



# A NEW AGENDA FOR EUROPE

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– shaping the next policy cycle of the EU, 2019-2024

A contribution to the future work program of the European Commission by the **Confederation of Danish Industry**.



The European Union 2019-2024



## FOREWORD

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After the European elections in May 2019, the appointment of the next European Commission marks the beginning of a new five-year policy cycle for the EU. This requires a new agenda for the EU – an agenda that addresses shared challenges, but also seizes new opportunities for Europe.

The EU must continue to deliver on growth and jobs in all corners of Europe. At the same time, the EU is expected to address large scale challenges, such as climate change – challenges that no country can solve on its own.

European prosperity in the future depends on companies' ability to innovate and develop new technologies, products and services that can compete on a global scale. To be successful European companies will continue to rely on a strong Single Market as their common home market and on open trade with the rest of the world.

The Single Market is also an important tool to address new challenges. The economic opportunities arising from the digital economy can only be realized on a European scale as part of an upgraded Single Market. Similarly, a well-functioning European market is key in fighting climate change and foster sustainable development. For example, the Single Market enables the proliferation of renewable energy and energy efficient products across EU member states, and allows for a cleaner environment based on circular economy in Europe.

All in all, it will be the job of the next Commission to pursue policies that will deliver growth, jobs and prosperity in Europe, while also accelerating the transition to a sustainable future.

The UN Sustainable Development Goals (SDGs) provide an integrated approach to achieve these political objectives both at global and European level. Adopted in 2015, the SDGs set out a clear direction for a sustainable and prosperous future all over the world.

The Confederation of Danish Industry (DI) supports the idea of using the SDGs as an overall policy framework for the next Commission. The SDGs recognize the importance of the private sector. In fact, one of the goals explicitly emphasizes the active engagement of the private sector in achieving sustainable development on a global scale, while other goals underline the critical role of technology and innovation to foster sustainability.

Europe is well positioned to invest in sustainable growth and jobs. Companies are committed to be part of this. European companies have pioneered many of the technologies that allow sustainable development to progress. Danish companies are no exception. Indeed, when asked in 2018, 8 out of 10 member companies of DI responded that they work with sustainability as part of their business.

Placing sustainability, in a broad sense, at the heart of the Union's policy will position the EU well to shape Europe's shared future in a more sustainable direction, while promoting growth and jobs at home, as well as leading the way for sustainable development globally.

**This policy catalogue seeks to inspire the next Commission.** The catalogue, containing a number of *concrete* proposals across various policy areas, calls for an integrated approach to sustainability, growth, jobs and prosperity across Europe. Where relevant the individual proposals are specifically linked to one or more SDGs.

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## INTRODUCTION

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Setting the right EU policy agenda for the next five years is a daunting challenge.

This agenda needs to enhance Europe's place in a world of new geopolitical uncertainty, secure growth and prosperity, and find the right answers to legitimate worries of European citizens about climate change, migration and inequality.

It needs to be ambitious and at the same time realistic. The EU cannot and should not solve all the issues facing society in Europe, but it can and should set ambitious strategic objectives for trans-border issues that its member states cannot solve on their own.

Seen from the viewpoint of Danish business, the most important overall elements of a program for the next Commission are the following:

- Taking global strategic leadership on the green transition and create the best possible conditions for business to deliver on this all-important agenda. This requires concrete new action on both energy and climate policy and on environment and circular economy.
- Setting a new agenda on digitalization and technology development that covers both the necessity to invest in infrastructure and R & D as well as the need to define a world leading regulatory framework that creates trust, while at the same time being based on technology neutrality.
- Safeguarding open global and rule-based trade, and enhancing international cooperation on all relevant topics such as climate change and migration.
- Using an improved and better functioning Single Market as an instrument to reap the benefits of a truly unified European market and create the necessary scale for European companies to deliver the market and technology solutions that only business can deliver.
- Acknowledging that the Single Market needs to be based on a basic principle of well-functioning competition, non-discrimination, strict enforcement of common regulation and reliable rule of law across the Union. This is especially important for SMEs, who also depend on European high-quality regulation that is unbureaucratic and designed to stimulate entrepreneurship.
- Keeping high and real ambitions for all aspects of the Single Market, including more integration of a European services market rather than less, and a well-functioning common European labour market with fewer rather than more barriers. This is and should not in any way be in contradiction with respecting national labour markets models. On the contrary, on social regulation a change of course is needed from the next Commission to reinstate true application of the principle of subsidiarity.
- Tackling the migratory pressure towards Europe in all the ways possible. This requires a will to reform common asylum rules, as well as investing EU resources both in effective European external border control and economic development in neighbouring regions. Effective migration control is a prerequisite for effectively upholding the EU as an area without internal borders, which is an essential element of the European Single Market for businesses.

The proposals in this document are intended at providing concrete and specific, rather than comprehensive, ideas to realizing an EU agenda based on these elements.

## EU'S LONG-TERM CLIMATE STRATEGY

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*The EU must follow a net-zero climate path onwards to 2050*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

The climate agreement from COP21 Paris 2015 obliges the parties of the agreement to put forward long-term strategies in 2020. This includes the EU, which acts as a single block in this regard.

All sectors of the EU's economy will be impacted by the transition to a low carbon economy. This includes companies as well. No company will be unaffected. While the transition to a low carbon economy will certainly change our society, it also presents new opportunities for European businesses. The future regulatory framework, which will facilitate this transition, will be a crucial factor for how easily European companies can harvest these opportunities.

The newly adopted Energy Union, as well as targets for energy efficiency and renewable energy for 2030, is a good point of departure. Furthermore, in November 2018, the European Commission presented different pathways for the EU to reach carbon neutrality by 2050 in its long-term climate strategy. This strategy will frame the discussion and subsequent policy decisions on the 2050 regulatory framework during the course of the next 1-3 years.

### STATUS AND EXISTING EU LEGISLATION

The Commission published the Communication "A Clean Planet for all - A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy" in November 2018. This will be debated in 2019 by the European Parliament and the Council.

The legislative framework is comprehensive and includes the EU ETS directive, the EU Effort Sharing Decision, the Energy Efficiency Directive, the Renewable Energy Directive, the Energy Performance of Building Directive, EU's market design in electricity and gas, and the EU Governance Regulation. Most of these files will be revised in 2023 as part of the fitness check of the EU Energy Union.

### RECOMMENDATIONS

As set forth in our joint Nordic position paper "[A Nordic Climate Vision](#)", DI supports a vision for the EU centered on climate neutrality.

As the EU must show leadership in the fight against climate change, we call on the incoming EP and the Council to endorse an ambitious climate 2050 vision aiming at net zero carbon emissions.

We call on the EU to adopt a post-2030 political framework that delivers cost-efficiently, while also taking into account the key objectives of 1) climate 2) energy security and 3) competitiveness. This framework should include the following elements:

- EU climate leadership is needed internationally.
- The EU must follow a net-zero climate path onwards to 2050.
- Aspire to become a clean, sustainable and competitive economy through a market-based approach.

- The EU must pursue a coherent political framework that puts innovation and sector coupling in the center.
- Firm 2030 implementation is key and will potentially reduce total EU emissions by 45 percent in 2030, thus overachieving the EU’s 40 percent Paris Agreement obligation.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDGs

DI’s recommendations would support the EU’s work towards achieving UN Sustainable Development Goals number 7 “Affordable and Clean Energy”, including 7.2<sup>1</sup> and 7.3<sup>2</sup>, number 9.4<sup>3</sup> “Industry, Innovation and Infrastructure”, number 13.2<sup>4</sup> “Climate Action” and number 15.2<sup>5</sup> “Life on land”.



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<sup>1</sup> By 2030, increase substantially the share of renewable energy in the global energy mix

<sup>2</sup> By 2030, double the global rate of improvement in energy efficiency

<sup>3</sup> By 2030, upgrade infrastructure and retrofit industries to make them sustainable, with increased resource-use efficiency and greater adoption of clean and environmentally sound technologies and industrial processes, with all countries taking action in accordance with their respective capabilities

<sup>4</sup> Integrate climate change measures into national policies, strategies and planning

<sup>5</sup> By 2020, promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests and substantially increase afforestation and reforestation globally

## ENERGY EFFICIENCY

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### *Building an energy efficient European Energy Union*

#### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Energy efficiency is a key instrument for reaching a low-carbon economy as stated in the European Clean Energy Package. With the revised Energy Efficiency Directive from 2018, the EU has increased the European 2030 energy efficiency target from at least 27 per cent to at least 32.5 per cent. A more efficient use of energy will allow Europeans to reduce their energy bills, and cost-efficient projects will improve companies' competitiveness. Furthermore, energy efficiency may increase energy security as well as aid the fight against climate change due to decreased fossil energy use. Additionally, energy efficiency is an important factor in the integration of renewable energy and smart energy use across sectors.

Energy efficiency also provide business opportunities for European companies that deliver energy efficient products and services, which are necessary for reaching the 32.5 per cent EU-target. However, to reach that target, investments are needed across sectors within construction, manufacturing, transportation, as well as energy production. This may be a challenge for companies in these sectors, if the relevant legislation is not well designed.

#### STATUS AND EXISTING EU LEGISLATION

Energy efficiency is a topic in several EU Directives including the 2018 revised Energy Efficiency Directive and the Energy Performance of Building Directive in addition to the Ecodesign Directive and the Energy Labelling Directive. The Ecodesign directive is expected to be extended to areas as product life and more within the coming years.

#### RECOMMENDATIONS

DI would like to see an ambitious and cost-efficient energy efficiency effort in the EU as a part of a net-zero climate path onwards to 2050. DI wants the new Commission, the new EP, and the Council to endorse this ambition. Concretely, DI recommends:

- Energy efficiency must be improved across sectors.
- As buildings account for around 40 per cent of total energy consumption, these must be included in the effort to improve energy efficiency. An acceleration in the implementation of a renovation strategy for buildings from the Energy Performance of Building Directive is therefore needed.
- Smart buildings, including smart readiness indicators for buildings, should be implemented.
- A concrete and unambiguous definition of companies affected by the mandatory energy audit for non-SME's in the Energy Efficiency Directive article 8.4.
- High focus on implementation as well as enforcement of the European energy and climate legislation to ensure investment security and a net-zero climate path onwards to 2050.



### THIS PROPOSAL IS ALSO SUPPORTED BY

These proposals have also been raised and discussed in OECD Export Credit Forum, Denmark’s Export Credit Agency (EKF), the Ministry of Industry, Business and Financial Affairs as well as in the Danish Ministry of Foreign Affairs.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDGs

DI’s recommendations would support the EU’s work towards achieving UN Sustainable Development Goals number 7.2<sup>6</sup> “Affordable and Clean Energy”, number 9.4<sup>7</sup> “Industry, Innovation and Infrastructure”, number 11.3<sup>8</sup> “Sustainable Cities and Communities” and number 13.2<sup>9</sup> “Climate Action”.



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<sup>6</sup> By 2030, double the global rate of improvement in energy efficiency

<sup>7</sup> By 2030, upgrade infrastructure and retrofit industries to make them sustainable, with increased resource-use efficiency and greater adoption of clean and environmentally sound technologies and industrial processes, with all countries taking action in accordance with their respective capabilities

<sup>8</sup> By 2030, enhance inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management in all countries

<sup>9</sup> Integrate climate change measures into national policies, strategies and planning

## RENEWABLES

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*Energize Europe and achieve carbon neutrality by 2050*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

The shift to renewables and increased electrification is crucial to achieve carbon neutrality by 2050. This of course should be done in a cost-effective manner based on market principles.

The EU's new electricity market design contributes to the EU's goal of being the world leader in energy production from renewable energy sources by allowing more flexibility to accommodate an increasing share of renewable energy in the grid. This reconciles the EU objectives of security of supply and emissions reduction.

### STATUS AND EXISTING EU LEGISLATION

As part of the Juncker Commission's energy package, *Clean Energy for All*, two central pieces of legislation for the electricity sector were adopted in 2018.

Aside from setting a binding target for renewables of 32 percent in 2030, the revised [directive on Renewable Energy Source \(RES\)](#) provides guiding principles on financial support schemes for RES, renewable energy self-consumption, energy communities and district heating. The directive aims to enhance mechanisms for cross-border cooperation, simplify administrative processes, strengthen the sustainability and greenhouse gas emissions-savings criteria for biofuels, bioliquids and biomass. Finally, the directive mainstreams the use of RES in the transport sector and in the heating and cooling sector.

The [Electricity Market Regulation](#) introduces harmonised rules to open up the electricity market. By allowing electricity to move freely to where it is most needed, Europe will benefit from cross-border trade and competition to keep energy costs and prices in check. Capacity subsidies to power plants emitting more than 550gr CO<sub>2</sub>/kWh will be phased out under the new rules.

### RECOMMENDATIONS

#### 1. Governance

A firm implementation of EU's renewable policies requires close cooperation between regulators, Member States and companies. To ensure an implementation, which is aligned with the Governance Regulation agreement of June 2018, DI recommends the following:

- Ensure firm implementation of the EU's renewable target of 32 percent based on clear and ambitious integrated national energy and climate plans.
- Promote stronger coordination between Member States.
- Commit to predictability and investment security by means of close monitoring and follow-ups by the Commission.
- Promote cost-efficiency through regional cooperation, market-based measures and coherent Member State policies.
- Engage stakeholders prior to the 2023 review process. The Commission should facilitate an implementation conference in cooperation with Member States.

## 2. Market Design

A market-based power market design that allows for cost-effective penetration and cross-border transportation of electricity is key for the EU’s transition towards a low carbon economy. To ensure this, DI recommends the following:

- Capacity mechanisms should be used only as a last resort and on a short-term basis. Member States must account for, and justify, their use of capacity mechanisms.
- No need for priority dispatch for new renewable energy generation, nor for those under 500 kW, as local market failures are not present. Instead, keep the assigned priority dispatch for already decided investments.
- In areas with bottlenecks, where transmission connections in peak periods are often at full capacity, fast track plans to overcome market failures should be swiftly addressed.
- Ensure flexibility and make it easier to sell to the market. More flexible access to the market will benefit trading from local energy renewable production.

## 3. Implementation of the new sustainable criteria for forest biomass

The revised RES directive introduces a new sustainability criterion for forest biomass. For this purpose, DI recommends the following:

- Promote use of sustainable biomass
- Harmonize sustainable criteria for forest biomass
- Common criteria for sustainability of biomass are key for designing a competitive and well-functioning market for biomass that delivers sustainable biomass at the lowest possible cost.
- Promote internationally common, objective, trustworthy and ambitious sustainable criteria for biomass.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDGs

DI’s recommendations would support the EU’s work towards achieving UN Sustainable Development Goals number 7.2<sup>10</sup> “Affordable and Clean Energy”, number 9.2<sup>11</sup> “Industry, Innovation and Infrastructure”, and number 13.2<sup>12</sup> “Climate Action”.



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<sup>10</sup> By 2030, increase substantially the share of renewable energy in the global energy mix

<sup>11</sup> Promote inclusive and sustainable industrialization and, by 2030, significantly raise industry’s share of employment and gross domestic product, in line with national circumstances, and double its share in least developed countries

<sup>12</sup> Integrate climate change measures into national policies, strategies and planning

## THE ROLE OF GAS

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*The role of gas in the transition towards a low carbon economy*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Efficient energy markets are important for business as they ensure higher security of supply at a lower cost. A single European energy market is an important tool to achieve such efficient energy markets.

An important first step towards an integrated single European market for energy was taken with the adoption of the regulation on electricity market design, which was part of the European Clean Energy Package. The regulation harmonizes the market rules in the European electricity markets, thereby opening national energy markets and ensuring equal competition.

While focus in recent years has been on new market design rules for electricity, the political focus is now shifting to the gas market. Opening up gas markets in EU will enhance our security of energy supply and create a more stable foundation for the transition towards a low carbon economy.

### STATUS AND EXISTING EU LEGISLATION

The European gas market is regulated by the Gas Directive (2009/73/EC). In November 2017, the Commission proposed to amend the Gas Directive to clarify that the core principles of EU energy legislation (third-party access, tariff regulation, ownership unbundling and transparency) will apply to all gas pipelines to and from third countries up to the border of the EU's jurisdiction.

The Gas directive is part of the Third Energy Package from 2009, which also contains the Electricity Directive (2009/73/EC), Regulation on Establishing an Agency for the Cooperation of Energy Regulators (713/2009/EC), Regulation on Conditions for Access to the Network for Cross-Border Exchanges in Electricity (714/2009/EC), Regulation on Conditions for Access to the Natural Gas Transmission Networks (715/2009/EC). The Third Energy Package sets the rules and regulation of the gas and electricity sector.

In preparation of an expected overhaul of the EU's gas market design, in 2018, the Commission published a study on the regulatory framework of the EU's Gas Market.

### RECOMMENDATIONS

Efficient energy markets and integration of energy from different sectors is needed to achieve a sustainable energy system. The Commission should adopt a gas package to reach this objective. When updating the rules governing the gas market, as part of a gas package, it is important to carefully consider the role of green gases in the transition towards a low carbon economy. Harmonization of market rules should ensure that gas efficiently contributes to a long-term strategy for a sustainable energy system.

Flexibility is required in our future energy system to underpin sustainability. Sector integration in our energy system will not only achieve this goal, it will also enhance security of supply in all member states. For instance, in case of surplus production of electricity from sustainable sources, the surplus electricity should be used to produce heat or be converted into gas with a view to store it. Similarly, converted gas and/or biogas can be used to produce electricity when supply of electricity fall short of demand. This way, sector integration stabilizes our energy systems as well as security of supply.

Sector integration will also contribute to continued use of the large and expensive gas infrastructure, which is already in place.

DI recommends:

- A new gas market design focusing on green gases.
- Rules to remove barriers for sector integration, e.g. in the regulation of the respective sectors

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDGs

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 7.2<sup>13</sup> "Affordable and Clean Energy", number 9.2<sup>14</sup> "Industry, Innovation and Infrastructure", and number 13.2<sup>15</sup> "Climate Action".



### ADDITIONAL INFORMATION

The Commission has evaluated the functioning of the EU's internal gas market in the report: [Quo vadis EU gas market regulatory framework – Study on a Gas Market Design for Europe](#).

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<sup>13</sup> By 2030, increase substantially the share of renewable energy in the global energy mix

<sup>14</sup> Promote inclusive and sustainable industrialization and, by 2030, significantly raise industry's share of employment and gross domestic product, in line with national circumstances, and double its share in least developed countries

<sup>15</sup> Integrate climate change measures into national policies, strategies and planning

## CIRCULAR ECONOMY

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*Continue the large focus on circular economy*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

The world population will grow from 7 billion today to 9.7 billion by 2050. At the same time, the global middle class is likewise increasing in size. Together with the fact that we need three globes worth of resources to maintain our current living standards, these circumstances express a clear need to change our pattern of consumption.

We need to secure the supply of raw materials for future generations. It is thus important that we make the transition from a linear to a circular economy (CE), where products and materials are kept in circuit, so their value is used to its full extent.

CE is an important agenda for businesses that can contribute to an increase in resource efficiency and security in supply of scarce resources like raw materials and water. We must secure market-based solutions that lead to cost effective solutions, so European companies can stay competitive in a global context. The transition to a more circular economy can secure European companies a leading position in relation to international exports of technological solutions that may solve global environmental challenges.

European companies should be among the most resource efficient companies globally by 2025. Many European companies have already included CE in their business plans and strategies. This positive development must continue. However, today the use of secondary raw materials is very expensive and burdensome compared to the use of primary resources. This is mainly a consequence of the fact that secondary materials are characterized as waste and thereby subject to regulatory requirements, challenges when crossing EU-borders, and public inspection, among other things. Besides this, the characterization of waste also brings more challenges by required tests and control of its content, characteristics and quality.

### STATUS AND EXISTING EU LEGISLATION

In December 2015, the Commission put forward a first Circular Economy Package, which included revised legislative proposals on waste, as well as a comprehensive Circular Economy Action Plan. In 2018, a second Circular Economy Package was launched, including the EU Strategy for Plastics in the Circular Economy, Monitoring Framework of Indicators for the Circular Economy, a Communication on the interface between chemicals, products and waste legislation. The Commission also made a proposal for a Directive addressing single-use plastics and fishing gear.

The Commission initiatives on CE have included a mix of voluntary initiatives and regulatory actions. There has been a total of 54 actions, some have already been adopted. On others, the work will continue in 2019 and beyond.

### RECOMMENDATIONS

The Juncker Commission has been very ambitious and presented many initiatives aimed at strengthening the transition to a circular economy. DI finds it important that the new Commission continues this important work and puts CE at the top of the political agenda.

DI furthermore recommends that:

- Common EU-regulation exists and supports a level playing field for virgin and recycled materials. Important steps have been taken in this direction, and the next step should be a reform of the Waste Shipment Regulation (WSR). *See separate DI proposal on this for more information.*
- High quality and transparency in the waste treatment should be honored. The IE-directive on emissions is insufficient to ensure quality in the recycling or the handling of waste.
- The focus on the interface of chemical, product and waste legislation should continue and improve.
- The EU should investigate further how and if the successful ECO-design directive can deliver similar results regarding not only energy efficiency, but also material efficiency in order to reach the goal of EU as world leader when it comes to resource efficiency.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDGs

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 9.4<sup>16</sup> "Industry, Innovation and Infrastructure", number 11.3<sup>17</sup> "Sustainable Cities and Communities", number 12.15<sup>18</sup> "Responsible Consumption and Production", and number 13.2<sup>19</sup> "Climate Action".



### ADDITIONAL INFORMATION

- In response to the Commission call for pledges to use more recycled plastics, DI's members have pledged an additional 202.412 tons recycled plastics used in 2025.
- In the spring of 2018 the Danish Plastics Federation initiated Forum of Circular Plastics Packaging, gathering the companies along the value chain as well as members of parliament and NGO's to create shared solutions to the plastics challenge. One of the outcomes of the Forum is a design manual for reuse and recycling of plastic packaging for private use.

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<sup>16</sup> By 2030, upgrade infrastructure and retrofit industries to make them sustainable, with increased resource-use efficiency and greater adoption of clean and environmentally sound technologies and industrial processes, with all countries taking action in accordance with their respective capabilities

<sup>17</sup> By 2030, enhance inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management in all countries

<sup>18</sup> By 2030, substantially reduce waste generation through prevention, reduction, recycling and reuse

<sup>19</sup> Integrate climate change measures into national policies, strategies and planning

## A COHERENT WATER POLICY

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*An up-dated and more holistic legislation*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Access to water is vital for human health, the global economy and geopolitical stability. Consequently, clean and safe water is a prerequisite for progress and growth for the benefit of EU citizens and the European industry. Water is moreover the most consumed material in the world.

It is thus crucial that the EU plays an active role in ensuring the efficient use and protection of clean water as the security of supply is imperative for the survival of many water-dependent entities.

Cost-effective solutions in the area of water will ensure the competitiveness of European companies. Many European companies in the water sector offer technical solutions in the water area – from resource management, over distribution and treatment of waste water – which can contribute to solve global environmental issues that will benefit the common good.

It is paramount that the EU secures the necessary legal framework to support the development, export and implementation of water technology both within the EU and to third countries.

### STATUS AND EXISTING EU LEGISLATION

The Commission has proposed two pieces of legislation on water within this policy term:

- Quality of Water Intended for Human Consumption (2017/0332(COD))
- Minimum Requirements for Water Reuse (2018/0169(COD))

Both proposals will change or complement existing legislation.

In addition to the above-mentioned pieces of legislation, the current legal landscape regarding water consists of two other directives already in force:

- EU Water Framework Directive (2000/60/EC), and “daughter directives”.
- Urban Waste Water Treatment Directive (91/271/EEC) – both currently under REFIT.

The EU Water Framework Directive is currently being evaluated with the purpose of deciding whether a revision of the directive is needed.

The Urban Waste Water Directive is currently subject to a REFIT. A consultation has taken place in 2018. DI has submitted input to this consultation.

### RECOMMENDATIONS

DI recommends that the new Commission takes on a more holistic approach towards water regulation and presents a coherent water package in the beginning of the new term to ensure legal consistency and certainty between the different legislative acts. The package should support the water resource cycle giving a more distinct identification of stakeholders their impact and responsibility along the water cycle.



Water technologies have improved drastically the last 25 years. Modern technology requires modern legislation, which will be possible, if the different pieces of water legislation are reviewed and revised simultaneously and if the various goals and instruments are compatible.

Currently, the different pieces of legislation contain different principles, e.g. the principle of cost-recovery is only mentioned in one directive but is left out in other directives on water management. This raises questions about the inter-connection between the directives and regulation.

Moreover, as water is an utmost basic need in many human activities, the water sector's regulation within other policy areas should also be consistent when it comes to climate impact and adaptation, as well as energy, resource and waste policies.

DI furthermore recommends that any future legislation in the area of water has clear references to and are compatible with the UN Sustainable Development Goals.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDGs

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 6.1<sup>20</sup> "Clean Water and Sanitation", number 11.6<sup>21</sup> Sustainable Cities and Communities", and number 12.2<sup>22</sup> "Responsible Consumption and Production".



### ADDITIONAL INFORMATION

- DI holds the chairmanship of the Water Task Force at BusinessEurope and is a member of the Task Force on Water at Orgalim.
- The Commission webpage dedicated to the EU Water Framework Directive can be found [here](#).
- Info on the public consultation [here](#).

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<sup>20</sup> By 2030, achieve universal and equitable access to safe and affordable drinking water for all

<sup>21</sup> By 2030, reduce the adverse per capita environmental impact of cities, including by paying special attention to air quality and municipal and other waste management

<sup>22</sup> By 2030, achieve the sustainable management and efficient use of natural resources

## WASTE AS A RESOURCE

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*Regulation on shipment of waste no. 1013/2016 (WSR)*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Five directives on waste management have been revised as part of the EU's commitments to circular economy. However, the Regulation on Shipments of Waste has not been revised yet. It is a prerequisite that waste is considered as a resource - just like any other raw material - that moves freely within the single market, if the EU is expected to become a truly circular economy. The further the EU moves towards the creation of a single market for waste, the closer we get to realizing the potential inherent in a circular economy.

The existing EU legislation on shipment of waste makes it very expensive and difficult to ship waste between member states to facilitate reutilization. It is currently an obstacle for Danish companies to find new, foreign business partners, who will be able to sort out the companies' waste. The experience from Danish companies is that large variations in administration occur between member states. Especially regarding waste characterization and waste definitions, assessment of impurities etc.

Creating a legal framework that allows European companies to reuse waste to a larger and better extent will unlock a huge potential within the circular economy. This will ultimately create more 'green' jobs, and facilitate technology development as well as investments, which could strengthen and increase European exports.

### STATUS AND EXISTING EU LEGISLATION

Article 60 (2a) in the Regulation on Shipment of Waste (no. 1013/2006) requires an evaluation to be carried out before the 31<sup>st</sup> of December 2020. This evaluation is running now. A consultation has taken place which ended the 27 April 2018.

DI has provided input to this consultation, generally stating that regulation is very relevant with great potential, but the objective needs to be adjusted to support the transition towards a circular economy.

### RECOMMENDATIONS

- DI recommends a cost-effective green transition to legislation that will enable better waste management. This could be achieved by revising the Regulation on Shipments of Waste.
- Waste is a resource and should be legally treated as such. Private actors and a free market for waste management will contribute to a far better exploitation of resources that may be derived from waste. There is an international market for trade with natural resources. This market should include waste.
- The interpretation and enforcement of EU legislation for shipment as well as import/export of waste, makes up an essential regulatory framework and a necessary competitive factor for European companies. DI recommends that EU requirements should be consistent in all member states to enable trade with waste. It creates barriers to trade if member states have different terminology and rules when dealing with waste as a resource.

- Furthermore, DI recommends to adopt rules to prohibit deposition of waste that could have been reused or recycled.
- Today, many companies that want to contribute to green solutions by reusing secondary materials in their production, face administrative barriers and financial challenges. DI recommends that a level playing field for companies is created, so some companies do not pay more than others. Shipping waste across EU borders for recycling and utilization in new products needs to be easier and less bureaucratic than today. Waste facilities that upgrade waste to secondary raw materials back into the circular economy should be able to receive input material from other EU countries in a fast track handling. Basically, the regulation needs to be upgraded to handle cascade recycling through several different processes.
- It is important to emphasize that all waste handling facilities in EU should be under surveillance of the competent local/national authority to ensure that they comply with all environmental requirements. The regulation on shipments of waste should only regulate the movement of waste to the waste handling facility.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDGs

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 7.2<sup>23</sup> "Affordable and Clean Energy", number 9.4<sup>24</sup> "Industry, Innovation and Infrastructure", number 11.6<sup>25</sup> "Sustainable Cities and Communities", and number 12.2<sup>26</sup> "Responsible Consumption and Production".



### ADDITIONAL INFORMATION

- Info on the Danish Waste and Resource Industry Association (a part of DI) [here](#).
- Info on the Regulation [here](#).
- Info on the public consultation on the evaluation of the regulation [here](#).

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<sup>23</sup> By 2030, increase substantially the share of renewable energy in the global energy mix

<sup>24</sup> By 2030, upgrade infrastructure and retrofit industries to make them sustainable, with increased resource-use efficiency and greater adoption of clean and environmentally sound technologies and industrial processes, with all countries taking action in accordance with their respective capabilities

<sup>25</sup> By 2030, reduce the adverse per capita environmental impact of cities, including by paying special attention to air quality and municipal and other waste management

<sup>26</sup> By 2030, achieve the sustainable management and efficient use of natural resources

## AN EFFECTIVE COMPLAINT SYSTEM

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### *An Effective Complaint System (SOLVIT)*

#### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

In the Single Market, businesses are often requested to comply with various legislative requirements even though those requirements are not in line with the EU Treaty. Businesses seldom know their rights, and therefore choose to comply with these requirements, even when they are onerous and expensive.

Only few businesses are aware of the option to complain through the informal complaint system, SOLVIT, to claim their internal market rights.

As for now, unfortunately, it is well documented that SOLVIT is not very effective in solving the cases businesses provide. Therefore, the Commission has launched an Action Plan to ensure better performance and encourage businesses to use SOLVIT when facing internal market challenges. However, the Commission has no formal obligations to follow up on the plan and are, to a large extent, dependent on actions taken or not taken by the Member States. Thus, there is a need to do more to ensure an effective and efficient complaint system. A new regulation on mutual recognition completed during this legislature provides for involvement of the Commission in the compliant handling of cases related to mutual recognition. That is positive. However, many challenges faced by businesses on the internal market are not related to mutual recognition, but rather to different interpretation of EU legislation or questionable national regulations. Thus, there is a need to expand the obligations of the Commission.

If businesses get better avenues for complaints, the Single Market will function better. Substantial costs will be saved if businesses have to adapt their products solely to requirements justified under EU law when they export their products to other EU countries.

At the same time, the complaint system can deliver valuable insights to the Commission as to where the real challenges of the Single Market lie. Such insight will improve the Commission's ability to enforce the rules vis-à-vis the Member States, including commencement of treaty infringement cases when necessary. Furthermore, the system will contribute to greater understanding within and across the Member States when it comes to understanding Member States' internal market obligations. All these effects will have a positive impact on the private sector.

#### STATUS AND EXISTING EU LEGISLATION

Commission Recommendation of 17 September 2013 on the principles governing SOLVIT (2013/461/EU), Action plan on the Reinforcement of SOLVIT (COM (2017) 255 final) and the newly adopted regulation on mutual recognition based on proposals for regulation (COM (2017) 796 final).

#### RECOMMENDATIONS

- Member States should act according to the Action Plan on SOLVIT and share best practices with each other and with the Commission.
- The Commission should follow up on the Action Plan on SOLVIT at Member State level to heighten awareness and determine if a stronger legislative framework is needed to ensure companies access to an effective complaint system.

- A stronger legislative framework should allow for involvement by the Commission in all types of complaints handling related to the challenges that businesses face in the Single Market. This should be regardless of whether these complaints are related to national or European legislation and regardless of whether they are related to the legislation itself or its interpretation.
- Companies should be allowed to engage directly with the Commission in the problem handling process.

### THIS PROPOSAL IS ALSO SUPPORTED BY

In the summer of 2018, this proposal was submitted to and adopted by the Danish Implementation Council. The Danish government hence supports the proposal. Furthermore, the proposal is also included as one of BusinessEurope’s recommendations for the next Commission in its paper [Priorities for the Single Market beyond 2019](#).

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDG

DI’s recommendations would support the EU’s work towards achieving UN Sustainable Development Goals number 9.3<sup>27</sup> “Industry, innovation and infrastructure”, and number 16.3<sup>28</sup> “Peace, justice and strong institutions”.



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<sup>27</sup> Increase the access of small-scale industrial and other enterprises, in particular in developing countries, to financial services, including affordable credit, and their integration into value chains and markets

<sup>28</sup> Promote the rule of law at the national and international levels and ensure equal access to justice for all

## SINGLE MARKET FOR PUBLIC TENDERS

*Strengthened knowledge sharing and market access across national borders and better transparency in terms of the enforcement of the procurement rules*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

EU's procurement directives must guarantee open access to businesses to bid for contracts in other EU countries. The Single Market for public tenders is, nevertheless limited as only 2 pct. of tenders in the period of 2009-2015 were won by European companies in another Member State than the Member State where the contracting entity is located. In the same period, however, 20 pct. of these tenders were subsidiaries of European companies located in other Member States.

Public procurement rules are implemented differently across the individual Member States. This results in complications for European companies – especially the service sector – who find it difficult to navigate the different rules.

There is an opportunity to increase cross-border activity, bidding and competition by reducing the variations of implementation of public procurement rules or by ensuring more transparency in the differences across countries.

### STATUS AND EXISTING EU LEGISLATION

In October 2017, the EU published a [Public Procurement Package](#). It recommends Member States to deal with public procurement more professionally. This included a requirement to ensure training of public employees who are dealing with public procurement in their work. However, the package does not contain initiatives to strengthen public procurement across Member States.

### RECOMMENDATIONS

*Strengthened knowledge sharing and market access across national borders*

The Commission must take the initiative to establish a common European procurement portal to support knowledge sharing and market access for businesses. The portal must have contracting entities and businesses as its target group, consolidate the Commission's existing tools in procurement areas and:

- Present information about the market for public contracts in the individual Member States, including referring businesses to further tools and platforms in each Member State. This means the setup of a single point of entry for businesses wanting to scan the business opportunity in countries other than their country of residence.
- Ensure better access to and usage of procurement data from the Commission's procurement platform, Tenders Electronic Daily for businesses.
- Guarantee uniformity and recognizability in the development of the common European Single Procurement Document (ESPD), which businesses must use in their bidding for all tenders.
- Ensure that the Commission's online information system, e-certis, which includes information about relevant forms for submitting bids in the individual Member States, is regularly updated. This is an important tool for both the contracting authority and the bidder. The information system should be made more user-friendly on an ongoing basis.

### *Better transparency in terms of the enforcement of the procurement rules*

The Commission must support businesses, which encounter concrete challenges and real discrimination when they want to bid for contracts in other Member States. In concrete terms, the Commission must offer:

- ‘Fast track’ help in the event of obvious infringement of the procurement rules, including the offer of informal dispute resolution of procurement cases by contacting contracting authorities that clearly discriminate against businesses. Inspired by an earlier used model in Denmark for dispute resolution, the Commission’s involvement in a case should be without legal effect, but for the purpose of a fast resolution of obvious errors and infringements through a polite recommendation.
- Give an overview of the complaint procedure in the various Member States, so that it is clear how the organization of the complaints body, complaint procedure, complaint fee etc. vary, and which national authorities can assist the businesses in progressing.

### THIS PROPOSAL IS ALSO SUPPORTED BY

In the summer of 2018, this proposal submitted to and adopted by the Danish Implementation Council. The proposal is hence included as one of the Danish government’s priorities for the next Commission. Furthermore, the proposal is also features in BusinessEurope’s recommendations for the next Commission in its paper [Priorities for the Single Market beyond 2019](#).

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDGS

DI’s recommendations would support the EU’s work towards achieving UN Sustainable Development Goals number 9.3<sup>29</sup> “Industry, innovation and infrastructure”, and number 16.3<sup>30</sup> “Peace, justice and strong institutions”.



### ADDITIONAL INFORMATION

More info about EU and Public Procurement [here](#).

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<sup>30</sup> Promote the rule of law at the national and international levels and ensure equal access to justice for all



## EUROPEAN STANDARDIZATION SYSTEM

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*Safeguard the European standardization system and the New Legislative Framework*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

New Legislation Framework (NLF) is a method of developing harmonization legislation that has helped speed up the integration of the Single Market. In NLF, harmonization legislation establishes the essential requirements that products need to comply with within the EU. The technical specifications that ensure presumption of conformity with the essential requirements are developed by the established standardization system (harmonised standards, hENs).

The Commission is responsible for publishing references to these standards in the Official Journal of the European Union (OJEU). Member States are obliged to enforce the rules through market surveillance at national level. National authorities are also obliged to object to the standards if they discover that products produced in line with the standards in question do not comply with the essential requirements of the relevant legislation.

However, many references to standards are not published and some companies might therefore be forced to use third-party certification before they can market their products. This is very expensive and time-consuming as certification capacity is scarce. Furthermore, the solutions identified by the Commission to solve the issues, impose substantial administrative burdens on those companies that contribute to the development of the European standards. This ultimately reduces the companies' interest in contributing to the development of harmonised standards, which is problematic because the technical know-how in standardization predominantly comes from company experts.

Without European harmonised standards, the NLF cannot work properly. SMEs will be forced to use 3rd party certification, which is expensive, or alternatively give up marketing their products. Bigger companies, on the other hand, will revert their activities to other fora to the disadvantage of European innovation and growth. Action is needed in order to ensure that the NLF, which has served the Single Market so well for more than 30 years, will continue to work well.

At the same time new legislative proposals are being proposed or amended in such a way they are not aligned with NLF. It adds complexity for businesses' whose products have to comply with the rules.

### STATUS AND EXISTING EU LEGISLATION

The recommendations concern Regulation (EC) no. 765/2008, Decision 768/2008/EC and Regulation (EC) no. 1025/2012.

### RECOMMENDATIONS

The Commission should acknowledge and evaluate the consequences of the changes imposed on the standardization system.

The Commission should ensure that requirements related to the development of standards are proportional to the purpose the standard serve in NLF, i.e. as a voluntary compliance tool to obtain presumption of conformity with the essential requirements of EU-legislation.



If needed, the Commission should propose a revision of the standardization regulation (1025/2012), to accommodate a proper balance between the requirements that harmonised standards need to live up to and the role they serve as a voluntary compliance tool.

The Commission should work to ensure the enforcement of the NLF as a basis for developing new harmonisation legislation in the product area.

The Commission should rely on Decision 768/2008/EC, when it tables new proposals, and substantiate decisions relevant to the NLF and any deviations.

As increasingly more products are digitalized and integrated with services, the Commission should evaluate the decision on NLF to ensure it is fit-for-purpose.

### THIS PROPOSAL IS ALSO SUPPORTED BY

In the summer of 2018, this proposal was submitted to and adopted by the Danish Implementation Council. The proposal is hence included as one of the Danish government's priorities for the next Commission. Furthermore, the proposal is also featured in BusinessEurope's recommendations for the next Commission in its paper [Priorities for the Single Market beyond 2019](#).

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDG

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 9,<sup>31</sup> "Industry, innovation and infrastructure", and number 17, "Partnerships for the goals".



### ADDITIONAL INFORMATION

DI has recently published a paper, "[the way forward for the EU Single Market – Based on the experience of Danish Businesses](#)", which further elaborates on our recommendations for the Single Market, while also giving guidance to companies on how to navigate in the Single Market.

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## MORE AND BETTER MARKET SURVEILLANCE

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*Creating a level playing field for European companies on the internal market*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Many companies express concern about unfair competition due to insufficient market surveillance. Compliant companies spent a vast amount of resources to ensure compliance with still more complex regulation. Yet far too often non-compliant products can be placed on the market with no consequences to rough traders.

More and better market surveillance could ensure more fair competition and incentivize compliance with established legislation. In addition, better market surveillance would provide for a better understanding of how to interpret the relevant legislation and result in greater certainty for companies regarding the formal requirements their products must comply with in order to be lawfully marketed on the Single Market.

While cross-border e-commerce within the EU is increasing, so is global e-commerce. End users – B2C as well as B2B – can purchase products online from companies all over the world. Without stringent market surveillance at the EU's external boarder, this poses a threat to European product safety standards, as products sold by companies based in third countries do not necessarily comply with EU rules.

### STATUS AND EXISTING EU LEGISLATION

A new regulation on Market Surveillance and Compliance addresses some of the challenges mentioned here when it comes to products covered by EU-wide harmonization legislation. It will come into force in 2021. However, more work is needed to ensure a framework that will support the creation of a more level playing field.

### DI RECOMMENDS

- The Commission and the Member States should ensure proper implementation of the new legislation on market surveillance of harmonised products and work to improve the legislative framework for non-harmonised products.
- The Commission should perform a systematic follow-up on Member States' obligations to enforce common EU rules within their national territory, including the new regulation of market surveillance, and report on the results as part of a strengthened Single Market Scoreboard.
- The Commission should ensure that the new legislation on market surveillance does not interfere negatively with global trade and work to identify global solutions to the challenges related to e-commerce for instance at WTO level.
- Member States should allocate sufficient resources to ensure a well-functioning market surveillance and share best practices at EU-level on how to achieve this.

## THE DI PROPOSALS WOULD SUPPORT THE FOLLOWING SDGS

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 9.3<sup>32</sup> "Industry, innovation and infrastructure", and number 16.a<sup>33</sup> "Peace, justice and strong institutions".



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<sup>33</sup> Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime

## NATIONAL INFORMATION PORTALS

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*Establishment of national Information Portals that provide better information and services to exporting businesses*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Companies that export or intend to export goods or services to other EU Member States must comply with all requirements on the market in question. According to existing Single Market legislation, Member States must inform companies through information contact points/points of single contact. Nonetheless, companies often face difficulties trying to obtain information about what rules to comply with (national rules as well as EU rules), which procedures to follow, and which public authorities to contact in the Member State they wish to export to.

Despite good intentions, it is impossible to get an overview of the contact points, and they do not cover all business-related aspects nor information of the entire range of requirements that a company must comply with in the individual Member State. Moreover, the information provided is – in some cases – only available in the local language.

It adds to the challenge for companies that new national regulation is introduced every year in Member States increasing the already complex regulatory framework of the Single Market. The Single Digital Gateway is an important tool to ease companies' access to information. However, a more coordinated approach on Member State level is needed.

### STATUS AND EXISTING EU LEGISLATION

Today, Member States' information obligations are imposed by (but not only) the Market Surveillance Regulation, the Services Directive and the Enforcement Directive. The following recommendations include these obligations as well as information about requirements that originate from other legal acts relevant to exporting companies. The following recommendations do not, however, propose any amendment of said legal acts.

### RECOMMENDATIONS

DI recommends that the Commission works to ensure that Member States fulfil their existing information obligations vis-à-vis foreign companies that want to export to a given Member State, in a way that effectively provides these businesses with a total overview of:

- which national rules and EU rules they must comply with in the Member State in question;
- what they must do to observe and comply with these rules (procedures with step-by-step guidance);
- which documents they must have in place where and when; and
- which authorities they must contact.

This could be realised by creating a national information portal in each Member State. Such an information portal should not only consolidate the existing information contact points under one general access portal but also include necessary information about any other business-related requirements that are mandatory for a company to comply with in the relevant Member State, including VAT (rates, registration requirements, reporting obligations, etc.) and income taxes, social security and labour law requirements.

Through this portal it should be possible for a company to get one single, coordinated answer from the national contact points about the requirements of each Member State - both national and EU related. All information and relevant documents should be available in English.

- The national information portal should also be responsible for helping local companies that wish to export goods and/or services to other Member States. Particularly by helping them - in the local language - to identify which requirements, procedures etc. they must comply with in other Member States.
- National information portals should cooperate across Member States to ensure that a company receives correct and comprehensive information about what to comply with in a given Member State. Such cooperation should also ensure knowledge sharing across Member States, both in terms of ‘best practice’ and in terms of administrative and regulatory barriers in the Single Market, ultimately to the purpose of creating a more coherent and efficient Single Market.
- The national information portals should be accessible through the Single Digital Gateway.
- Finally, the Commission should work to ensure that any new directives or regulations concerning the Single Market still include a requirement to establish a national information contact point.

### PROPOSAL IS ALSO SUPPORTED BY

In the summer of 2018, this proposal was submitted to and adopted by the Danish Implementation Council. The proposal is hence included as one of the Danish government’s priorities for the next Commission. Furthermore, the proposal is also featured in BusinessEurope’s recommendations for the next Commission in its paper [Priorities for the Single Market beyond 2019](#).

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDGS

DI’s recommendations would support the EU’s work towards achieving UN Sustainable Development Goals number 9.<sup>34</sup> “Industry, innovation and infrastructure”, and number 16.<sup>10</sup><sup>35</sup> “Peace, justice and strong institutions”.



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<sup>35</sup> Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime

## NOTIFICATION SYSTEMS

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### *Better enforcement of national regulation notification requirements*

#### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Each year, Member States notify 600-800 national technical regulation to the European Commission for the purpose of scrutiny. These notifications can include rules on the contents of specific substances in products or requirements for the labelling of products to name a few examples. Member States are also required to notify national regulations covered by the Service Directive but the extent to which this happens is not publicly available.

The notifications are intended to pave the way for a dialogue between the Commission and the Member States on potential trade barriers caused by the national regulations and how they can be addressed.

The notifications have proven to be an effective way to prevent new trade barriers when it comes to national product regulations (SWD(2017)465 final), although there is still room for improvement. Often, the notifications do not include an impact assessment and there are no procedures in place to ensure all notified regulations are indeed scrutinized by the relevant DG. In the area of national regulations related to services, in 2016 the Commission concluded that there was a need to improve the notification obligations as the requirements were not sufficiently well described and the deadlines and consequences of non-compliance were unclear. Thus, the Commission proposed a separate legal act COM (2016) 821 (proposal for a directive laying down a notification procedure for authorisation schemes and requirements related to services). However, the proposal was later withdrawn due to strong opposition from Member States. Therefore, there is a need to address the challenge in a different way.

#### STATUS AND EXISTING EU LEGISLATION

Affected Legislation: Directive (EU) 2015/1535, Directive (EF) 2006/123/EF.

#### RECOMMENDATIONS

DI recommends that the Commission secures proper enforcement of the current notification procedures by

- Developing soft law measures to ensure Member States are aware of their notification obligations under the existing directives, for instance through awareness campaigns, guidance development and capacity building in the individual Member States
- Improving the internal processes related to scrutiny of notified national regulations and report on the level and quality of their scrutiny.
- Develop tools to identify breaches of notification obligations i.e. national regulations that have not been notified and report on the prevalence of any given breach and the extent to which the tools developed are effective.
- Define objective criteria as to the steps needed to take in case of breaches to the notification obligation, including engagement in compliance dialogue, infringement procedures etc.

Furthermore, DI recommends that it becomes possible to recommend reassessment of national rules, which have already been notified. This possibility to recommend rules already notified must be widely accessible and should be followed by a ‘comply or explain’ principle for the Commission (in cases where no infringement procedures are initiated, or the issues are not resolved in another way).

The above recommendations will ensure the existing notification obligations are more properly enforced. At the same time, the reporting will serve to further justify the need for better notification obligations in the future.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDG

DI’s recommendations would support the EU’s work towards achieving UN Sustainable Development Goal number 9.3<sup>36</sup> “Industry, innovation and infrastructure”.



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## BETTER ENFORCEMENT AT EU LEVEL

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*Ensuring consistent and timely implementation of EU legislation*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Many companies experience different interpretation of identical EU legislation in different Member States. This may be due to directives that are being transposed insufficiently, incorrectly or late in some Member States or simply due to different interpretation of directives or regulations by the competent authorities in different Member States. Although the intention of the legislators has been to harmonize the rules at EU level, on the ground, the rules are not harmonised, adding complexity and costs for companies selling products on the Single Market.

### STATUS AND EXISTING EU LEGISLATION

The Commission has the responsibility as the guardian of the treaty to ensure consistent implementation and interpretation of European legislation, and to react if Member States that do not fulfill their obligations under the treaties. They have a number of softer as well as harder instruments at hand to serve that role. Implementation plans and guidance documents are examples of the former, infringement procedures are part of the latter. However, there is a need for increased focus in the area of proper implementation and enforcement in general. In addition to developing principles for transparent implementation (see also Transparent Implementation), the Commission should step up its activities to gain a greater knowledge of the state-of-play when it comes to proper implementation. Furthermore, the Commission should set clear criteria as to when to apply the different instruments, especially the infringement procedure when Member States do not fulfill their internal market obligations.

### DI RECOMMENDS

- The Commission should strengthen the Single Market Scoreboard to cover qualitative aspects of the national implementation of EU legislation. Furthermore, it should be linked to the number of notifications in the TRIS and IMI databases to provide for a more holistic picture of the Member States' approach to the integration of the Single Market.
- With inspiration from the Environmental Implementation Review (EIP), the Commission should conduct implementation reviews of selected legislations or of specific aspects of different legislations for instance the implementation of market surveillance clauses of EU harmonization legislation (See also More and Better Market Surveillance).
- Building on the principles set out in the Communication "EU law: Better results through better application", the Commission should develop and apply a set of criteria as a basis for launching infringement procedures. These criteria should be used to ensure consistency in the detailed process of assessment and selection. The criteria should also indicate overall political and strategic priority areas of the Commission, including prioritization of violations entailing distortion of competition.
- Efficient and systematic efforts to enforce legislation is a prerequisite for an efficient policy cycle. It is the actual application of the rules that determines if the policy goals



are accomplished. In order to strengthen the Commission's work in this area, an institutional strengthening of enforcement could be considered, e.g. by appointing a Commission vice president with responsibility for better regulation, implementation and enforcement. Explicitly highlighting implementation and enforcement as the responsibility of a vice president would increase political focus on this agenda and make it a central and integrated element of every new policy initiative.

### THE DI PROPOSALS WOULD SUPPORT THE FOLLOWING SDGS

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 9.<sup>37</sup> "Industry, innovation and infrastructure", and number 16.a<sup>38</sup> "Peace, justice and strong institutions".



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<sup>38</sup> Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime

## BETTER PUBLIC CONSULTATIONS

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*Strengthening of EU legislation through increased involvement of external stakeholders*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

The Commission has worked on an ongoing basis to involve more external stakeholders and to give them more and better options to contribute to the EU's political decision-making process. For instance, since 2010, the Commission has conducted more than 700 public consultations, in which the Commission has received input from businesses, NGOs and citizens to ensure cohesive and transparent EU legislation.

Furthermore, the Commission has worked to make the political decision-making process more transparent. This took place, in the framework of the recent revision of the guidelines for better regulation in the context of public consultations. Businesses and organisations also appreciate the new 'Contributions to Legislation' website, which collects all consultations on a single platform. Despite the guidelines and the positive efforts, there is still a need to improve the consultation processes of the EU institutions, which are deemed to be confusing and biased. The questions are often worded subjectively or negatively, which makes it difficult to provide objective answers.

### STATUS AND EXISTING EU LEGISLATION

According to the EU Treaty, the Commission must carry out public consultations within the Union action areas to guarantee that the decisions of the Union are cohesive and transparent. Thus, all EU legislation could be affected. The same applies to transposed Danish legislation.

### RECOMMENDATIONS

DI recommends that the incoming Commission seeks to improve the way the public consultations are prepared and carried out as well as how the feedback is used. DI recommends that the Commission attaches special importance to the following aspects:

- Increase awareness of the Commission's services related to the principles of better regulation: e.g. through regular mandatory training.
- Improve the design of the questionnaires. The questionnaires should not be too long, and they should make it possible to provide open answers and comments. Questions must be simple and clear. Finally, it should be possible to reply to all questions in the questionnaire irrespective of the nature of the stakeholders.
- The consultation forms should be designed in such a way, that they can be downloaded in an editable format. There must always be an option of uploading opinion papers associated with the consultation.
- Work should be done to guarantee that the Regulatory Scrutiny Board ensures greater coherence between the relevant consultations and impact assessments.
- Many of the Commission's consultations are also aimed at citizens of EU countries. This helps reduce the gap between what is perceived as the 'Brussels bubble', on the one hand, and European citizens, on the other. A number of the consultations, how-

ever, include questions, which are only aimed at citizens, and in this connection relevant stakeholders are unable to provide input to the questions in the same way. The focus must be on how relevant stakeholders, including umbrella organisations, can better form part of these consultations. In this context, DI recommends taking into consideration that an umbrella organisation represents a large number of businesses or organisations, so their answers should have more weight than those of individuals. It is further recommended that the Commission prepares two sets of consultations specifically aimed at citizens and umbrella organisations.

- There should be enough time to react to the consultations, and consultations should not be held during holiday periods. The four-week consultation period for consultations on drafts for delegated and transposition measures should be extended. In relation to transposition measures, there should be enough time for the Commission to contemplate amendments prior to voting in the relevant committee.
- EU institutions should make use of the results from a consultation, and it should be explained in the legislative procedure how the results are being used in the proposal.
- Public consultations are important tools, but they must always be supplemented by robust data. Results from public consultations should, therefore, not constitute the only basis for relevant proposals, because the answers are subjective. Consequently, there must be more focus on the difference between statements of opinion from non-experts, statements of opinion from experts and factually validated information.
- Finally, DI supports the recommendations of the Refit Platform for improvement of public consultations dated 7 June 2017.

### THIS PROPOSAL IS ALSO SUPPORTED BY

In the summer of 2018, this proposal was submitted to and adopted by the Danish Implementation Council. The proposal is hence included as one of the Danish government's priorities for the next Commission.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDG

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 17.17<sup>39</sup> "Partnerships for the goals".



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<sup>39</sup> Encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships

# EVALUATIONS AND FITNESS CHECKS

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*A way to strengthen EU legislation*

## CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

As part of the REFIT agenda, the Commission is committed to evaluate current regulation to check whether the Commission delivers on its targets, and whether the legislation is still fit for purpose.

The current practice of the evaluations and fitness checks is, however, less advanced than is the case in the preparation of impact assessments.

### Evaluations:

Evaluations of individual acts of legislation are made based on the ‘evaluate first’ principle. The principle ensures that existing legislation is reviewed before changing the rules or introducing new ones. This is important for business because it ensures stability and coherence of EU action. While the ‘evaluate first’ principle is fine in theory, there is a need to investigate how the principle functions in practice. In the Court of Auditors stresses annual report it is stressed, that the Commission complies with the ‘evaluate first’ principle in 25 pct. of the cases. The Regulatory Scrutiny Board (RSB) further indicates that evaluations often lack important assessments. It has also been pointed out that the results of the evaluations are prepared too late to be taken into the considerations of whether a revision of the current legislation should take place.

### Fitness checks:

The value of comprehensive evaluations such as fitness checks is that the Commission has the opportunity to assess interfaces and accumulated costs related to the different EU laws. The fitness checks, therefore, create added value in complex EU areas.

However, an appropriate selection of the legal areas included in the fitness checks is not always made. In addition, the consultations and the questionnaires often include subjective questions, directing the answers towards a certain result. Finally, some fitness checks take a long time to complete (in some cases more than five years).

## STATUS AND EXISTING EU LEGISLATION

The Commission has integrated a principle of ‘evaluate first’ in the Commission’s ‘[Better Regulation Toolbox](#)’.

## RECOMMENDATIONS

DI recommends that the new Commission takes the points below into consideration:

- The principle of ‘evaluate first’ should be followed, and execution of the evaluations should be improved regarding timing, design and methods employed.
- The Commission should take into consideration evaluations and their conclusions, when revising existing or preparing new regulation.
- The questionnaires in the public consultations, in connection with evaluations and fitness checks, must be neutral and make it possible to elaborate on the answers in the comments or with a position paper

- It should be specified when there is a need for an evaluation from the Regulatory Scrutiny Board.
- In relation to fitness checks, timetables should contain a reasoned explanation of the choice of the laws included in the fitness check.
- A timetable should ensure increased transparency and thus clearly state the different consultation channels initiated and emphasise if external consultants are involved.
- The Commission should endeavour to perform evaluations within a maximum timeframe of 2-3 years.

### THIS PROPOSAL IS ALSO SUPPORTED BY

In the summer of 2018, this proposal was submitted to and adopted by the Danish Implementation Council. The proposal is hence included as one of the Danish government's priorities for the next Commission.

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## ENSURE GOOD REGULATION

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### *Quality of Legislation and Impact Assessments*

#### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

The Juncker Commission has devoted considerable time and resources to the 'better regulation' agenda to improve the quality of EU policy and law-making. Good regulation ensures that EU legislation benefits the European citizens and consumers and reaches the political goals without imposing unnecessary burdens or impede competitiveness or European business.

Impact assessments constitute an important step in ensuring that legislation is fit for purpose and do not create unnecessary barriers, costs and/or burdens for companies and citizens. Impact assessments are assessed by the Regulatory Scrutiny Board before the proposal is tabled.

The work on the better regulation agenda is important and should be continued by the next Commission. However, there is still room for considerable improvement with regard to the issues below.

- The impact assessments
- Regulatory Scrutiny Board (RSB)
- The negotiation processes
- Political or technical decisions

#### STATUS AND EXISTING EU LEGISLATION

The Commission has established a number of processes and developed tools to ensure good regulation. More information can be found [here](#).

#### RECOMMENDATIONS

DI recommends that the next Commission maintains and enhances its focus on the better regulation agenda. The Commission should particularly take into consideration that:

- Impact assessments of all proposals should be made before they are tabled by the Commission.
- If, by way of exception, a proposal is so urgent that no impact assessment can be made before the proposal is tabled, an impact assessment should be started as soon as possible. That way the results can at least influence the remainder of the process (in the Council, the European Parliament and the trilogues).
- The impact assessments should always be based on actual information and not primarily on statements of opinions. Open public consultations cannot and should not be used as representative sections of the population, corporate sector or other groups, since there is a high degree of self-selection (see also The Danish Implementation Council's recommendation no. 4 on public consultations).
- The data and calculations that form the basis of the impact assessments should always be publicly available. There should also be openness about the responses included in

the impact assessments, and there should be clear separation of where the responses come from.

- Proposals, whose impact assessments are very defective, should be rejected by the Council.
- The Regulatory Scrutiny Board should be transformed into a more independent entity. There may be different methods of achieving this, but most central is that internal members of the Commission should not form a quorum at the board.
- The Commission's right of initiative should not be changed, but there should be full openness as to the Regulatory Scrutiny Board's evaluation of the impact assessments, if the Commission chooses to propose legislation. It should thus be stated directly and clearly in the proposal whether the Regulatory Scrutiny Board has provided one or more critical feedback responses to the impact assessments.
- Material and substantial amendments to proposals made during the negotiation process, for example in trilogue negotiations, should always be followed by an updated impact assessment of the entire proposal.
- The use of delegated transposition measures must be limited to technical solutions and never political decisions, on which agreement cannot be achieved at the political level.
- Decisions in committees, authority collaboration etc. must not replace political decisions: particularly not in terms of guidelines and the like, which are subject to the 'comply or explain' principle.

#### THIS PROPOSAL IS ALSO SUPPORTED BY

In the summer of 2018, this proposal was submitted to and adopted by the Danish Implementation Council. The proposal is hence included as one of the Danish government's priorities for the next Commission.

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## TRANSPARENT IMPLEMENTATION

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*Reducing differences of EU legislation across Member States*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

European businesses often find that there are differences in enforcement and implementation within the EU Member States. Often this results in businesses facing obstacles and burdens when selling the same product or delivering the same service across the Single Market.

The Single Market significantly contributes to economic activity in each individual Member State of the EU. A study commissioned by the Danish Business Authority finds that 56 million jobs in the EU depend on trade in the Single Market. But the Single Market could work even better in practice. Every year, around 700 national technical regulations concerning goods are notified and a recent DI study shows that Danish companies face great challenges with different implementation of EU regulation across countries.

We encourage a new Commission to strengthen the focus on implementation and transposition of EU regulation.

### STATUS AND EXISTING EU LEGISLATION

According to Article 17(1) of the Treaty on European Union (TEU), the European Commission 'oversees the application of Union law under the control of the Court of Justice of the European Union'. It has an oversight role regarding the implementation and application of EU law by Member States.

### RECOMMENDATIONS

DI recommends that the new Commission works to ensure that implementation of EU legislation happens in a way that does not fragment the Single Market, hinder competitiveness or creates unnecessary costs and burdens.

Businesses should be provided clear information of the rules they need to comply with when conducting business across borders. A long-term action plan for better implementation and enforcement is needed to make current rules work in practice.

We therefore recommend that the Commission develops a set of principles that the member states should follow when implementing EU legislation. The principles must be implemented with respect for Member States' treaty-bound competencies. It should also be stressed that Member States can in no way be deprived of their competency to implement minimum directives in a manner, which is not appropriate in a national context.

The principles for good implementation are also found in the former Stoiber Committee's check list for good transposition of EU legislation.

The Commission could find inspiration for such principles below, which the Danish government use to implement EU regulation:

- When implementing new EU legislation, the Member States should assess whether they extend the original scope of the legislation.
- When implementing new EU legislation, the Member States should assess whether (full) advantage is made of exceptions: in particular, if this would result in barriers to the Single Market.



- When implementing new EU legislation, the Member States should state whether further requirements are added to what is required. In particular, whether they fall outside the purpose of the EU legislation or maintain national statutory requirements that are more comprehensive than those demanded in the legislative act.
- When implementing new EU legislation, the Member States should be aware whether the legislation is implemented earlier than on the date specified in the legislative act.
- When implementing new EU legislation, the Member States should explain why stricter enforcement mechanisms are used, or mechanisms other than what is necessary for correct implementation.
- Based on the above-mentioned principles, the Member States should prepare an annual report for the Commission on transposition of EU legislation in the particular Member State. This reporting should be publicly available. It should be considered using the current IT tool ('[MNE Interface](#)'). This will create further transparency if the Member States annually report on their implementation to the Commission.

### THIS PROPOSAL IS ALSO SUPPORTED BY

In 2018, this proposal was submitted to and adopted by the Danish Implementation Council. The proposal is thus included as one of the Danish government's priorities for the next Commission. This proposal has also been raised and discussed in BusinessEurope, which has developed a strategy paper on this topic with similar recommendations.

### ADDITIONAL INFORMATION

The Danish government has introduced five principles for implementing business-targeted EU legislation in Denmark. Their purpose is to ensure that new EU legislation is not over-implemented, unless there is a clear political desire and mandate to do so and, in that case, that the politicians are aware of the consequences that the over-implementation will entail.

The Danish Implementation Council and the Danish Implementation Committee show by example that it is possible to reduce the number of business-targeted EU rules being gold-plated in Denmark. This has partly been the result of three years of strategic work with the five principles for implementing business-targeted EU legislation, which are a permanent part of the legislative procedure in all Danish ministries.

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## IMPROVEMENT OF THE REFIT PLATFORM

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*An important tool to create better regulation*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

In 2015 the Juncker Commission set up the so-called REFIT Platform, partly inspired by the Danish Business Forum for Better Regulation.

Since its establishment, the REFIT Platform has processed over 700 proposals and adopted more than 80 joint opinions within many different policy areas.

The Platform has been an excellent instrument for addressing burdensome issues related to existing legislation. DI therefore recommends that the mandate of the REFIT Platform is renewed by the upcoming Commission. At the same time, it is a good opportunity to improve the process and the communication of the Platform's work.

### STATUS AND EXISTING EU LEGISLATION

The mandate of the REFIT Platform runs out in 2019. The better regulation agenda is currently undergoing evaluation. The REFIT Platform and its structure are among the elements being assessed.

### RECOMMENDATIONS

The REFIT Platform is still a relatively new institution, and it has taken some time to get the procedures to run smoothly. Even though it is now up and running, there is still room for improvement. DI recommends that the five areas below are addressed by the next Commission:

- The REFIT Platform should become a permanent body supporting ex-post evaluation.
- The activities of the REFIT Platform can be developed further, for example by designing recommendations related to cross-cutting better regulation topics such as consultations and impact assessments, and also need to become better known among the broader public.
- On the 'lighten the load' website, the Commission should give an indication of the factors that may improve submissions, such as a precise problem description.
- The person or organization submitting a suggestion should be given the opportunity to present the submission either in person or via digital means to the REFIT Platform, as this may clarify the issue at stake.
- Since follow-up to the opinions of the REFIT Platform is key, we suggest that the person or organization submitting a suggestion should also be given the opportunity of a feedback meeting with the relevant Commission services.

Reforming the platform would result in fewer administrative burdens, in simpler rules and ensuring that legislation does not entail excessive burdens to achieve the desired goals. This will be an advantage for both businesses and civil society.

### THIS PROPOSAL IS ALSO SUPPORTED BY

In the summer of 2018, this proposal was submitted to and adopted by the Danish Implementation Council. BusinessEurope has also developed a strategy paper on this topic with similar recommendations.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDGs

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 9.3<sup>40</sup> "Industry, innovation and infrastructure", and number 17.17<sup>41</sup> "Partnerships for the Goals".



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<sup>40</sup> Increase the access of small-scale industrial and other enterprises, in particular in developing countries, to financial services, including affordable credit, and their integration into value chains and markets

<sup>41</sup> Encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships

## FUTURE-PROOF REGULATION

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*Digitalization and innovation driven by better regulation*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

The Commission has contributed to utilizing Europe's digital potential by establishing a digital single market that balances protection of personal data and the free flow of data across Member States and to/from third countries. This is a step in the right direction as digital solutions have the potential to play a significant role in tackling large societal challenges such as climate change, energy supply and scarcity of resources.

To ensure that the regulatory framework in the EU is digitalization-ready, future-proof and innovation-friendly, the Commission should introduce a set of principles and initiate targeted measures at all stages of the legislative cycle to enforce these principles. These measures should have a two-fold purpose:

- Enable digital administration to promote more efficient and more user-friendly public services to businesses and citizens as well as to improve enforcement and prevent errors and fraud.
- Provide a future-oriented regulatory framework to accommodate and enable businesses to innovate and apply new technologies and business models.

### STATUS AND EXISTING EU LEGISLATION

The Juncker Commission has integrated innovation into the better regulation agenda through the [Better Regulation Toolbox](#), which contains a research and innovation tool described in [Principle 21](#).

Further, the Council Working Group for Better Regulation has had regular discussions about future-proof and innovation-friendly legislation. Together with the Commission, the changing presidencies of the Council have collected 'best practice' from the Member States for implementing the innovation principle and making legislation more future-proof.

### RECOMMENDATIONS

DI recommends that the Commission follows up on the use of the innovation principle.

Moreover, DI recommends that the Commission develops a set of principles to ensure more agile regulation, which is fit for a society where digital tools and business models are growing in significance. The Commission can find inspiration in the principles mentioned below, which guide the Danish government's work in this area.

#### **1. Enable use of new business models**

It must be assessed whether new legislation can support the development of new business models, including the creation of better options for trials and tests and the use of new technologies, while taking substantial socio-economic or protective considerations into account.

It is important that businesses can quickly test new technologies and business models at European level, so that they know within a short period of time which legislation they are subject to, across all EU countries.

## 2. Technology-neutral legislation

It must be assessed whether new legislation can underpin businesses' ability to keep up with the technological development, for example by refraining from making demands on the use of specific technologies. A general rule should be to use clear and unambiguous definitions together with objective criteria.

## 3. Simpler and targeted legislation

A clear focus on purpose rather than process requirements makes room for innovation. To the greatest extent possible, new legislation should avoid detailed requirements and specific descriptions that make it difficult for the businesses to use new technologies and business models.

## 4. Holistic thinking

A more holistic approach to EU legislation is needed if the objective is to ensure a uniform approach to innovation and increase the possibility of using new digital technologies in the EU. The Commission must guarantee that new legislation takes existing legislation into account and avoids overlap (e.g. in terms of concepts and data). The holistic approach should also be integrated into the organization of the new Commission, in which the DGs must work very closely together when drafting new legislation.

## 5. Ensure user-friendly digitalization

Good digital implementation of new legislation is important – also at EU level. Where relevant, new legislation must contain a description of how business-targeted digital solutions are made user-friendly. It should be a priority for EU legislation to be digitalization-ready. For citizens who cannot use digital solutions, other solutions must still be offered.

## THIS PROPOSAL IS ALSO SUPPORTED BY

In the summer of 2018, this proposal was submitted to and adopted by the Danish Implementation Council. The proposal is hence included as one of the Danish government's priorities for the next Commission.

## THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDG

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 9.3<sup>42</sup> "Industry, innovation and infrastructure"



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<sup>42</sup> Increase the access of small-scale industrial and other enterprises, in particular in developing countries, to financial services, including affordable credit, and their integration into value chains and markets

## ACCESS TO DATA

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*Fuelling a data driven economy*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

In a digitalised economy, data is an essential raw material. Data is already fuelling the creation of new business models in the technology industries and beyond. However, the EU needs to ensure an innovation friendly regulatory framework fit to provide innovative opportunities and to handle the challenges deriving from new technologies such as AI and IoT based products and solutions.

Access to data is key. The creation of a future-proof data framework to open access to data will drive forward European industry's digital transformation and facilitate a data driven economy in Europe.

### STATUS AND EXISTING EU LEGISLATION

Enabling free flow of data has been a key element in the Commission's strategy for the Digital Single Market. In 2017, the Commission published the Communication *Building A European Data Economy*.

Following this, the Commission adopted a proposal for regulation on free flow of non-personal data as well as a revision of the directive on public sector information. Both proposals were adopted in 2018.

### RECOMMENDATIONS

- Conduct a review of the European framework on the use and re-use of non-personal data to ensure a simpler and more coherent framework that promotes voluntary business-to-businesses data-sharing by reducing uncertainty for businesses. The review should focus on simplifying and clarifying the framework while avoiding unintended consequences for innovation, investment and competition.
- Facilitate a comprehensive analysis of the regulatory landscape to identify potential regulatory shortcomings in the legal framework on e.g. safety and liability, and provide clarity regarding the existing rules.
- Develop clear and user-friendly guidance tools targeted especially at SMEs and common European infrastructure-components that facilitate voluntary business-to-business sharing of non-personal data such as model contracts, standards, certifications and platforms.
- Encourage member states to adopt open data policies and make large public data sets available for private and academic use.
- Ensure proper enforcement of the free flow of non-personal data regulation, applied with a narrow interpretation of exemptions, such as national security, to avoid disruptions of data flows.

### THIS PROPOSAL IS ALSO SUPPORTED BY

This proposal is supported by the Danish government. Further, the proposal has also been discussed in [BusinessEurope](#), [DigitalEurope](#) and [Orgalim](#) – all three organisations have

published their own digital ambition papers for the next Commission, encompassing several of the abovementioned recommendations.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDG

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 9.<sup>143</sup> "Industry, innovation and infrastructure".



### ADDITIONAL INFORMATION

Centre for European Policy Studies (CEPS) has at the request of the European Parliament's Committee on Industry, Research and Energy (ITRE) prepared [a report](#) that examines the current state of play in the open data market and the legal framework in the EU.

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<sup>43</sup> Develop quality, reliable, sustainable and resilient infrastructure, including regional and transborder infrastructure, to support economic development and human well-being, with a focus on affordable and equitable access for all

# ARTIFICIAL INTELLIGENCE

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*Creating a successful digital single market in EU where AI can thrive*

## CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

The global race for Artificial Intelligence (AI) leadership has begun. In 2016, the US and China invested around \$20 billion \$10 billion in artificial intelligence, respectively. In the same period, Europe invested \$3-4 billion. While the US and China are clearly ahead in the AI race, the battle is not lost for Europe. Europe can still catch up. A strong and advanced manufacturing base provides an excellent foundation for Europe to develop and deploy artificial intelligence.

Given the complexity of AI technology and its wide-ranging applications, a holistic EU approach to artificial intelligence is needed. This should be based on four pillars:

Firstly, digital trust must be at the core of the Europe's digital revolution, also for AI applications. Secondly, a common EU-wide definition of AI is needed as the foundation for an EU policy framework. Thirdly, AI in Europe should be advanced by promoting investments in research and deployment as well as acquisition of the necessary high-performance computers (and other technological instruments). Fourthly, regulatory burdens should not hamper innovation. The EU should therefore examine the extent to which existing regulation is fit for purpose, also in the field of artificial intelligence, before new regulatory requirements to AI application are introduced.

## STATUS AND EXISTING EU LEGISLATION

In April 2018, the Commission presented a Communication outlining its strategy for AI in Europe. The strategy focuses on the following areas: 1) boost public and private investment in AI, 2) prepare EU for socio-economic changes and 3) ensure appropriate ethical and legal framework.

In December 2018, the Commission presented a coordinated plan for AI, aiming at fostering development and use of AI at Member State level. This plan proposes joint actions for closer and more efficient cooperation between Member States in four key areas: increasing investment, making more data available, fostering talent and ensuring trust.

## RECOMMENDATIONS

- Digital trust must be at the core of Europe's digital revolution. The EU's data protection rules, as well as the upcoming Commission guidelines on ethical use of artificial intelligence, are paramount for a successful Digital Single Market in Europe, in which artificial intelligence can thrive.
- Clear definitions of AI should be set at EU level as an essential first step in designing an effective common EU policy framework, including removal of barriers for the development and use of AI, e.g. anonymization of data, ownership of algorithms and liability issues.
- The EU's next long-term budget (MFF) must prioritize funds for artificial intelligence through the Digital Europe Program, the Connecting Europe Facility and Horizon Europe. As EU funding will not be enough to catch up with the US and China on its own,



investment plans for artificial intelligence are therefore also needed in all individual Member States.

- To ensure the nascent European AI industry is not overburdened with new regulation, the next Commission, in close cooperation with relevant stakeholders, should conduct an exhaustive examination as to whether current regulation is fit for purpose in a digital era, also in relation to AI. New rules and regulation should only be introduced if regulatory “gaps”, while also considering the extent to which standards could be sufficient.

### THIS PROPOSAL IS ALSO SUPPORTED BY

This proposal is supported by the Danish government. Further, the proposal has also been discussed in [BusinessEurope](#), [DigitalEurope](#) and [Orgalim](#) – all three organisations have published their own digital ambition papers for the next Commission, encompassing several of the abovementioned recommendations.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDGs

DI’s recommendations would support the EU’s work towards achieving UN Sustainable Development Goals number 8.2<sup>44</sup> “Decent work and economic growth”, and number 9.1<sup>45</sup> “Industry, innovation and infrastructure”.



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<sup>44</sup> Achieve higher levels of economic productivity through diversification, technological upgrading and innovation, including through a focus on high-value added and labour-intensive sectors

<sup>45</sup> Develop quality, reliable, sustainable and resilient infrastructure, including regional and transborder infrastructure, to support economic development and human well-being, with a focus on affordable and equitable access for all

# DIGITAL INFRASTRUCTURE

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*Boost digital infrastructure – Europe’s way into the future*

## CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

High speed connectivity is essential for Europe’s digital economy. For the EU to foster a gigabit society and become a true leader in the global digital transformation, Europe needs high-speed internet based on quick roll-out of 5G broadband. In particular, digitalisation of European industry as well as further exploration of IoT technologies across Europe depends on immediate, large scale investments in EU-wide 5G roll-out.

Europe also has regulatory challenges to address. The market for IoT applications continues to be rather immature due to regulatory obstacles, often in relation to interoperability, change of provider, IPv6, spectrum or lack of global coordination. A more efficient and coordinated regulatory approach at EU level is needed, particularly in relation to spectrum management.

## STATUS AND EXISTING EU LEGISLATION

In its proposal for the next multiannual financial framework 2021-2027 (MFF), the Commission proposes to allocate EUR 3 billion in the high-capacity broadband network.

The EU’s new electronic communications code was adopted in 2018 with a view to prepare Europe for the era of 5G by means of promoting investment, competition, consumer protection and the development of new services. Meanwhile, the body of European Regulators for Electronic Communication were established.

## RECOMMENDATIONS

- Ensure funding for digital infrastructure in the Connecting Europe Facility program under the next Multiannual Financial Framework.
- Enhance market investment while ensuring competition by a harmonised and forward-looking implementation of the Electronic Communication Code and accompanying guidelines.
- Promote framework conditions for investments in fixed and wireless infrastructure, while preserving competition, e.g. network sharing, net neutrality rules etc.
- Continue efforts to promote harmonised framework on spectrum, while also focusing on removing barriers for a wider IoT and 5G implementation.
- Further cooperation among member states on cybersecurity.

## THIS PROPOSAL IS ALSO SUPPORTED BY

This proposal is supported by the Danish government. Further, the proposal has also been discussed in [BusinessEurope](#), [DigitalEurope](#) and [Orgalim](#) – all three organisations have published their own digital ambition papers for the next Commission, encompassing several of the abovementioned recommendations.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDG

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 9.<sup>146</sup> "Industry, innovation and infrastructure".



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<sup>46</sup> Develop quality, reliable, sustainable and resilient infrastructure, including regional and transborder infrastructure, to support economic development and human well-being, with a focus on affordable and equitable access for all

## DIGITAL TRUST

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*Digital trust as a European stronghold*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Trust in the digital economy has been compromised in recent years. Successful cyberattacks, misuse of personal information and the transformative nature of Artificial Intelligence calls for a continued focus on responsibility and accountability in the digital economy.

An EU framework to ensure digital responsibility and accountability would spur digital trust in Europe and serve as a way to differentiate the EU's approach to digitalisation from that of the US and China. In this way, digital responsibility, for example promoting ethical use of AI, could become a competitive advantage for Europe.

### STATUS AND EXISTING EU LEGISLATION

The Juncker Commission has already taken decisive steps in this direction. The General Data Protection Regulation (GDPR), which came into force in May 2018, now serves as the cornerstone in EU's effort to protect personal data. With a view to ensure privacy in electronic communication, the Commission has also proposed an update of EU's rules on ePrivacy. Meanwhile, the newly adopted Cybersecurity Act has made the mandate of the EU Cybersecurity Agency (ENISA) permanent, while also enhancing the capabilities and resources to effectively assist member states in responding to cyberattacks. In the field of AI, a high-level expert group under the Commission has issued guidelines for ethical use of AI.

### RECOMMENDATIONS

- Ensure proper enforcement of GDPR in all Member States.
- Promote GDPR as a global set of rules of data protection.
- Put forward a new ePrivacy proposal which fully aligns ePrivacy rules with GDPR.
- Promote the use of voluntary technical standards on AI Trustworthiness.
- Promote further collaboration and coordination among member states on cybersecurity. The Cybersecurity Act will provide a new framework for this. ENISA should have sufficient capabilities to address European cybersecurity treats.
- Use the newly established framework for cybersecurity schemes to develop cybersecurity certifications for connected devices.
- Avoid fragmentation of cybersecurity requirements at national level as well as in EU's product legislation.

### THIS PROPOSAL IS ALSO SUPPORTED BY

This proposal is supported by the Danish government. Further, the proposal has also been discussed in [BusinessEurope](#), [DigitalEurope](#) and [Orgalim](#) – all three organisations have published their own digital ambition papers for the next Commission, encompassing several of the abovementioned recommendations.

This proposal has also been discussed in BusinessEurope, [DigitalEurope](#) and [Orgalim](#). These organisations have published their own digital ambition papers for the next Commission, encompassing several of the abovementioned recommendations.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDGS

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 9.1<sup>47</sup> "Industry, innovation and infrastructure", and number 16.3<sup>48</sup> "Peace, justice and strong institutions".



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<sup>47</sup> Develop quality, reliable, sustainable and resilient infrastructure, including regional and transborder infrastructure, to support economic development and human well-being, with a focus on affordable and equitable access for all

<sup>48</sup> Promote the rule of law at the national and international levels and ensure equal access to justice for all

# COHERENCE BETWEEN CLIMATE POLICY AND TRADE DEFENCE INSTRUMENTS

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*Ensuring that the EU's trade policy, including trade defence measures, supports the EU's ambitious climate agenda*

## CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

European companies across many different sectors provide the cutting-edge technology, goods and services that are necessary to achieve the EU's ambitious climate objectives. Exporting such cleantech products from the EU also helps third countries reduce their greenhouse emissions. Thus, European companies contribute to the global fight against climate change. In order to help achieve the EU's climate goals in the most cost-efficient manner, European producers of e.g. wind turbines, solar panels and energy efficient construction materials seek to reap the benefits of free trade. They do this in order to make their high-quality products as affordable as possible for European governments and consumers. This endeavor is often aided by the EU's trade policy. The EU's bilateral trade agreements, for instance, make sourcing inputs and raw materials from third countries cheaper. In some cases, however, application of the EU's trade defence instruments makes imported inputs, such as steel and glass fibre components, more expensive. This leads to higher costs and/or capacity constraints for European producers of cleantech products. Such instances have the unintended consequence of making the EU's green transition more expensive and the EU's climate goals more difficult to achieve. Political focus on the need for coherence between the EU's trade and climate could alleviate this problem.

## STATUS AND EXISTING EU LEGISLATION

It is paramount for the EU to have effective trade defence instruments at its disposal. EU Regulations 2016/1036 and 2016/1037 provide the legal basis for imposing anti-dumping and anti-subsidies duties, respectively. The current EU rules stipulate that anti-dumping measures on specific imports can only be imposed if four conditions are met:

1. The product in question is, in fact, dumped, i.e. exported to the EU at a price below the product's normal value.
2. There must be material injury to the EU industry producing like products.
3. There must be a causal link, whereby the dumped imports are a cause of the injury to EU producers.
4. The anti-dumping measures must not be against the overall *economic* interests of the EU. In practice, this means comparing the injury to EU producers caused by the dumped imports with the economic injury of the anti-dumping measures on EU consumers as well as EU industries that use the goods in question in their own production.

## RECOMMENDATIONS

DI considers the EU's current trade defence instruments to be an essential part of the EU's toolkit for ensuring free and fair trade with third countries. Adequate protection from illegal dumping and subsidies abroad is also necessary for maintaining the EU's current competition rules, which ensure free and fair competition within the EU's Single Market – a key component for European competitiveness.

However, it is also important to ensure coherence between the EU’s various policies, priorities and objectives. In particular, tackling the major challenge of climate change requires a concentrated and aligned effort across policy areas. The following recommendations illustrate one way of ensuring even greater coherence between the EU’s trade and climate policies:

- When the Commission conducts an anti-dumping investigation, the EU’s climate and energy priorities should be taken into account when defining the “Union interest” (article 21 of Regulation 2016/1036), thus going beyond the current focus on strictly economic interests.
- If a proposed anti-dumping measure is deemed to negatively impact the Union’s climate policy, for instance by making certain renewable energy or energy efficiency end-products more expensive for the Union, the anti-dumping measures in question should not be imposed.
- When assessing the negative climate policy impact of a potential anti-dumping measure, the Commission should not only account for a potential increase in the price of the cleantech end products in question. It should also consider the potential impact on the supply capacity for the user industry in question. As an example, the anti-dumping measures could be found to result in a final production of fewer EU wind turbines or solar panels than would have been the case without the proposed anti-dumping measures. This would indicate a negative effect on the speed and efficiency of the EU’s transition towards climate neutrality and should be taken into account when assessing the impact on the Union interest.

### THIS PROPOSAL IS ALSO SUPPORTED BY

DI’s recommendations have been submitted to the Danish Ministry of Foreign Affairs.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDGs

DI’s recommendations would support the EU’s work towards achieving UN Sustainable Development Goals number 7.2<sup>49</sup> “Affordable and Clean Energy”, and number 13.2<sup>50</sup> “Climate Action”.



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<sup>49</sup> By 2030, increase substantially the share of renewable energy in the global energy mix

<sup>50</sup> Integrate climate change measures into national policies, strategies and planning

## DIGITAL TRADE AND DATA FLOWS

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*Clear and comprehensive rules for digital trade*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

International trade is in these years undergoing a digital revolution. As of today, many companies rely on digital tools to do payments, customer support, production optimization and to rethink their business model. In the near future, digital value chains will become a precondition to compete globally and to reach customers. Therefore, it is problematic that the WTO rulebook is not updated to regulate digital trade flows. In absence of international rules, countries worldwide imposed digital trade barriers hampering the potential of the digital economy. The BRIC countries in particular have adopted restrictive measures, including data localization requirements, heavy licensing requirements for web shops and limited market access in digital sectors. It is therefore crucial that the EU takes a proactive approach to ensure a global level playing field for digital trade.

### STATUS AND EXISTING EU LEGISLATION

In January 2019, 76 members of the WTO, including the EU, the US, China and Japan, signed a declaration that they intend to start negotiations on rules for digital trade. The first round of negotiations is scheduled to take place in May 2019. To begin with, the parties will discuss whether to have a narrow focus on e-commerce or to address digital trade, including cross-border data flows, more broadly. The expectation is to reach a partial agreement at the WTO Ministerial Conference in the summer of 2020. On EU level, a new regulation ensuring free flows of data in the Single Market was adopted in 2018. The next step is to remove digital trade barriers between the EU and third countries. So far, the EU's newest trade agreements with Japan, Mexico and Singapore, only contain a review clause on digital trade. The main reason is that the European Commission proposed a broad safeguard provision to protect personal data, which creates a risk of misuse for protectionist reasons. The next Commission will therefore have to strike balance between protection of personal data and the importance of facilitating legitimate cross-border flows of business-related data.

### RECOMMENDATIONS

The EU should take leadership on digital trade to ensure clear and comprehensive rules on trade flows through electronic means. This will allow European companies to realise the potential of the digital economy and to improve their competitiveness. To do so, the EU should within the WTO-negotiations on digital trade and its bilateral trade agreements push for:

- Free movement of data across borders. This implies prohibition of data localization requirements as well as restrictions on in- and outflow of data unless such restrictive measures are justified by legitimate public policy purposes.
- Non-discriminating and transparent regulation of e-commerce platforms, webshops and establishment of digital service affiliates.
- Consistent international minimum standards on protection of personal data. In this regard, the EU should use its weight to disseminate the principles of GDPR.



### THIS PROPOSAL IS ALSO SUPPORTED BY

The proposal has been discussed in BusinessEurope, Business and Industry Advisory Committee to the OECD (BIAC), European Services Forum, DigitalEurope and Orgalim. All of these international business organizations have chosen digital trade as a strategic objective for the coming years. DI's proposal seeks to raise the level of ambition towards digital trade in each of the organizations and to broaden their lobbying effort to cover dissemination of GDPR as well.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDGs

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 9.3<sup>51</sup> "Industry innovation and infrastructure, and number 17.10<sup>52</sup> "Partnerships for the goals".



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<sup>51</sup> Increase the access of small-scale industrial and other enterprises, in particular in developing countries, to financial services, including affordable credit, and their integration into value chains and markets

<sup>52</sup> Promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organization, including through the conclusion of negotiations under its Doha Development Agenda

## EXPORT CREDITS AND TRADE FINANCE

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*Creating a level playing field for European companies on international markets*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

European companies doing business on foreign markets are often dependent on access to *export financing*, including export credit guarantees. The current EU export credit framework is under pressure on several different fronts. EU export financing takes place in increasingly globalized markets, with less cohesive co-operation among traditional partners in international fora. WTO regulated free trade is under pressure and evolving financing practices in the market no longer fit seamlessly within the *OECD Arrangement regulating export financing*.

At the same time, significant innovations are currently taking place with respect to developing *new financing instruments* that can support sustainable development. However, there is confusion between development finance and financing on more commercial terms. Hence, there is a significant risk of increased use of state aid, which only on the surface looks like development funding.

### STATUS AND EXISTING EU LEGISLATION

Export credits are regulated in the OECD under the Arrangement on Officially Supported Export Credits (the Arrangement), which in practice means that non-OECD member countries (including China) operate outside the rules. This in turn means that European companies are experiencing significant, unfair competition in the financing of exports.

In addition, the Commission's Communication on Short-term Export Credits expired at the end of 2018. With respect to an extension and possible revision of the Communication, it is important to ensure sufficient flexibility so that European business has access to export insurance in line with their foreign competitors.

### RECOMMENDATIONS

- DI believes that the OECD Arrangement is an important tool for creating a level playing field in international markets. However, a fundamental review of the Arrangement is necessary to make it fit for the future.
- DI recommends that the EU should take the lead – as a united actor – in terms of driving the review process forward within the OECD.
- DI recommends that the Commission's Communication on Short-term Export Credits be revised with due regard for flexibility and respect for the different systems of the individual Member States.
- DI recommends that the EU strengthens its efforts to ensure the continued development of new financing instruments without increasing the use of subsidies and competition in unequal terms – both within the EU / OECD and with other countries.

### THIS PROPOSAL IS ALSO SUPPORTED BY

The proposals have also been supported by the OECD Export Credit Forum, Denmark's Export Credit Agency (EKF), the Ministry of Industry, Business and Financial Affairs as well as the Danish Ministry of Foreign Affairs.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDGs

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 8.<sup>53</sup> "Decent work and economic growth", number 9.<sup>54</sup> "Industry innovation and infrastructure, and number 17.<sup>10</sup><sup>55</sup> "Partnerships for the goals".



### ADDITIONAL INFORMATION

DI has actively participated in the formulation of business priorities towards [the future of the OECD on export credits](#).

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<sup>53</sup> Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro-, small- and medium-sized enterprises, including through access to financial services

<sup>54</sup> Increase the access of small-scale industrial and other enterprises, in particular in developing countries, to financial services, including affordable credit, and their integration into value chains and markets

<sup>55</sup> Promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organization, including through the conclusion of negotiations under its Doha Development Agenda

## BALANCED EU SAFEGUARD MEASURES

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*Adjust EU safeguards to avoid negative impact on downstream users of steel*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

The EU has imposed safeguards on steel due to the risk of trade diversion caused by U.S. punitive tariffs. While it is necessary to shield European steel producers from potential steel dumping, it should also be a top priority for the EU to ensure that safeguard measures do not disrupt supply chains and reduce the competitiveness of downstream users of steel. Such users include producers of wind turbines, cars, robots, industrial machinery – in other words strategically important sectors supporting 20 million jobs in Europe. The overall expectation is that European steel producers will not be able to meet the demands from downstream manufacturers. Therefore, it is probably not sufficient to increase quotas by 5 pct. annually as planned by the EU. Moreover, quotas are still allocated via the first-come-first-served principle. This causes high uncertainty for wholesalers and downstream manufacturers since quotas might be exhausted when steel imports arrive at the EU border. Therefore, it is crucial that the EU adjust the safeguard to avoid distortion in steel supply chains that are of great importance to the EU's industry.

### STATUS AND EXISTING EU LEGISLATION

In March 2018, the European Commission launched a safeguard investigation to clarify if the U.S. punitive tariffs on steel products caused a surge of steel imports into the EU. Already in July 2018, the Commission concluded that steel suppliers were diverting exports from the US to the EU. Therefore, the EU imposed temporary safeguard measures on certain steel categories, applying an extra duty on 25 pct. for imports from countries outside the EU and EEA exceeding the quotas. When the safeguard investigation was finalized in January 2019, the Council gave consent for the Commission to impose definitive safeguard measures. These measures apply from 3 February 2019 until 30 June 2021. To respond to concerns from downstream manufacturers, the import quotas will be increased by 5 pct. in July 2019 and 2020. At the termination of the safeguard, the Commission will have to document continued pressure on the EU's steel market if the safeguard measures are to be kept in place.

### RECOMMENDATIONS

When the first evaluation the safeguard measures takes place, the Commission should take into account the demands from downstream sectors and potential market distorting effects of the safeguard. This implies:

- Monitor closely the development in prices on European steel and survey downstream manufacturers' expectations for imports in the coming years. To the extent that European steel producers cannot meet the demands from European industry, the import quotas should be increased by more than 5 pct. per year.
- Provide steel importers with the option to reserve a part of the import quota under the condition that the importers can document confirmed steel orders.
- Examine the impact on intra-European value chains of the inclusion of Switzerland in the safeguards and consider how to mitigate distorting effects.

- Investigate the share EU imports being subject to double remedies due to rebalancing duties on US products. Depending on the conclusions, it should be considered to adjust rebalancing measures similarly to antidumping duties.

### THIS PROPOSAL IS ALSO SUPPORTED BY

DI's proposal has been discussed with the Danish Business Authority and the recommendations receive full support from the Danish government. The proposal is also supported by Orgalim which shares DI's objective to mitigate the impact of EU's safeguards measures on downstream users of steel.

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## HARMONIZED SYSTEM CUSTOMS CODES

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*Creating a level playing field for European companies on international markets*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

For many years, the World Customs Organization's (WCO) Harmonized Commodity Description and Coding (HS)-System has been behind the technological development. This especially applies to HS codes within chapter 84-85 covering machinery, mechanical appliances and electrical equipment. These are product lines that change rapidly due to new inventions. The HS system is not fit to classify new technologies since it refers to outgoing products such as "sound recorders", "television image" and "video reproducing apparatus", while current products on the market, including, devices for Internet of Things, electronics based on GPS, Virtual Reality glasses etc., are absent.

The lack of up-to-date HS codes constitutes a major challenge to manufacturers of electronics and technology that base their production on global value chains. In Denmark, the customs authorities found that most electronics manufacturers used an incorrect HS code for their import classification. These companies now have to pay customs debt and provide documentation for the last three years, leaving less resources for improving their core business. It is therefore needed to conduct a fundamental update of chapter 84-85 in particular, in order to ensure that the HS codes reflect technologies of the 21<sup>st</sup> century.

### STATUS AND EXISTING EU LEGISLATION

The HS codes are updated through 5-year terms and the next update of the HS codes will enter into force on 1 January 2022. The possibility to send proposals for HS updates to the European Commission, representing the EU in WCO, is overdue. So, the effort towards modernising the HS system should be directed at the updates taking effect on 1 January 2027.

In the fall of 2019, the Commission will be asking European business organisations to send proposals for an update of the HS-codes. The deadline for sending proposals to the Commission will be in the summer of 2022. Subsequently, the EU's proposals will be discussed in the WCO's HS-committees.

### RECOMMENDATIONS

Rather than a narrow focus on specific HS-codes, the Commission should cooperate with European business organisations on how to horizontally renew HS-codes covering product categories that are crucial to the EU's strategic interests. This implies:

- Modernization of chapter 84 and 85 in the WCO's Harmonised System. These chapters include commodity categories that changed fundamentally over the last decade due to rapid technological development.
- Corresponding update of the EU's CN codes. In this regard focus should be to:
  - a) Remove customs codes that are over-specified and only used by a few companies.
  - b) Issue separate codes for intermediary products, such as printed circuits, to make it easier for sub-suppliers to classify their products.

### THIS PROPOSAL IS ALSO SUPPORTED BY

In the summer of 2018, DI's proposal was adopted in the Danish government's Business Forum for better regulation. The government decided to follow the proposal and raise it in the EU's REFIT Platform.

The proposal has also been discussed in the BusinessEurope, which will include DI's recommendations for modern customs codes in its position paper on strategic objectives towards customs regulations.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDG

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 17 "Partnerships for the goals" including targets 17.11<sup>56</sup> and 17.12<sup>57</sup>.



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<sup>56</sup> Significantly increase the exports of developing countries, in particular with a view to doubling the least developed countries' share of global exports by 2020

<sup>57</sup> Realize timely implementation of duty-free and quota-free market access on a lasting basis for all least developed countries, consistent with World Trade Organization decisions, including by ensuring that preferential rules of origin applicable to imports from least developed countries are transparent and simple, and contribute to facilitating market access

## SUSTAINING LEGAL EXTRA-EU TRANSACTIONS

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*Reducing the impact of barriers, such as extraterritorial sanctions, that inhibit EU companies from conducting lawful trade with third countries*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

European companies face an increasing number of measures that restrict their ability to trade with countries outside the EU. One particular set of barriers impacts businesses by forcing banks to be more risk averse regarding financial transactions to certain third countries. Some such measures have positive intentions, such as stringent anti-money laundering regulations. Other measures are more explicitly aimed at preventing EU trade with particular countries, such as the recently re-introduced U.S. extraterritorial economic sanctions on Iran. The effect is that, in an increasing number of cases, European banks fear running foul of such measures. They therefore refuse to conduct financial transactions on behalf of EU exporters and importers, even though these transactions are fully legal according to EU rules. As a consequence, EU companies are deterred from otherwise lawful trade with e.g. Iranian customers. In some cases, this results in supply problems for people in need of essential goods such as food and medicine. Such measures also decrease European companies' opportunities for trade, growth and job creation. Last but not least, they undermine the EU's foreign policy objectives. An appropriate EU response has the clear potential to mitigate these negative consequences with regards to both current and future cases.

### STATUS AND EXISTING EU LEGISLATION

Iran is not the only instance of regulations that limit the opportunities for legal financial transactions. However, it is the most salient current example. In the summer of 2018, the EU updated (EC) Regulation 2271/96. This so-called "blocking statute" prohibits European companies to comply with U.S. extraterritorial sanctions. In theory, the blocking statute also provides EU companies with the opportunity to seek compensation for losses suffered due to U.S. extraterritorial sanctions. In practice, however, no European company with significant business operations in the U.S. would risk losing access to the U.S. market and/or financial system with basis in Regulation 2271/96. Even if a company was to secure a favourable judgment at a European court, based on the Blocking Statute, it would be largely unenforceable in the U.S. Presently, exports of pharmaceuticals, medical devices and food products are exempt from U.S. sanctions. However, in practice, European companies who wish to lawfully sell such products to Iran are still not able to do so. This is mainly because EU banks are reluctant to engage with the Iranian market in any fashion whatsoever.

In January 2019, Germany, France and the UK established the Instrument in Support of Trade Exchanges (INSTEX). This special purpose vehicle allows European and Iranian entities to trade with each other without the use of direct financial transactions from the EU to Iran and vice versa. This experimental system is yet to become fully operational, not least due to the need for an equivalent instrument in Iran.

### RECOMMENDATIONS

The EU should employ an array of tools with which to shield European citizens and companies from extraterritorial sanctions and other barriers for lawful trade and transactions with third countries. Some recommendations include:



- The Commission should provide additional clarity and guidance regarding Regulation 2271/96. One particular concern exists for European companies who choose to cease business operations in Iran to avoid big fines and to maintain their access to the much larger U.S. market. In principle, the EU blocking statute provides a legal basis for such European companies to be subjected to legal action by either the Commission or individual companies (such as suppliers). European companies should not be trapped between a rock and a hard place due to the ambiguity of the blocking statute.
- DI supports the establishment of INSTEX. The EU should continue developing the instrument to make it fully functional. This includes diplomatic and possibly capacity building cooperation with the Iranian authorities. To maximize the incentives for EU companies to utilize the instrument – and for U.S. authorities not to intervene – INSTEX should, in the short term, remain focused on trade in goods that are not subjected to U.S. sanctions, namely pharmaceuticals, medical devices and agri-food.
- Decreasing the dominance of dollar-denominated financial transactions would lessen the impact of U.S. extraterritorial sanctions. As such, DI supports the Commission’s recently accelerated work on strengthening the international role of the euro. However, it is important that such initiatives do not cause market distortions that limit the choice of available currencies for European companies.
- DI supports the development of a fully integrated payment system in the EU. Such a system would have the potential to decrease the dependency on the small number of global providers for cross-border and online payments. This could strengthen the EU’s autonomy in the area and provide companies with alternatives with which to process cross-border payments in ways that do not trigger U.S. extraterritorial sanctions.
- The EU could set up a helpdesk in the same vein as the existing IPR Helpdesk that could provide support, information and assistance for European companies who want to conduct lawful extra-EU trade without infringing existing measures such as anti-laundering rules and third country economic sanctions.

### THIS PROPOSAL IS ALSO SUPPORTED BY

The proposals have been raised and discussed in the Danish Ministry of Foreign Affairs.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDG

DI’s recommendations would support the EU’s work towards achieving UN Sustainable Development Goals number 17.3 <sup>58</sup>“Industry, innovation and infrastructure”.



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<sup>58</sup> Increase the access of small-scale industrial and other enterprises, in particular in developing countries, to financial services, including affordable credit, and their integration into value chains and markets

## PROPER INCENTIVES FOR EU INNOVATION

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*An efficient IPR framework is a prerequisite for private investments in Research and Development*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Global competition to deliver sustainable solutions to common challenges facing humanity – including implementation of the UN SDGs – is fierce. Much depends on the innovation capacity of European private companies who act on their respective company missions to combat hunger, promote health and access to clean water supply, develop sustainable climate and energy solutions, as well as advancing a responsible circular economy.

Efficient and long-term reliable protection of the knowledge-based assets deriving from private investments in R&D and design is key in this regard. Appropriate incentives and proper framework conditions are critical elements in companies' decisions regarding where to allocate their global R&D investments and resources. A strong commitment to innovation is vital for European companies' ability to attract and maintain a high-skilled workforce and global talents.

A Commission study demonstrates significant positive correlation between EU's IP-intensive industries and European employment and growth. Yet, recent policy developments within EU life science (specific examples include pharma and biotech) strongly question the EU's political commitment to compete globally on innovation. Doubts are also raised as to whether the EU IPR framework is sufficiently flexible to ensure that European companies who invest R&D in e.g. circular economy can avoid conflicts with protection of trademarks and designs.

If the EU fails to provide European innovative companies with the appropriate framework conditions and long-term incentives to retain and attract R&D, EU will be at serious risk of being left behind in global innovation. Other regions of the world demonstrate clear commitment to pursue innovation and take charge in shaping the future. The obvious outcome is that they will deliver solutions to common challenges which can be manufactured and sold globally.

### STATUS AND EXISTING EU LEGISLATION

It is essential that EU's IPR framework, including design, trademark, SPC, biotech as well as other pharma-related legislation is fit for purpose and supports innovation in solutions to implement UN SDGs etc. Parts of the overall framework are targeted by various ongoing or announced Commission initiatives (e.g. pharma incentives review and review of industrial design). Furthermore, specific product regulation which may be relevant to ensure recycling of products.

### RECOMMENDATIONS

- EU should undertake a horizontal review of its IPR framework to ensure it is globally competitive and adequately tailored to ensure and promote European companies' investments in R&D, creativity and innovation to achieve sustainable solutions.
- Commission should undertake – together with the private sector – a study of how knowledge-based asset models can help to accelerate sustainable transition.

- Global SDG Innovation Testing should be required in impact assessments of new policy initiatives when relevant to ensure that the initiative supports private European contribution to SDG implementation.

### THIS PROPOSAL IS ALSO SUPPORTED BY

The proposal has also been discussed in BusinessEurope, which has developed strategy papers on this topic with similar recommendations for the next Commission.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDG

DI's recommendations would overall support the EU's work towards achieving UN Sustainable Development Goals number 9 "Industry, Innovation and Infrastructure", including number 9.b<sup>59</sup>.



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<sup>59</sup> Support domestic technology development, research and innovation in developing countries, including by ensuring a conducive policy environment for, inter alia, industrial diversification and value addition to commodities

## TRANSPARENT AND EFFECTIVE TAXATION

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### *Adoption of a Common Corporate Tax Base (CCTB) and a Common Consolidated Corporate Tax Base (CCCTB)*

#### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Adoption of these proposals would contribute to a better functioning Single Market for businesses, promote growth, employment and investment in the EU. At the same time, adoption of the proposals will contribute to more robust rules against aggressive tax planning, make it easier for the tax authorities to conduct efficient control, and create greater transparency about the countries' actual corporate tax base (effective tax rate).

It is crucial that the directives are implemented in the same way in all Member States rather than merely set minimum standards. For instance, recent experience regarding the anti tax avoidance directives (ATAD) and mandatory disclosure rules on cross-border arrangements (DAC6) illustrate how fragmented the Single Market becomes when minimum directives are adopted. Without uniform and consistent implementation of CCTB and CCCTB in all Member States, the desired benefits will not be achieved.

#### STATUS AND EXISTING EU LEGISLATION

The Commission on 25 October 2016 presented proposals for CCTB and CCCTB. The CCTB proposal lays down common rules for computing the tax base of multinational companies within the EU, whilst the CCCTB proposal complements the CCTB proposal with the consolidation element. Parliament's opinion was adopted in plenary on 15 March 2018. The proposal is thus now in the hands of the Council.

A description of the development and current status can be found in ECOFIN Report of 6 December 2018 to the European Council on tax issues ([15082/18](#)).

#### RECOMMENDATIONS

- The Commission should work actively to create the basis for the EU countries to adopt the proposals in the Council.
- The Commission should work actively to ensure that the proposals are not adopted as minimum standards.

#### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDG

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 16, "Peace, justice and strong institutions", including 16.6<sup>60</sup>, and number 17.1<sup>61</sup> "Partnerships for the Goals".

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<sup>60</sup> Develop effective, accountable and transparent institutions at all levels

<sup>61</sup> Strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection



### ADDITIONAL INFORMATION

A full DI position paper can be shared upon request. Please contact Sune Hein Bertelsen,

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# WITHHOLDING TAX ON DIVIDENDS BETWEEN MEMBER STATES

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*Impact assessment of abolition of all withholding tax on dividends between EU-countries*

## CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

The practice of withholding taxes on dividends on cross-border portfolio investments constitutes one of the main obstacles to an integrated capital market in the EU. This is especially so for institutional investors (Collective Investment Vehicles, CIV). In most cases, such entities cannot qualify for withholding tax relief in their country of residence, as they pay little or no tax themselves against which to claim the relief. For all portfolio investors, however, the procedure of reclaiming excess withholding tax (in the source country) and obtaining credit for paid withholding tax (in country of residence) can be cumbersome, especially considering the relatively small amounts in question.

As the withholding tax is a gross tax (at source, in one Member State) it may in some cases conflict with the net taxation of the taxpayer in another member state (the country of residence). E.g. if the taxpayer's capital income is net negative, but he/she must still pay withholding tax on dividends from another Member State. In such a case, the withholding tax directly conflicts with the free movement of capital, as portfolio investments in another member state is discouraged.

The net effect of the withholding tax on dividends between EU Member States is to increase the cost of capital and hamper cross-border portfolio investments.

Abolishing withholding taxes on cross-border portfolio investments between Member States will remove a significant obstacle to the flow of capital within the EU, thus lowering the cost of capital.

For Member States, the withholding tax is on the one hand a source of income (on dividends paid to taxpayers in other Member States). On the other hand, however, it is an expense (as resident taxpayers claim tax relief for withholding tax paid in other Member States).

To our knowledge, no one has conducted an impact assessment of the effects of an abolition of the withholding tax on dividends between EU Member States, including the net effects on tax revenues in each Member State.

## STATUS AND EXISTING EU LEGISLATION

Following the parent / subsidiary directive, there is no withholding tax on the dividends from foreign direct investments (FDI) between Member States. However, in the case of portfolio investments, the "source country" has the option of collecting a withholding tax (WHT) on the payment of dividends to foreign taxpayers (portfolio investors). The size of the WHT is regulated in bilateral tax treaties. In the case of dividends between EU member states, the WHT imposed typically varies between 10 and 15 percent.

In many instances, however, a larger WHT is initially withheld at source, leaving the taxpayer the option of claiming a refund (down to the WHT rate set in the bilateral tax agreement) from the source country. Then he/she may offset the remaining WHT against the capital income tax in the country of residence.

In 2010, the Commission published its [recommendations regarding the procedure for claiming relief for withholding taxes](#).

This issue is also addressed by [the Commission's Action Plan on Building a Capital Markets Union](#).

### RECOMMENDATIONS

- The Commission should take steps towards the abolition of all withholding tax on dividends between member states.
- First and foremost, the Commission should conduct an impact assessment of the proposal, including net effects on the tax revenues of each member state.
- The impact assessment should also explore the option of only abolishing the withholding tax on dividends to CIV.

### THIS PROPOSAL IS ALSO SUPPORTED BY

The need to remove the withholding tax on dividends from portfolio investments between EU member states was addressed in BusinessEurope's reply to [the Commission Consultation regarding the Capital Markets Union](#), in May 2015.

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# EUROPEAN HARMONISATION OF ELECTRONIC ARCHIVING

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*Ensuring the same level of regulation across Member States regarding electronic archiving of invoices and other accounting material*

## CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Fragmented, national legislation regarding electronic archiving of invoices and other accounting material slows down the development of the digitalization process as this generates uncertainty for European businesses. With increased digitalization and, for instance, the requirement to be able to receive electronic invoices in B2G-trade effective from April 2019 (with a possibility to postpone until April 2020), the use of electronic invoicing is expected to grow significantly. The EU VAT legislation supports electronic invoicing, but even though this has generally improved the legal framework, other legislation like national bookkeeping acts, would also need to be aligned in order to fully support the transition.

## STATUS AND EXISTING EU LEGISLATION

With the Second Invoicing Directive (SID), general improvements in the ability to issue electronic invoices were adopted. The recent study conducted for the EU Commission on the evaluation of invoicing rules of Directive 2006/112/EC from January 2019 concludes that its provisions were largely considered as working well by the stakeholders and that the SID have generated administrative savings

According to the study, in the last five years, an increasing number of Member States have introduced a diversified set of additional e-reporting requirements to fight against tax evasion, which risks undermining some of the harmonisation gains achieved by the Directive in the area of invoicing rules.

Further, the work performed by the European Multi-Stakeholder Forum on e-Invoicing concludes in a report from 2017 that the consultation shows in a clear way different levels of regulation in EU countries with regards to electronic archiving of documents in general and invoices in particular, both in case of paper invoices and e-invoices. There are also differences regarding the legal terms for document archiving (including invoices), both paper and digital. Differences in legislation may also depend on different laws concerned (i.e. tax or civil laws).

## RECOMMENDATIONS

EU initiatives to facilitate a harmonised approach to storage and archiving of electronic invoicing should be initiated, not only covering the VAT-issues, but also covering bookkeeping and archiving rules.

## THIS PROPOSAL IS ALSO SUPPORTED BY

The EU Multistakeholder Forum on e-Invoicing in their report from 2017 from the Activity Group on Regulatory Issues.

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## INTERNATIONALLY ALIGNED AUDIT LEGISLATION

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*The EU Audit Regulation should be reviewed and based firstly on international standards in order to support audits of global entities*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

In April 2014 the EU approved a reform of the EU Audit market. The new set of legislative acts entered into force in June 2016. Especially for listed entities, the EU-Audit reform has had a significant impact on their interactions with their auditors.

However, since part of the legislation is not based directly on international standards, the impact on global audits has caused some concerns in the interaction on a global level. With a new restructured and revised international Code of Ethics, a new opportunity to align EU regulation with international standards has materialised.

With an alignment – and add-ins where necessary – it will be easier for European businesses and their audit committees to monitor for instance the independence rules.

### STATUS AND EXISTING EU LEGISLATION

In April 2014 a new regulation<sup>62</sup> on specific requirements regarding statutory audit of public-interest entities as well as changes in the audit directive were adopted by the EU. These rules became effective in April 2016 and the part of the regulation addressing the operation and effectiveness of the system of cooperation between competent authorities within the framework of the CEAOB is subject to a review in 2019 by the Commission. The rest of the regulation is subject to a review by June 2028.

### RECOMMENDATIONS

DI recommends closer alignment between the European regulation and the international standards. In particular, DI recommends the use of the newly revised and restructured IESBA Code of Ethics in addition to the current use of the International Standards on Auditing as the starting point. This would facilitate international harmonisation and reduce the compliance burden.

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<sup>62</sup> Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC Text with EEA relevance

## VAT – DEFINITE REGIME

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*Working for a better and more transparent EU VAT system*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

The current VAT system for B2B-trade needs to be modernised to keep pace with the challenges of today's global, digital and mobile economy. The current VAT system for cross-border trade, which came into force in 1993 was intended to be a transitional system.

New developments in business models, combined with increased “servitization”, are blurring the lines between goods and services.

Current developments in the administration of the VAT system across Europe are creating a complex compliance pattern and decreased transparency in a number of areas. These developments add to the costs and complexities for legitimate business, while opening up new opportunities for fraud, even when the opposite is intended.

### STATUS AND EXISTING EU LEGISLATION

The Commission has acknowledged the challenge. Based on the EU VAT Action Plan from 2016, a number of proposals have been tabled. Unfortunately, the key issue of the blurring lines between goods and services is not being adequately addressed in the proposals.

### RECOMMENDATIONS

The new Commission should re-ignite the discussions and build on the work already performed. Discussions on the desired outcome should be restarted in order to agree the principles before hammering out the details.

DI is currently evaluating the proposals in accordance with the following four benchmarks:

- Growth
- Simplicity
- Sustainability
- Robustness / Safeguarding the system

Growth is the most important benchmark. Simplicity and sustainability facilitate growth. Focusing efforts in these three areas at first will lead to positive spillover effects that will in turn reduce fraud.

Aligning the VAT treatment of goods with the current treatment of services would be a key simplification and key principle in creating a more robust system.

### THIS PROPOSAL IS ALSO SUPPORTED BY

The definite regime has already been discussed in the Council, the European Parliament and relevant expert groups. DI and BusinessEurope are planning an event on 30 September 2019 to highlight the commercial implications of the current system, the commercial reality going forward and to discuss possible solutions in the longer run.

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# CONTINUATION OF THE MOBILITY PACKAGE

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*Creating a well-functioning Single Market for transportation*

## CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

EU transport policy should aim at achieving a well-functioning Single Market for transportation that connects countries, regions and people. Common EU rules on the social and employment affairs for the European road transport sector are key components of such policies. A common set of rules, including on the social aspects of road transport, will prevent a patchwork of different national interpretation of rules and thereby a fragmentation of the market.

The first mobility package, presented by the Commission in May 2017, aims to achieve this and has been a key focus of the Council as well as the Transport and Employment committees in the European Parliament.

## STATUS AND EXISTING EU LEGISLATION

The package aims at laying down common rules for enforcement requirements and specific rules for posting drivers in the road transport sector, daily and weekly driving times, minimum breaks and rest periods as well as the cabotage rules. The mobility package (part I) has been subject to lengthy negotiations during three EU presidencies; the Bulgarian, the Austrian and the Romanian EU-presidency.

For a long time, it seemed impossible to find a common ground. Nevertheless, on 3 December 2018, the Council adopted a [General Approach](#). The compromise is carefully crafted, balancing various interests of the Member States, and thus leaving little room for maneuver in the upcoming negotiations with the EP.

In January 2019, the TRAN Committees voted on the 3 dossiers of Mobility Package 1. Only the proposal to amend Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector (access to the market and cabotage) was adopted.

The two remaining proposals: 1) enforcement requirements and specific rules for posting drivers in the road transport sector, and 2) amending Regulation (EC) No 561/2006 regarding the minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) 165/2014 as regards positioning by means of tachographs were both adopted by plenary vote in April 2019.

## RECOMMENDATIONS

- Enforcement of agreed common rules is essential for the proper functioning of the Single Market, for ensuring a level-playing field throughout Europe, and for improving and upholding social legislation and conditions, while also supporting the efficiency of transport.
- Continued efforts to finalize trilogue negotiations, also under a new Commission, is paramount.
- If all attempts to reach an agreement on the Mobility Package falls, the new Commission must put forward new initiatives to ensure common rules in the areas.

## THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDG

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 8.<sup>63</sup> "Decent Work and Economic Growth"



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<sup>63</sup> Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment

## AVIATION FIT FOR THE FUTURE

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*Creating a level playing field for European air transport companies on international markets*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Proportionality, fair competition and not least sustainable contributions to address the climate change are multifaceted, but all-important, issues for the European aviation sector as well as society, given the importance of aviation for mobility and international connectivity.

### STATUS AND EXISTING EU LEGISLATION

A recast proposal on regulation 261/2004 was submitted in 2013. There is no progress mainly due to disagreement between UK and Spain on the status of Gibraltar.

Member States are awaiting a report on the social agenda from the Commission. In October 2018, the transport ministers of Denmark, Belgium, France, Germany, Luxembourg and Holland issued a joint declaration the Commission to act on the issue. SESII: a push for implementation of already agreed regulation is needed.

### RECOMMENDATIONS

- A basic recast of regulation 261/2004 (passenger rights aviation) is highly needed, as the regulation's non-proportional effects threaten the viability of small and medium-sized airlines.
- Some airlines practice "rule-shopping" by exploring differences in social security rules among EU member states. Such differences can be reduced by a few changes in regulation 1008/2008, as proposed by Denmark in 2017/18 ("Lex Aviation").
- Aviation is challenged by its climate impact, and sustainable solutions are in high demand. The Single European Sky (SES II, 2009) initiative will enable fuel reductions of approximately 10 pct. by more effective airspace management. However, implementation has stopped due to opposition among air traffic controllers in a few – but influential – Member States.

### THIS PROPOSAL IS ALSO SUPPORTED BY

The proposal has been discussed by the Danish Ministry of Transport and has the support of the Danish government. The abovementioned recommendations are also included in BusinessEurope's priorities for transportation for the next Commission.

### ADDITIONAL INFORMATION

Danish Aviation issued a report on various competitiveness issues back in 2015, see [www.dansk-luftfart.dk](http://www.dansk-luftfart.dk).

The Danish government followed up on the industry request and issued the Danish Aviation Strategy in 2017. The strategy addresses the above themes – among others.

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## GLOBAL E-COMMERCE

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*Benefiting from global ecommerce – while respecting EU product safety*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

E-commerce enables customers to buy products from all over the world. E-commerce allow customers to enjoy a large selection of products. 23 pct. of EU residents, who have purchased goods or services online in the last year have made an online purchase from a seller outside of the EU, according to Eurostat. Manufacturers and traders also benefit from e-commerce, as e-commerce provides them with relatively easy access to new markets. E-commerce thus contributes to an increase in the volume of international trade.

These new possibilities provided by e-commerce have also given rise to concerns related to EU's product safety rules. When third country-based traders direct their activities to a Member State they are obliged to comply with the EU rules on product safety. Not all traders, particularly those traders selling on Chinese marketplaces, comply with EU product safety rules. When these products originate outside EU jurisdiction, it is impossible to enforce EU regulation. Not only does this pose a threat to consumers' safety, it also creates unfair competition for compliant EU-based traders, i.e. an unlevel playing field.

### STATUS AND EXISTING EU LEGISLATION

The Commission has signed a Product Safety Pledge with four of the largest online marketplaces; Amazon, Alibaba, Ebay and Rakuten-France. The four marketplaces have committed to requiring sellers to inter alia comply with the EU rules and respond to notifications on dangerous products. This is a welcome, however voluntary, first step in tackling the product safety issues stemming from the globalization of ecommerce.

Furthermore, the Parliament and the Council recently passed legislation, which enables market surveillance authorities in Member States to carry out controls with third country businesses that place products on the EU market.

### RECOMMENDATIONS

DI recommends that this issue be addressed at the global level. To ensure a level playing field between EU-based traders and third country-based traders, the DI calls on the Commission to include the issue of compliance by third country companies in the WTO negotiations on digital trade with the aim to adopt binding:

- Provisions that traders targeting a foreign market are obliged to comply with local rules on product safety.
- Commitments to cooperate on the enforcement of local product safety rules.

## THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDG

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 17.12<sup>64</sup> "Partnerships for the goals".



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<sup>64</sup> Realize timely implementation of duty-free and quota-free market access on a lasting basis for all least developed countries, consistent with World Trade Organization decisions, including by ensuring that preferential rules of origin applicable to imports from least developed countries are transparent and simple, and contribute to facilitating market access

## EUROPEAN DEFENCE FUND

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*Creating opportunities for all EU countries and maintaining a close relationship with partners outside the EU*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

The European Defence Industry is highly fragmented. It is characterized by a lack of cooperation and market access between Member States. This results in inefficiencies, insufficient competition and lack of economies of scale for industry and production, as well as severe underinvestment in research and development. Defence and defence industry issues have in recent years become a matter of high priority for EU. The Commission proposes to commit 11.5 billion euro for a European Defence Fund (EDF) in the 2021-2027 MFF. Through research and development projects, the Fund seek to drive cross-border cooperation to facilitate restructuring of the defence industry, to sustain its international competitiveness and more efficient spending on development and subsequent procurement of defence equipment and systems in Europe. It will strongly encourage the participation of small and medium-sized enterprises in collaborative projects and foster breakthrough innovation solutions. Introducing the EDF is a possible gamechanger for the European Defence Industry.

### STATUS AND EXISTING EU LEGISLATION

The proposal for a regulation of the European Parliament and of the Council establishing the European Defence Fund was tabled by the Commission in June 2018 and adopted 18 April 2019 by the European Parliament. The EDF proposal refers to the EU Global Strategy and also the European Defence Action Plan (EDAP), adopted on 30 November 2016. It also goes hand in hand with the two Directives on procurement and on EU transfers in the defence sector. EDF complements projects implemented within PESCO and initiatives through the European Peace Facility.

### RECOMMENDATIONS

- Denmark and a number of other EU countries have global defence industrial ties. EU initiatives under the EDF should therefore not exclude collaboration with close partners outside the EU. Otherwise, the EU will risk becoming inward-looking and protectionist. Interaction with these actors will benefit technology development and products, thus making them and the European defence industrial and technological base more competitive on the world market.
- EDF should provide opportunities for all EU countries and must not distort competition between different industries.
- A genuine cross-border market access and fair chances to participate in projects or as sub-suppliers hereto should be provided. An open and transparent database of consortia would be beneficial.

### THIS PROPOSAL IS ALSO SUPPORTED BY

The proposals have also been raised and discussed in the Commission, the European Parliament, the Danish ministries (Defence; Industry, Business and Financial Affairs), the Permanent Representation of Denmark to the European Union, the NORDEFSCO and the ASD (AeroSpace and Defence Industries Association of Europe).





- European Commission (on-going)
- European Parliament (on-going)
- Danish ministries (Defence; Industry, Business and Financial Affairs – on-going)
- Permanent Representation of Denmark to the European Union
- NORDEFECO (on-going)
- ASD – AeroSpace and Defence Industries Association of Europe (on-going)

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## RESEARCH AND INNOVATION

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*Strengthening EU's innovation and competitiveness*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Research and innovation are prerequisites for continued growth and development of our society. It helps us compete globally and improves the daily lives of millions of people in Europe and around the world. At the same time, it solves some of our biggest societal challenges and helps to reach the UN Social Development Goals (SDGs).

Companies are the main drivers of innovation and according to Eurostat businesses contribute with 2/3 of the total European R&D expenditures. However, currently businesses are only involved in 1/3 of all activities in the current Horizon 2020 program.

There is a clear acceleration of the global innovation race (especially from China) and it is thus important that the Commission puts innovation and research at the top of the political agenda in the coming policy cycle in order to further strengthen EU's innovation power and competitiveness.

### STATUS AND EXISTING EU LEGISLATION

The EU's research and innovation framework programs have over the years contributed with funding and facilitation of research and innovation in the EU countries. The future program Horizon Europe is currently awaiting the MMF negotiations before it can be finalised.

### RECOMMENDATIONS

To improve research and innovation in the EU, DI recommends:

#### *More and smart funding*

Public money is key to leverage private sector investments in research and innovation. While we acknowledge the Commission's efforts to increase spending on research, development and innovation activities, we would like to see even higher ambitions. We recommend matching the strong policy ambitions with an equally ambitious budget of at least €120 billion in the Horizon Europe program.

#### *Fit-for-innovation regulation*

Regulation can be a driver of innovation, if it is designed well. Good regulation is prepared and developed according to the Commission's better regulation guidelines including the innovation principle. It should be science and evidence based, up-to-date, digital-by-default, stable and have a high degree of harmonisation. Moreover, there should be coherence between the EU and the national level as well as among Member States. Finally, a fit for innovation regulation entails a simpler and more efficient administration of RDI funding.

#### *Skilled people*

European companies suffer from a significant shortage of skilled staff, which hamper their innovation power. The need is especially high in the so-called STEM disciplines (Science, Technology, Engineering and Mathematics), which are especially relevant in order to develop the solutions that can contribute to the SDGs. Focus must be set on motivating parents, teachers, children and especially girls and women to occupy themselves with STEM.

*Enhanced co-operation (public/private partnerships)*

RDI collaboration and networks between universities, science institutions and industry are key in order to ensure a successful transformation of inventions to innovations. DI recommends that the Commission continues to support the establishment/construction of big RDI infrastructures but with a clear focus on promoting and supporting collaborative RDI project for example within fields of Biotechnology and Advances Materials which make use of the infrastructures.

*Key Enabling Technologies*

KETs are and must continue to be a key priority to modernise the industrial base of Europe. As previously stated by the European Commission, KETs provide the basis for innovation in a range of products across all industrial sectors and underpin the shift to a greener economy and drive the development of entirely new industries.

**THIS PROPOSAL IS ALSO SUPPORTED BY**

DI is in close dialogue with BusinessEurope about the recommendations above, which are high priorities among company associations across Europe.

**THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDGs**

DI’s recommendations would support the EU’s work towards achieving UN Sustainable Development Goals number 8.2<sup>65</sup> “Decent work and economic growth”, and number 9.5<sup>66</sup> “Industry, innovation and infrastructure”.



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<sup>65</sup> Achieve higher levels of economic productivity through diversification, technological upgrading and innovation, including through a focus on high-value added and labour-intensive sectors

<sup>66</sup> Enhance scientific research, upgrade the technological capabilities of industrial sectors in all countries, in particular developing countries, including, by 2030, encouraging innovation and substantially increasing the number of research and development workers per 1 million people and public and private research and development spending

## IMPROVE GENDER BALANCE ON BOARDS

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*New proposal for a directive to improve the gender balance among non-executive directors of companies listed on stock exchanges*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Gender balance is an important issue for European companies. The legislative framework is different from one Member State to another. There is a need for a new European regulation, which accommodates such differences, and is in compliance with good corporate governance and push forward continuing improvement of the gender balance among non-executive directors of companies listed on stock exchanges.

### STATUS AND EXISTING EU LEGISLATION

The present proposal COM(2012)614 has for seven years met resistance initially from national parliaments and since from member states such as DE, PL and DK opposing European regulation in this area. Parliaments in several Member States have opposed EU-regulations in this area and specifically a quantitative regulation which is in risk of conflicting with national regulation.

### RECOMMENDATIONS

To secure a continuing rise in the share of the underrepresented gender on the board of directors of listed companies, a new regulation should be put forward to commit Member States to impose an obligation for private, listed companies to set target figures for the share of the underrepresented gender on the board of non-executive directors. Companies with a share of an underrepresented gender of less than 30 percent must be obliged to set target figures no lower than the current share and comply or explain with this target.

The Danish law on gender composition in management and on board of directors has both a focus on the board and on the “food chain” for the boards, where companies themselves set target figures at the board level and prepare a policy to promote women on subjacent management levels. In this way, one does not apply the same yardstick to everybody as is done with quota regulation, but the development is created on the basis of a respect for the companies' own work with good corporate governance and preconditions that can be extremely different from one company to another (eg. number of female employees, managers etc.).

The development in Denmark shows that the Danish law has acted as a good framework for the work of getting more women in the boards of directors.

### THIS PROPOSAL IS ALSO SUPPORTED BY

Such an EU-Regulation will be in compliance with national models in Germany (Zweite Säule of national regulation) and in Denmark ([Danish regulation](#), Danish Business Authority). A new, target-setting and comply-or-explain EU-regulation will be in accordance with the principle of subsidiarity and reduce opposition among member states.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDG

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 5.5 <sup>67</sup>“Gender Equality”.



### ADDITIONAL INFORMATION

In compliance with Danish regulation companies are working to improve the gender balance in management. See these [recommendations and best practices](#).

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<sup>67</sup> Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life

## NEW EU TOURISM STRATEGY

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*Creating a new political framework for tourism in Europe*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Tourism is a key sector of the European economy, with an increasingly positive impact on economic growth, regional development and employment in Europe, accounting for 10.3 pct. of EU GDP and 11.7 pct. of the total labour force. More than 2 million European companies are directly related to the tourism industry. Europe is the world's number one tourist destination, with a current market share of more than 50 pct.

The European tourism sector faces several challenges and opportunities in the coming years, which will impact its development for the next years.

A renewed coherent strategical approach to tourism in the EU is much needed to promote growth and productivity in the sector.

### STATUS AND EXISTING EU LEGISLATION

Following the adoption of a new legal basis for tourism, the Commission adopted a strategy for tourism in 2010 with a Communication on 'Europe, the world's No 1 tourist destination – a new political framework for tourism in Europe'. The strategy was accompanied by an implementation rolling plan. The rolling action plan has not been updated since 2013.

### RECOMMENDATIONS

DI recommends the establishment of a high-level group to support the new Commission in developing new sustainable and long-lasting tourism strategy.

The high-level group shall be formed as a multi stakeholder-forum consisting of representatives from Member States, industry-organizations, consumer-organizations, businesses etc. The focus of the group must be on:

- How tourism in the EU can be strengthened by cross-border cooperation
- Digitalization in the tourism sector
- Investments in the tourism sector
- Supporting a sustainable transformation of the tourism sector
- The creation of jobs and development of skills in the tourism sector
- Cooperation of marketing through public-private partnerships to promote transnational European tourism products
- How the new tourism policies can be implemented in member states in cooperation with national authorities and private organizations.

### THIS PROPOSAL IS ALSO SUPPORTED BY

This proposal has also been raised and discussed in the Danish Implementation Council.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDG

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 8.9<sup>68</sup> "Decent Work and Economic Growth"



### ADDITIONAL INFORMATION

European Union Tourism [Trend](#)

[Conclusions](#) European Tourism day 2018

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<sup>68</sup> By 2030, devise and implement policies to promote sustainable tourism that creates jobs and promotes local culture and products

## VISA FACILITATION

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*Visa facilitation to support business in attracting investments, tourists and strengthen trade*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

The tourism and travel industry both play a key role in the European economy, representing around 10pct. of EU GDP. The Schengen cooperation has made travelling to and within the Schengen area easier for both tourists and business travellers, but experiences with the current visa legislation have, however, shown that there is room for improvement. Hence, DI welcomes and supports the on-going revision of the visa code (COM(2018)0252) for the Schengen area.

DI recognizes that EU Member States are confronted with the challenge of balancing national security and immigration concerns on one hand, while promoting economic activity and fostering political relations on the other. However, the financial and intangible damage to trade and tourism caused by visa requirements each year is disproportionate when compared to its underlying objective.

Visa facilitation is a competitive advantage. An increasing number of countries ease visa procedures as a mean to increase their competitive advantage in attracting investments and tourists and strengthen trade. It is essential that the EU is seen as a region open for trade and tourism. There is increased international focus and awareness on the importance of visa facilitation and the possibilities of obtaining visa on arrival or eVisa.

### STATUS AND EXISTING EU LEGISLATION

The current proposal for a revision of the visa code is expected to be formally adopted by the Council at the end of June 2019. The European Parliament approved the proposal on 17 April.

With the new visa code, the EU will simplify procedures for requesting and issuing short-stay visas for tourism, trade and business, whilst it will use the visa policy to encourage non-EU countries to cooperate on irregular migration.

Further digitalisation of the visa application and issuing will be introduced at a later stage, after the Commission concludes its feasibility study, to be released in autumn 2019.

### RECOMMENDATIONS

DI welcomes the current proposal entailing that applicants registered in the Visa Information System (VIS) can apply electronically. The application process is unfortunately not entirely electronically since applicants still have to pick up the visa sticker at the closest representation. DI therefore recommends that the possibility of a full electronic application procedure is examined as well as the possibility of combining an electronic application process with receiving visa at the border to increase the flexibility in the application process. These solutions could be targeted at a smaller well-defined group, e.g. frequent travellers to the Schengen area.

DI proposes a longer validity of the visa. A longer validity for multiple entry visas would significantly reduce the burdens for travellers visiting the Schengen area. It ought to be possible for frequent travellers (the so-called bona fide travellers) to apply for visas valid for up to 10 years.



Thus, DI recommends that the up-coming visa code is reviewed 2 years after its implementation to assess the regulatory impacts. If these are viewed as positive, a longer validity of the visa for frequent travellers should be considered.

### THIS PROPOSAL WOULD SUPPORT THE FOLLOWING SDG

DI's recommendations would support the EU's work towards achieving UN Sustainable Development Goals number 8.<sup>69</sup> "Decent Work and Economic Growth".



### ADDITIONAL INFORMATION

European Commission - Impact assessment study supporting the review of the Union's visa policy to facilitate legitimate travelling.

European Commission - Implementation and development of the common visa policy to spur growth in the EU COM (2012) 649).

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<sup>69</sup> By 2030, devise and implement policies to promote sustainable tourism that creates jobs and promotes local culture and products

## MAXIMUM LIMITS OF VITAMINS AND MINERALS

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*Complete the current provisions laying down maximum levels for vitamins and minerals*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Food supplement and food fortification are regulated in Directive 2002/46 and Regulation 1925/2006, respectively. However, there are no harmonized, EU-wide maximum limits for vitamin and minerals added to food or food supplements. Instead, Member States have persisted with different national approaches. This has led to a very fragmented situation that forces companies to adapt and change recipes and products for almost each and every Member State market. This leads to enormous costs and a lot of bureaucracy. For SMEs in particular, it leads to additional burdens to accessing markets.

The failure to agree harmonized maximum levels for the addition of vitamins and minerals to foods and food supplements has created barriers to trade and is not compatible with the aims set out with regard to consumer protection in Directive 2002/46/EC and Regulation (EC) No. 1925/2006.

### STATUS AND EXISTING EU LEGISLATION

In Directive 2002/46 and in Regulation 1925/2006 it is stipulated that the Commission sets maximum limits for vitamins and minerals that are added to food supplements and food, respectively. As indicated in article 6 in Regulation 1925/2006 *“The Commission may, to this end, submit a draft of measures for the maximum amounts by 19 January 2009”*.

The Commission initiated discussions in accordance with a discussion paper in 2006 and an orientation paper in 2007 that comprised all Member States feedback and scientific models and quite clear majorities for a common approach were achieved. Nevertheless, it has subsequently proved impossible for Member States to agree on one approach that would have harmonised the maximum levels for vitamins and minerals in the EU.

Furthermore, The European Court of Justice has made it very clear in its recent Judgments in the cases *Noria* (Case C 672/15, Judgement of 27 April 2017) and *Queisser Pharma* (Case C-282/15, Judgement of 19 January 2017), that there is no room for “national maximum level science” on vitamins and minerals. The reason given is that all available scientific data has to be taken into account and a recourse to national data only is not possible and that anyway national maximum levels cannot prevent the marketing of products that are produced according to the levels set in another Member State.

### RECOMMENDATIONS

In order to better protect consumers and facilitate the functioning of the internal market, it is necessary to complete the current provisions laying down maximum levels for vitamins and minerals.



### THIS PROPOSAL IS ALSO SUPPORTED BY

The Stakeholder group of REFIT Platform has recommended EU-harmonised maximum levels for vitamin and minerals added to food and food supplement. According to the REFIT Platform Opinion adopted 19 March 2018 the majority of the members of the government group support the recommendation of the Stakeholder group.

### CONTACT INFORMATION

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## NUTRIENT PROFILES

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*Establishment of nutrient profiles in accordance with regulation 1924/2006*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

Diet-related lifestyle diseases and obesity are growing problems worldwide and the implications of unhealthy diets are an increasing burden for public health systems.

Establishment of nutrient profiles in the EU is an important tool in the common efforts to prevent diet-related lifestyle diseases and obesity. The main purpose of nutrient profiles is to ensure that the consumers are not misled about the nutritional and health benefit of a food that is marketed with nutrition health claims (making healthier choices). And that, on the other hand, companies will be able to claim healthier products, as well as giving the companies a reason to innovate and develop healthier products.

### STATUS AND EXISTING EU LEGISLATION

In accordance with the Nutrition and Health Claims Regulation (1924/2006), the Commission should have established nutrient profiles no later than 19 January 2009. Nutrient profiles should ensure that nutrition and health claims are not used on foods with a generally non-beneficial composition, e.g. due to a high content of salt, saturated fat or added sugars.

Denmark brought the issue to the Commission's attention in a joint letter co-signed by Finland, Sweden, the Netherlands, Lithuania, Austria, Luxembourg and Belgium in December 2017. In the letter, the eight Member States urged the Commission to put forward a proposal on nutrient profiles. In January 2018, the Commission replied that it would complete the REFIT evaluation of the Health Claims Regulation before considering the next steps for the nutrient profiles. The Commission report on the REFIT evaluation is expected by 1 July 2019.

### RECOMMENDATIONS

The nutrient profiles must be established within the Nutrition and Health Claims Regulation (1924/2006), Article 4, 1, by a delegated act.

### THIS PROPOSAL IS ALSO SUPPORTED BY

This proposal is also supported by the Danish government as well as the governments in Finland, Sweden, the Netherlands, Lithuania, Austria, Luxembourg and Belgium.

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## PROBIOTICS

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*Current legislation is making it impossible to use the term 'probiotics' on food*

### CHALLENGES AND OPPORTUNITIES FOR EUROPEAN COMPANIES

The use of the term "probiotic" in the labelling, presentation and advertising of food products and beverages is not permitted in the EU. The reason is that the expression "contains probiotics" was interpreted as a health claim by the European Commission and Member States in 2007.<sup>70</sup>

The current situation has had a negative impact on the European ingredients industries. The sector is facing a decrease in sales and a decline in research and innovation. We feel we must take action now in order to urge the European Commission to propose clear, harmonized and compatible solutions with the EU legal framework to maintain growth and innovation in the European ingredient sector. This way, the EU can make sure that European companies can once again take the lead on the market for probiotics.

### STATUS AND EXISTING EU LEGISLATION

There is currently no EU-wide legal framework defining probiotic micro-organisms or the probiotic food category. For foods, only the communication on nutritional & health effects of probiotics is subject to regulation: the Nutrition & Health Claims Regulation 1924/2006 (NHCR).

There is currently a de facto ban on the use of the term probiotic in food since the European Commission and the Member States in 2007 interpreted the expression "contains probiotics" as a health claim. This means that, in principle, commercial use of the term "probiotic" for foods and supplements would *require a health claim authorisation* from EFSA.

The Danish Food Administration has a positive dialogue with the Commission in order to find a solution. The Danish Food Administration has also sent a joint letter to the member states, in order to gain support in stressing to the Commission the importance of EU harmonized legal framework on probiotics that allows the food industry to label products on a voluntary basis, containing probiotics.

The Danish Food and Drink Federation has had meetings with the Commission regarding this, and is also working with IPA-Europe on this issue.

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<sup>70</sup> According to the current regulation, the European probiotics industry is not allowed to inform consumers of the health improving effects linked to the intake of probiotics, as EFSA has not yet approved any specific health claim on any bacterial strain. The use of the term "probiotic" in the labelling, presentation and advertising of food products and beverages is not permitted in the European Union (EU) because the expression "contains probiotics" was interpreted as a health claim in 2007 by the European Commission and member states. Because of this interpretation, probiotics are trapped in a vicious circle: as probiotic effects are strain-specific, the term "probiotic" *per se* does not describe a health effect and therefore cannot be the object of an authorization as a health claim. Thus, the term probiotic cannot be claimed and cannot be submitted to EFSA.

## RECOMMENDATIONS

- The probiotic industry requests the European Commission and Member States to agree on an EU harmonised solution for probiotics. Our proposal is to come back to the initial interpretation of NHCR according which the expression "contains probiotics" is a nutrition claim. According to the industry, "contains probiotics" clearly meets the definition of nutrition claim.
- Reminder: all nutrition claims imply a beneficial effect by definition (Art 2 and 5 NHCR – so the link made by the consumer between the term probiotic and a "non defined" "health effect" is not enough to convert the term probiotic into a health claim!) + non beneficial nutrition claims are not covered by the scope of NHCR!
- Our solution is possible without any modification of the Health Claim Regulation as the existing annex can be used (contains + other substances).
- Opting for such a solution does not change the fact that a specific health benefit for a specific probiotic strain can only be claimed after assessment and approval of the claim by EFSA, and the necessary authorisation procedure \*\*.
- More and more Member States are in favour of a harmonised solution and more and more are in favour of the nutrition claim option, which is compliant with other legislation out of the EU (such as Canada, Argentina, Japan etc.)

## THIS PROPOSAL IS ALSO SUPPORTED BY

The DI proposal is supported by the Danish, Swedish and Italian government and IPA-Europe.

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*The Confederation of Danish Industry (DI) is a private organisation, funded, owned and managed entirely by approximately 11,000 companies within manufacturing, trade and service industries. DI is the strong voice of corporate Denmark – we aim at providing the best possible conditions for growth and competitiveness.*

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