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## OUTCOME OF THE COUNCIL MEETING

3519th Council meeting

### Competitiveness (Internal Market, Industry, Research and Space)

Brussels, 20 February 2017

President **Christian Cardona**  
Minister for the Economy, Investment and Small  
Business of Malta

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- Where declarations, conclusions or resolutions have been formally adopted by the Council, this is indicated in the heading for the item concerned and the text is placed between quotation marks.
- Documents for which references are given in the text are available on the Council's internet site (<http://www.consilium.europa.eu>).
- Acts adopted with statements for the Council minutes which may be released to the public are indicated by an asterisk; these statements are available on the Council's internet site or may be obtained from the Press Office.

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## **ITEMS DEBATED**

### **INTERNAL MARKET AND INDUSTRY**

#### **Consumer protection: cooperation between national authorities**

In public deliberation, the Council agreed on a general approach on a draft regulation aimed at improving cooperation between national authorities responsible for the enforcement of consumer protection laws.

The objective of the proposal is to modernise the cooperation mechanisms to further reduce the harm caused to consumers by cross-border infringements of EU consumer law.

In particular, effective consumer protection has to respond to the challenges of the digital economy and the development of cross-border retail trade in the EU.

The general approach enables the Council to start discussions with the European Parliament under the EU's ordinary legislative procedure.

*For more information see press release: [Consumer protection in the digital age](#)*

#### **Reform of the type-approval system for cars**

The Council took note of a [Presidency progress report](#) on the state of play of the ongoing examination of the [draft regulation to improve the current type-approval](#) system of motor vehicles.

The Council instructed its preparatory bodies to continue the examination of the proposal with a view to reaching agreement on a general approach at one of its upcoming meetings.

The progress report addresses outstanding political issues in the proposal.

During the ensuing public deliberation, a number of delegations acknowledged the need to modify the current legal framework and encouraged the member states to take forward work to identify areas of convergence.

The Commission urged member states to intensify efforts in order to agree on a general approach as soon as possible and engage in negotiations with the European Parliament.

The European Parliament's committee on the internal market (IMCO) voted on its amendments to the Commission proposal on 9 February 2017.

The objective of the draft regulation is to revise the EU's legal framework for the type-approval of motor vehicles, which is set out in [directive 2007/46/EC](#). The revision seeks to modernise the system to adapt it to new technologies available on the market and to improve control tests on car emissions data in order to address shortcomings identified in the existing type-approval system.

### **Start-up and Scale-up initiative**

Following a presentation by the Commission on the communication "[Europe's next leaders: the Start-up and Scale-up Initiative](#)", ministers held a debate on ways to help EU young enterprises grow and expand.

The initiative, which was launched in November 2016, aims to remove barriers for start-ups and scale-ups in the single market, create better opportunities for partnership, commercial opportunities and skills, and facilitate access to finance.

The outcome of the debate will feed into the ministerial discussions at the informal meeting of ministers for competitiveness that will take place in Malta on 5 and 6 April.

The debate was structured by means of a [Presidency policy document](#) with a questionnaire.

Ministers welcomed the Commission initiative as an important step forward in creating a favourable environment for start-ups and scale-ups in Europe, as this will have a direct effect on innovation, the creation of jobs and economic growth.

Many delegations referred to the priority of improving access to finance and ensuring that particular attention is given to cash flow requirements of start-ups and scale-ups.

In this regard, member states requested continued assistance from the Commission to better funnel the funding available from the various EU financial mechanisms, in particular the structural funds, the European Fund for Strategic Investments (EFSI), the European Investment Bank and the European Investment Fund.

Special importance should be given to other financial sources, such as venture capital. Some member states would like to see an EU-wide venture capital fund.

Many ministers also stressed the importance of speeding up work to bring about the [Capital Markets Union](#).

Ministers agreed that EU programmes should be more user-friendly for SMEs, with fewer administrative burdens so as to allow start-ups and scale-ups to concentrate on the products and services they want to sell.

EU programmes could also be reinforced in order to better assist companies in developing prototypes and commercialising new products, promote cross-border cooperation and allow start-ups and scale-ups to expand beyond local and national markets.

Some delegations called for the creation of a [single value added tax area](#) within the internal market.

The promotion of partnerships between start-ups and business clusters, investors, universities, larger companies and public and private networks was considered to be a measure with huge potential for helping start-ups to grow.

Minister also mentioned the urgency of implementing the “[New skills agenda for Europe](#)” and the need to encourage a “second-chance” culture for entrepreneurship.

Many advocated better use of the expertise provided to SMEs by the [Enterprise Europe Network](#) concerning European, national and regional incentives, market-related issues and advisory assistance.

Finally, delegations encouraged measures at EU and national level to promote investments in intangible assets, as well as to commit to the smart use of public procurement to support innovative firms.

## Competitiveness 'check-up': investments in intangible assets

Ministers exchanged views on intangible investments in EU businesses during the competitiveness check-up part of the Council session.

Intangible assets, which are not physical in nature, such as skills, organisational know-how, managerial expertise, customer portfolios, company reputation, computer software and databases, design, brands and intellectual property, are a driver of productivity and economic growth for companies.

The consideration of investment in intangibles contributes to a better understanding of differences in productivity developments across countries. The rising importance of intangibles is also reflected in their contribution to GDP growth<sup>1</sup>.

During the introductory presentation, the Commission indicated that the composition of investments is shifting from tangibles to intangibles and underlined the importance of investing in intangible assets, which are key elements of a knowledge-based economy.

The Commission presented data showing that while overall investment has fallen significantly in Europe, investments in intangibles has continued to grow. They have proved to be resilient in times of recession. However, their level remains low in the EU as compared to the US.

The Commission added that intangibles are difficult to measure and the definition used today might be too traditional and should be expanded.

Ministers acknowledged the contribution of intangible investments to the EU's economy and considered possible incentives and policy directions to make this sector grow.

They took the view that barriers to investment should be removed and a number of policy actions could be implemented to contribute to the valorisation of intangible assets. This should include:

- adequate intellectual property protection
- easy access to finance for firms, especially SMEs, to invest in intangible assets

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<sup>1</sup> See [European Winter Economic Forecast 2016](#).

- measures in favour of venture capital
- tax incentives
- additional efforts to promote investments in human capital
- prioritisation of education and skills
- support for investments in research and development, since intangible assets are closely linked to innovation.

Finally, some delegations pointed out the need to broaden the statistical definition of intangible assets and to collect relevant and comparable data in order to monitor the evolution of intangible assets in the European economy.

### **Public procurement**

The Council held a debate on public procurement policy in the context of the 2017 European Semester process.

Ministers took the view that an effective public procurement policy is a powerful tool to achieve savings, enhance the efficiency of procurement, improve the quality of spending and modernise public administration. This will help to improve Europe's socio-economic climate.

They shared a number of national experiences and best practices on implemented actions.

They also identified a number of priorities which could be further developed in the European Semester process in the coming years. These include:

- acknowledging the importance of professionalising procurement
- improving procurement review systems
- improving data on procurement

- making better use of strategic procurement, particularly to support innovation
- rolling-out e-procurement tools and exploiting their potential
- improving access to procurement markets for SMEs.

The European Semester is a useful instrument which enables EU member states to coordinate their economic policies throughout the year and address the economic challenges facing the EU.

Given the importance for national economies and for the EU as a whole (around 16% of GDP is affected), the Commission regularly evaluates the performance of the EU member states' public procurement systems in the European Semester process.

The [Annual Growth Survey 2017](#) was launched on 16 November 2016. It marked the start of this year's European Semester process. It refers to public procurement as a key area for single market structural reforms and for enhanced competitiveness.

At the end of the debate, the chair of the High Level Working Group on Competitiveness and Growth, a Council advisory body, was invited to briefly present the key findings of five thematic debates held by this group in recent months. In addition to public procurement, the high level group examined aspects of the services sector, regulated professions, research and innovation and skills. These five areas are of paramount importance for the good functioning of the internal market.

### **European industrial competitiveness**

During the informal working lunch, ministers discussed industrial competitiveness together with Elżbieta Bieńkowska, Commissioner responsible for the internal market, industry, entrepreneurship and SMEs, Markus J. Beyrer, Director General of BusinessEurope and Hariolf Kottmann, President of CEFIC (European Chemical Industry Council).

The participants considered the serious challenges that industrial activity is currently facing and possible solutions for a successful European industrial policy, such as supporting investments and innovation capacity.

Commissioner Bieńkowska drew attention to the [European Industry Day high level conference](#) that will take place in Brussels on 28 February 2017.

## ANY OTHER BUSINESS

### – *Unitary patent protection system*

The Council took note of information on the finalisation and entry into operation of the unitary patent and the Unified Patent Court (UPC).

Some delegations called on member states to intensify their efforts so as to bring this major reform into operation as quickly as possible.

In particular, the Belgian and Swedish delegations urged participating member states to confirm their consent to the [protocol to the UPC agreement on its provisional application](#), to allow the unitary patent package to enter into force before the end of 2017.

The provisional application concerns only the institutional, organisational and financial provisions of the UPC agreement and serves to ensure a smooth transition into the operational phase.

The unified patent package is built on three pillars:

- a [regulation establishing unitary patent protection](#)
- a [regulation on the translation arrangements](#)
- an intergovernmental [agreement setting up the UPC](#) for the settlement of disputes relating to European patents and European patents with unitary effect.

The two regulations were adopted under the enhanced cooperation procedure, with Italy and Spain not participating initially. In September 2015, Italy confirmed its participation in the system. Croatia, which was not an EU member state at the time, is also not participating yet.

The UPC agreement was signed on 13 February 2013 by all member states except Spain, Poland (although Poland participates in the enhanced cooperation) and Croatia.

Ratification details of the UPC can be found in the [Council's agreements database](#).

For the package to take effect, the UPC agreement must be ratified by 13 member states including France, Germany and the United Kingdom.

– *European Defence Action Plan*

The Council took note of a Commission presentation on the [European Defence Action Plan](#), published on 30 November 2016.

Some member states took the floor to express support for the objectives of the action plan.

The overall objectives of the plan are to support EU defence collaboration, to ensure that the EU retains industrial capacity in key areas and to support a robust technological and industrial base for European defence.

According to the action plan, the European defence market currently suffers from fragmentation and insufficient industrial collaboration. More efficient use of public money and a stronger industrial base could be achieved by strengthening the defence single market, reducing duplication and improving the competitiveness of the EU defence industry.

The defence industrial sector is not only of strategic importance to Europe's security. With a total turnover of EUR 100 billion per year and 1.4 million highly skilled people directly or indirectly employed in Europe, it is also a major contributor to the European economy.

– *Services package*

The Council took note of a Commission presentation on the "[services package](#)", released on 10 January 2017.

Member states broadly welcomed the objectives of the package.

The package contains the following legislative proposals:

- [proposal for a services e-card](#)

- [proposal for a services notification procedure](#)
- [proposal for a proportionality test before adoption of new regulation of professions](#)

It also contains [guidance on reform recommendations for regulation in professional services](#).

Examination of the proposals has already begun in the Council preparatory bodies.

Promoting the competitiveness of services markets is central for the creation of jobs and growth in the EU, with the services sector accounting for around 70% of the EU's GDP.

- ***Portability of online content services***

The Maltese Presidency informed the Council on the agreement reached with European Parliament representatives on [7 February](#) on new rules to ensure cross-border portability of online content services in the internal market.

The agreement was endorsed by the Council's Committee of Permanent Representatives (Coreper) on [15 February](#).

After legal-linguistic revision, the text of the agreement will be submitted for a vote at a plenary session of the European Parliament. Afterwards, it will have to be formally adopted by the Council.

Text of the agreement: [Draft regulation on ensuring the cross-border portability of online content services in the internal market](#)

- ***Competitiveness of the transport sector***

The Council took note of a [declaration](#) signed by nine delegations calling on the Commission to assess compliance of national measures with EU legislation in the road transport sector, in particular those measures that might jeopardise the freedom to provide services in the single market, generate excessive administrative burdens and affect the competitiveness of EU companies.

The Commission said that it was currently examining these measures, in particular their compatibility with EU law.

Other delegations expressed concerns with regard to the current challenges in the road haulage sector as regards fair competition and respect for social and labour rights. In this respect, they recalled the "Road Transport Alliance" signed by nine countries in Paris on 31 January 2017. They also asked the Commission to address these issues in upcoming initiatives in the road transport sector.

Last December, the Commission briefed ministers for transport on the road package it is planning to present in the coming months. It will consist of four pillars, focusing on the functioning of the internal market, the social aspects of road transport, road charging and digitalisation and interoperability.

## **OTHER ITEMS APPROVED**

### **INTERNAL MARKET**

#### **Chemicals (REACH) - Testing methods on skin sensitisation**

The Council did not oppose the adoption by the Commission of a regulation amending the REACH system as regards testing procedures on skin sensitisation.

The new Commission regulation will amend annex VII to the [REACH regulation](#) (regulation 1907/2006 on the registration, evaluation, authorisation and restriction of chemicals) ([15193/16](#) and [15193/16 ADD1](#)).

The draft Commission regulation is subject to the regulatory procedure with scrutiny. This means that now that the Council has given its consent, the Commission may adopt it, unless the European Parliament objects.

### **RESEARCH**

#### **e-Infrastructures for European science**

The Council took note of [recommendations made by the European Strategy Forum on Research Infrastructures](#) (ESFRI) to improve coordination of member states' investment strategies in e-infrastructures for research.

In its [conclusions of 29 May 2015](#) on open, data-intensive and networked research, the Council invited the ESFRI to explore mechanisms for better coordination of investment strategies in e-infrastructures, covering also high-performance computing, distributed computing, scientific data and networks.

The [ESFRI](#), which was set up in 2002, plays a key role in policy-making on research infrastructures in Europe. In particular, it contributes to the development of a roadmap that identifies new European research infrastructures for the next 10-20 years.

## **TRADE POLICY**

### **Colombia, Ecuador and Peru - Bananas**

The Council adopted a regulation amending regulation 19/2013 on the safeguard clause and the stabilisation mechanism provided for under the EU's trade agreement with Colombia and Peru in order to include them in the agreement as extended to Ecuador ([5994/17](#) + ADD 1 + [PE-CONS 61/16](#)).

For the sake of clarity, the regulation also amends regulation 20/2013 on the EU's association agreement with Central America.

## **INTELLECTUAL PROPERTY**

### **Patentability of plants**

The Council adopted [conclusions on legal protection of biotechnological inventions](#).

The Council conclusions urge member states, in their capacity as members of the European Patent Organisation (EPO), to advocate that the practice of the EPO be aligned with the content of the conclusions.

They also call on the Commission to carry out further analysis of the development and implications of patent law in the field of biotechnology and genetic engineering and report back in 2017.

Moreover, the conclusions acknowledge that the Commission's [explanatory notice](#) on certain articles of [directive 98/44](#) on the protection of biotechnical inventions increases clarity in this field.

The notice, which was published on 8 November 2016, states that products created through essential biological processes should be excluded from patentability.

The Commission notice seeks to clarify the demarcation line between patentable biotechnological inventions and plant varieties obtained through conventional breeding, for which a separate system of protection exists which includes the "plant breeders' privilege".

The notice came in response to decisions of the EPO on the patentability of plant material obtained through conventional breeding methods, and the impact of these decisions on the plant breeder's privilege.

The decisions of the EPO's Enlarged Board of Appeal of 25 March 2015 in Cases G2/12 (Tomatoes II) and G2/13 (Broccoli II) stated that products derived from essentially biological process might be patentable, even if the process used to obtain the product is essentially biological and thus not patentable.

The breeder's privilege under the [Community plant variety](#) rights system enables breeders to use any plant variety, whether protected by a Community plant variety right or not, for the creation of new ones.

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