⁷ Doc. 14688/13, COM(2013) 676 final, Commission Communication on evaluation of national regulations on access to professions

24. EMPHASISES that any further measures should ensure high-level protection for consumers while ensuring fair competition between all market actors, facilitate an investment-attractive environment and foster competitiveness of EU business. Therefore ENCOURAGES the Commission to use the Digital Single Market Package to address relevant and important issues of, *inter alia*, strategy in key digital areas to create the conditions for European companies to grow and to secure investment; cross-border geographical discrimination in the provision of products and services for consumers and businesses, for example restrictions on the access to products and digital content across borders; the role and current stage of development of platforms and assessing the need for further development of EU policy; online consumer protection; uninterrupted cross-border e-commerce, with emphasis on making it easier for SMEs to do business online; copyright rules appropriate for the digital age which contribute to growth in the creative industries while respecting the interests of rightholders and consumers; an efficient parcel delivery system; robust protection of personal data that is also business-friendly and promotes innovation; barriers, such as, physical establishment requirements for digital entrepreneurs; the transition towards e-procurement; on-line registration of companies; and open data in the context of information held by EU and Member State institutions.
25. STRESSES that the regulatory framework and related activities should be ‘digital by default’ to ensure that all new legislation is made fit for the digital age and addresses all possible ways in which digital solutions can reduce burdens for citizens and businesses. Therefore RECALLING its Conclusions of 4 December 2014⁸, which were endorsed by the European Council on 18 December 2014, INVITES the Commission to introduce, by the end of 2015, a digital dimension as an integral part of the impact assessment process. The Commission should also examine how existing legislation can be made fit for the digital age, as part of the REFIT process.

⁸ Doc. 16000/14

26. UNDERLINES the need to move towards open government, including upgrading e-government and interoperability of different e-government systems throughout Member States and efforts to apply an EU wide ‘once-only’ approach with regard to submitting information to public administrations, whilst protecting personal data. HIGHLIGHTS that full and efficient exploitation of tools and services such as Cloud Computing, Big Data, Automation, Internet of Things and Open Data can drive for better productivity and better services, and therefore should be facilitated, including through market driven solutions, R&D and the promotion of the necessary skills and capacity building, along with further ICT standardisation and interoperability.
