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NOTE

From: Presidency

To: Delegations

Subject: Revised draft Council Conclusions on Single Market Policy

Delegations will find in Annex revised draft Council Conclusions on Single Market Policy.

Revised draft Council Conclusions on Single Market Policy

COMPETITIVENESS Council (Internal Market, Industry, Research and Space)
Brussels, 2 and 3 March 2015

"THE COUNCIL (COMPETITIVENESS)

Completing the Single Market

1. ~~RECOGNIZES~~ **EMPHASISES** that the Single Market is the cornerstone of the EU's competitiveness and capacity for economic growth and job creation. 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. **BELIEVES that urgent action in this area is a critical component of delivering the structural reform necessary to maintain and enhance European competitiveness.**

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, **while completing and developing** a truly connected Digital Single Market **by 2015**; **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 by mid-2015 and** include proposals for concrete actions with set deadlines, targeting the most significant remaining **[unjustified and disproportionate]** barriers **with a particular focus on SMEs and gaps, notably in services**; and that the forthcoming Digital Single Market Package is a genuine driver for EU growth and new jobs. **URGES the Commission all EU institutions and Member States** to pursue these objectives by adopting the policy actions and guidelines proposed in these Conclusions.

* Changes compared to doc. 5091/15 are in **bold** and ~~strikethrough~~.

¹ Doc. 16443/13

² Doc. EUCO 237/14

3. REITERATES that a fully functioning Single Market **requires the application of** ~~rests on two complementary pillars:~~ (1) a harmonised area where common rules are set out by EU rules harmonisation; and (2) ~~the principle of mutual trust~~ **recognition** in non-harmonised areas, ~~where national law is coupled with effective application of mutual recognition~~. 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 **[unjustified and disproportionate]** regulatory and non-regulatory barriers 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 as part of its forthcoming Single Market Strategy.
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 ~~correctly~~ and enforced **correctly** and, where necessary, to propose new, or revise existing rules in order to address any gaps and **[unjustified and disproportionate]** barriers within the Single Market. INVITES the Commission to propose, and the co-legislators to adopt, **where appropriate**, 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 in the legislation. **Non-regulatory measures should be used whenever it is possible 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 proposals or revisions reflect smart regulation principles. Emphasis should be on preventing unnecessary **administrative and** regulatory burdens or overly prescriptive measures, **through the introduction of targets in particularly burdensome areas** underpinned and informed by ~~rigorous~~ impact assessments, 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 be paid to the systematic inclusion in impact assessment of competitiveness proofing, and the SME and Internal Market Tests. **INVITES the Commission to pursue the application of the Small Business Act in order to improve the regulatory and administrative environment for SMEs.** ~~Non-regulatory measures should be used whenever it is possible to achieve the same integration effects.~~
7. RECOMMENDS that the Commission use its 'REFIT' programme of ongoing legislative review to apply the refreshed approach to the Single Market *acquis*. INVITES the Commission to include within **REFIT** ~~this review~~ an assessment of the effectiveness of ~~minimum harmonisation legislation, and~~ **whether there are unnecessary administrative or regulatory burdens** ~~this has inadvertently created barriers to that~~ **prevent** the full functioning of the Single Market. CALLS upon the Commission to report annually on the results of this ~~assessment review~~, including what (if any) **[unjustified or disproportionate]** barriers have been identified and proposals for removing them.

³ Doc. 16000/14

8. LOOKS forward to the Commission's ~~analysis~~ **report** on the application of mutual recognition [as called for by this Council in December 2013]. In the event that ~~this the~~ **Commission's** analysis identifies barriers to the application of mutual recognition **or new areas where mutual recognition could be applied**, URGES the Commission to bring forward proposals to ~~remove~~ **address** these **barriers or to extend use of the principle**, focussing on ~~areas~~ **markets** where mutual recognition will achieve the greatest increase in EU competitiveness and growth. URGES ~~the Commission~~ **the Commission, working together with Member States and the Commission** to **bring forward an EU wide action plan by end-2015 to** increase efforts to ensure the application and enforcement of mutual recognition, specifically through raising awareness among ~~the~~ businesses and public administrations/competent authorities; and effective cooperation between competent authorities. **This should be undertaken through initially targeting areas with the greatest potential for competitiveness and growth.** UNDERLINES the importance of including mutual recognition clauses in national technical **requirements** ~~regulations~~ **legislation and URGES Member States to share best practice of implementation.** ~~CALLS upon the Commission for systematic~~ **STRESSES the importance of effective and regular** monitoring of ~~implementation~~ **application** of mutual recognition **in goods and services area**, ~~and to report the results on annual basis.~~
9. **NOTES the essential role European standardisation plays in facilitating and strengthening the Single Market, and reinforcing competitiveness of European industry at international level. STRESSES the need for the European Standardisation system to remain inclusive, transparent, market-driven and efficient and 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.**
- ~~9. STRESSES the important role of European and international standardisation, and the need for the European Standardisation System to be fit for the future. ENCOURAGES the Commission, in cooperation with European and national standardisation bodies, to implement the results of the Independent Review, focusing in particular on the efficiency of governance, interaction and communication. SUPPORTS the Commission to promote the use of standards in new areas such as the Digital Single Market, services (business services), new technologies, high-end technologies and e-policies (e-procurement, e-government).~~

10. **SUPPORTS** the Commission and stakeholders' joint endeavours to promote, where appropriate, the position of standards as recognised reference point in facilitating compliance with EU legislation, including new areas as the Digital Single Market, business services, new and high-end technologies as well as e-policies (e-procurement, e-government). **EMPHASISES** the continuous need for "state of the art" and high quality standards, and **STRESSES** the importance of fair, reasonable and non-discriminatory terms for the licencing of standard essential patents.
- ~~10. EMPHASISES the continuous need for "state of the art" and high quality standards in supporting EU legislation and the implementation of procedures designed to make intellectual property rights available under fair, reasonable and non-discriminatory conditions. ASKS the European Commission to carry out two studies in order to analyse: the impact of standardisation on Member States' and EU economies as well as the working procedures of the National Standardisation Bodies to assess whether harmonisation would be possible.~~
11. **INVITES** Member States to use the Public Procurement Directives to engage in national reforms of public procurement systems, to help ensure that public procurement fully contributes to economic recovery **also by better integrating social, employment-related and environmental considerations in the procurement procedures**. **CALLS** on the Commission to support Member States in addressing public procurement issues such as: improving SME access to procurement markets; **the use of European standards; promoting innovation and pre-commercial procurement; preventing** systemic failure and unfair practices in the markets **including non-application of Single Market rules in high value sectors**; the transition to ~~full~~ e-procurement; **and reducing** unnecessary ~~bureaucracy~~ **administrative burdens**.

Governance of the Single Market

12. STRESSES that timely and correct implementation and enforcement are crucial to realising the potential of the Single Market, and that the Commission and the Member States share responsibility for that. INVITES the Commission to ~~resume~~ **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** ~~its reporting on the functioning of the Single Market~~, and to set out when and how it will do this in its upcoming Single Market Strategy. **RECALLING its Conclusions of 2-3 December 2013 (Doc. 16443/13)**, INVITES the Commission to set out as soon as possible **qualitative and quantitative indicators for measuring the economic effects of the Single Market**. STRESSES the need for a continued focus on **functioning of the Single Market** ~~law~~ within the framework of the ~~EU~~ **European** semester and CSRs.
13. EMPHASISES that Member States must implement EU **harmonisation** legislation in a **proper, coherent and** uniform manner ~~and, for that purpose, URGES Member States to participate in implementing 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 manner** and enforced **properly**. **In order to prioritise enforcement action for the most significant [unjustified and disproportionate] barriers to the Single Market**, INVITES the Commission to make better and more transparent use **of** existing data, e.g. generated through **different** ~~the~~ Single Market **tools**. ~~Scoreboard, TRIS and IMI databases, to prioritise and act on the most significant barriers to the Single Market~~. **INVITES Member States to contribute to retrospective evaluations of the Commission including Fitness checks on the impact of Single Market rules, identifying problems or difficulties encountered.**

14. INVITES the Commission to evaluate, within the framework of the new 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, ~~new tools or the upgrading of existing ones~~. In this context, INVITES the Commission to have a centralised structure **or approach** with a specific remit to prioritise, pursue and resolve major breaches of Single Market rules. CONSIDERS that the Commission should also ~~foresee~~ **set out** in its Single Market Strategy a strong enforcement ~~dimension~~ **agenda**, introducing a mechanism for regular planning of enforcement actions and setting priorities.
15. STRESSES the importance of the notification procedure and the ‘standstill period’ to the effective functioning of the Single Market, **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 ~~also~~ to notify ~~existing~~ requirements on **services and** service providers, **inter alia**, such as ~~those concerning~~ **for** legal form and shareholding **and authorisation schemes** so as to highlight any requirements that may be disproportionate **and unjustified and with a view to the phasing out of all such restrictions on legal form and shareholding over a five-year period**. CALLS upon the Commission, **working with Member States**, to introduce a ‘standstill period’ **without opening up the Directive 2006/123/EC** for the notification of changes to domestic rules for services, and making notifications public and transparent as is the case for goods. **Fast-track notification and standstill could be considered for liberalising measures**. INVITES the Commission to address this issue, and to propose the necessary action, in its forthcoming Single Market Strategy. **STRESSES that “necessary action” should not include changes to the Services Directive at this time.**
16. INVITES the Commission and Member States to strengthen and streamline the Single Market tools, such as Points of Single Contact (PSCs), Product Contact Points (PCPs), the SOLVIT system and the IMI, with the aim of ~~creating~~ **ensuring** effective Single Market ~~centres~~ **tools** in all Member States. CALLS on the Commission to use its forthcoming Single Market Strategy to propose ~~common minimum standards for the operation of these centres and to provide co-financing where necessary~~ **further measures and minimum common objectives to strengthen these tools.**

The Single Market for goods and services

17. RECOGNISES ~~that the~~ **growing importance of services to economic output and growth** ~~distinction between products and services is blurring~~, including through the ‘servitization’ of manufacturing **industries**; 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 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** ~~where they impede the marketing~~, maintenance and after-sales of products.
18. ~~While RECOGNISING that the Single Market in goods generally functions well~~, INVITES the Commission to ~~consider~~ **develop** in its upcoming Single Market Strategy a more comprehensive and integrated approach to EU policy [and legislation] for **goods, including market surveillance products**. NOTES that trade integration for services is significantly lower than for goods. Therefore, **CALLS upon** the Commission to **examine regulatory and non-regulatory barriers, including those in the area of competition**, and use its forthcoming Single Market Strategy to present concrete and ambitious proposals for completing the Single Market in services. **While insisting on the complete horizontal enforcement of the Services Directive, sectors that are important for industrial competitiveness and cross-border trade, for example, professional and business services, construction and retail services could be identified for further action including new EU legislation where necessary, with clear deadlines for delivery. This work could serve to identify symptomatic regulatory and non-regulatory barriers across the board, which should be the basis for further action.** ~~It should identify sectors that are important for industrial competitiveness and wider economic growth, and where there is the highest potential for cross-border trade, for example in professional and business services, and construction and retail services. It should present action plans for removing regulatory and non-regulatory barriers in these sectors with clear deadlines for delivery, and propose new EU legislation where necessary.~~ **WELCOMES** the ongoing mapping of national sector-specific services standards by CEN, **which should identify areas where national standards might add to the fragmentation of the Single Market and could discover topics with a potential for developing European service standards.**

19. INSISTS on the need to pursue a "zero-tolerance" policy on the enforcement of the Services Directive and other Single Market rules, **while prioritising cases where the economic impact is highest**, and CALLS on the Commission to reiterate this in its forthcoming Single Market Strategy. In this context, 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** and ~~undertake~~ structural reform **where necessary**. ~~is delivered, and~~ URGES the Commission to take firm enforcement action where **there are [unjustified and disproportionate] barriers, prioritising sectors which will have the greatest positive impact on EU growth and competitiveness** ~~necessary~~. STRESSES the importance that the ~~possibilities~~ **barriers** for consumers to purchase services abroad should be **eliminated** ~~enhanced~~, 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 the Services Directive. **CALLS on the Commission to take action to ensure that service providers can easily obtain indemnity insurance that covers their cross-border activities.**
20. REITERATES its previous invitation to the Commission to take action on the proportionality ~~test~~ **assessment** in the context of the Services Directive. 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 on** ~~introduce an unambiguous interpretation of~~ how Member States should apply the proportionality test, and to report back to the Council on possible solutions by the end of 2015. This should apply to both existing and new requirements imposed to the Single Market in services and, where restrictions **are disproportionate** ~~do not meet the Commission's proportionality assessment~~ they should be subject to peer review by Member State experts and effective corrective action taken where necessary. **CALLS on the Commission and Member States to jointly examine case studies on the operation of the proportionality test, with a view to informing the proposed guidance.**

21. NOTES the benefits of a stronger Digital Single Market and the potentials for higher growth and new jobs; NOTES that these are dependent upon establishing a more coherent regulatory framework **and policy action, and the development of the skills** that spur digitisation, cross-border e-commerce across Europe, ~~and~~ innovation **and increase Europe's global competitiveness, while ensuring a high protection of intellectual property rights and respecting cultural diversity.**
22. 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 ~~any~~ barriers and gaps. Particular attention should be paid to issues that prevent consumers from benefiting from the full range of ~~digital~~ products and services, **digital of those offered through digital channels** ~~offered~~ in the EU, and prevent businesses from starting and scaling up, operating across borders, innovating.
23. EMPHASISES that any further measures should ensure ~~proper~~ **high-level** protection for consumers while enhancing **fair** competition, ~~and~~ ensuring an investment-attractive environment **and fostering competitiveness of EU business.** Therefore ENCOURAGES the Commission to use the Digital Single Market Package to **address relevant and important issues of, *inter alia*,** ~~pursue further action to abolish~~ cross-border geographical discrimination in the provision of ~~digital~~ products and services, for example restrictions on the access to **digital** content across borders, ~~as well as a proper framework for possible restrictions via~~ platforms; ~~harmonise~~ consumer protection **and sales rules;** ~~establish a framework for~~ uninterrupted cross-border e-commerce, with emphasis on making it easier for SMEs to do business online; ~~modernise~~ copyright rules **appropriate for the digital age helping growth in the creative industries while respecting the interests of rightholders and consumers;**

~~achieve an efficient parcel delivery system; establish a trustworthy~~ **and robust** data protection framework that is also business-friendly and promotes innovation; ~~remove barriers, such as,~~ physical establishment requirements for digital entrepreneurs; ~~ensure that domestic sales laws do not prevent~~ price neutrality for consumers; **the transition towards e-procurement** ~~establish a joint public procurement platform; and promote~~ on-line registration of companies; **use of open data by EU and Member State institutions.**

24. STRESSES that the regulatory framework **and related activities** should be “digital by default”. Therefore **RECALLING its Conclusions of 4 December 2014⁴, which were endorsed by the European Council on 18 December 2014**, INVITES the Commission to formalise and implement by the end of 2015 a **digital dimension** ~~‘digital competitiveness test’~~, 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, ~~including an emphasis on innovation.~~
25. UNDERLINES the need for further upgrading ~~e-governance~~ **e-government** and interoperability of different e-government systems throughout Member States **towards open government**, including efforts to apply ~~an~~ **secure** EU wide ‘once-only’ approach with regard to submitting information to administrations, **in due respect of data protection tools.** HIGHLIGHTS that full and efficient exploitation ~~of such technologies~~ **tools and services** **such** as Cloud **Computing**, Big Data, Automation, **Encryption**, Internet of Things and Open Data are prerequisites for better productivity and better services, and therefore should be **expanded** ~~explored~~, including **R&D and the promotion of the necessary skills and capacity building, along with** further ICT standardisation and interoperability.

⁴ Doc. 16000/14