



**Mr Boyko BORISSOV**  
Prime Minister  
Republic of Bulgaria  
1, dondukov Blvd  
BG - 1594 Sofia  
BULGARIA

24 January 2018

Dear Prime Minister,

## **BUSINESSEUROPE'S PRIORITIES FOR THE BULGARIAN PRESIDENCY OF THE EUROPEAN UNION**

Recovery in the European Union is picking up, while politically, we are more united and confidence in the European project is growing. With so many important files on the table, it is fundamental that the Bulgarian Presidency of the Council of the EU takes full advantage of the current momentum to continue gathering consensus on important files and ensuring we move forward with discussions that will be able to sustain a strong European Union in the years ahead. This is why we believe the motto chosen for the Presidency – “united we stay strong” couldn’t be better chosen.

First, there are key priorities in the Bulgarian Presidency programme that are crucial for the **future of Europe**. This is why we call for the following priorities to be high in the political agenda of the next 6 months:

1. **Make progress with discussions on the EMU:** Business investment requires a safe and predictable environment, which is why completing EMU and strengthening trust in the Euro is a priority for business. We have welcomed the roadmap the Commission published in December which sets out a number of important steps towards completing EMU, and businesses will now be looking to the Bulgarian Presidency to fully implement, longstanding initiatives such as the banking and capital markets unions, as well as constructively debating the Commission's new proposals. It is essential that the June Council will be one where concrete steps are taken forward on deepening EMU, as currently envisaged by President Tusk.
2. **Support reflections on the next MFF:** The proposal for the next MFF will only be published in May 2018 at the earliest – and therefore towards the end of the Bulgarian Presidency. However, many of the issues for discussions are clearly identified. It would therefore be helpful if the Bulgarian Presidency supports the



efforts of the Commission to advance discussions in concrete issues as the time frame for adoption the MFF proposal will be very tight – if we are to achieve an agreement before the European elections in mid-2019. Failing to agree on the proposal by then would be of serious consequences: it would very likely mean a last-minute deal, followed by serious delays in the start of programmes in 2021, and a lost year in investment by the EU budget – as it was the case in 2014.

3. **Maintaining a high profile for an EU industrial strategy:** While we had a first important step with the Commission Communication last September, we must ensure this topic remains high in the agenda and that both the EU and Member States provide an important contribute in building a long-term vision for the future of European industry. We must ensure we define a structured way forward and we call on the Bulgarian Presidency to ensure this topic continues to deserve the necessary commitment and attention.

Second, it is crucial to **continue developing our Single Market in line with the Leaders agenda**. We note with concern rising risks of fragmentation of the Single Market due to overregulation, the re-introduction of various obstacles in Member States and insufficient enforcement of EU rules. Focus must be on legislation only when necessary with clearer rules, removing remaining obstacles and making sure that existing rules work in practice. This is fundamental to make Europe more competitive globally. The goods package is an important proposal that must be given great attention.

Fragmentation of rules is also a great concern for the **Digital Single Market** which is borderless by nature and should know no bounds. A renewed emphasis is needed to urgently complete the Digital Single Market, which means legislating where real market failures exist, for example, to enable the free movement of data in the EU. Yet, not every technological advance requires legislation as in some instances, it could stifle innovation and investment. With regard to data ownership, access and liability, the existing legal frameworks and private contracts already answer these emerging data economy questions. A flexible and robust approach is required in these highly intricate situations. We count on the Bulgarian Presidency to ensure this topic remains high in the agenda and that the free flow of data proposal is treated as a matter of priority.

Third, it is key for the **EU to promote an ambitious trade policy**. We must stand strong against protectionist tendencies worldwide and within the EU. We have to stay competitive to retain and be able to attract talents and investments globally. The EU must not refrain from global competition but it must strengthen the overall companies' ability to face this global competition, defend and prioritise the interests of European citizens and companies. This includes shaping globalisation according to our common values and negotiating comprehensive modern trade agreements leading to strengthened international cooperation and a liberal rule-based global trading system. These basic

principles must be upheld in all legislative measures and all decisions taken at EU and national levels.

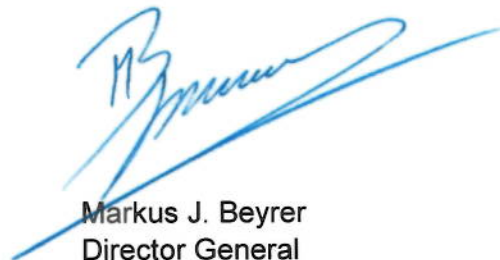
Fourth, we must ensure Europe remains one of the best places in the world to live and work, by **taking forward the necessary economic and social reforms**. Economic and social challenges must be addressed in a coherent way, recognising that economic progress is the basis for social well-being. To defend our social model, we must modernise it and to be able to finance social safety nets, we must be competitive. We need to lift rigidities in labour law, reduce excessive non-wage labour costs, address skills mismatches, promote mobility and legal migration, and remove unemployment traps.

At annex, you can find further details about our priorities for the Bulgarian EU Presidency. I look forward to working constructively with you and the different members of your government during the next six months in order to build a strong European Union answering companies' and citizens' concerns about the future.

Yours sincerely,



Emma Marcegaglia  
President



Markus J. Beyrer  
Director General



## **Annex: BusinessEurope priorities for the Bulgarian Presidency**

### **1. Progress in Brexit negotiations**

The European Council confirmed that sufficient progress has been made pertaining to phase one of the Brexit negotiations. This will allow to start negotiations on the transition and the framework for the future EU-UK relation but we are still far from the final deal. Companies are under time pressure as they need to plan ahead. Business needs certainty and a level playing field that allows trade and investment to remain stable. The worst case, a no-deal “cliff-edge Brexit”, must be avoided. It would have severe economic consequences and would negatively affect companies’ business activities in the EU27 and in the UK. The months ahead will be critical and we count on strong political will on both sides to find the best solution for business and citizens.

### **2. Progress in completing the EMU**

Business investment requires a safe and predictable environment based on a well-functioning EMU. This is why completing EMU and strengthening trust in the euro is a priority for business. We will now be looking to the Bulgarian Presidency to fully implement, longstanding initiatives such as the banking and capital markets unions, as well as constructively debating the Commission’s new proposals. This process should be open and inclusive, with member states whose currency is not yet the Euro able to participate in the various aspects of EMU.

We believe the following objectives must be a priority for EMU deepening:

- **EMU must deliver convergence towards strong growth rates in all member states.** We must reinforce the European Semester’s role in increasing growth, competitiveness and convergence, ensuring that all Member States implement agreed growth and employment enhancing structural reforms alongside strengthened implementation of the Macroeconomic Imbalance Procedure in both deficit and surplus countries. Completing and enforcing the single market is a crucial and powerful convergence driver.
- **The efficiency of the fiscal rules must be improved,** paying more attention to the quality and composition of public finances for a proper implementation of the Stability and Growth Pact (SGP), drawing on its in-built flexibility to help member states put their public finances on a sustainable footing. Fiscal sustainability, including where appropriate fiscal consolidation, is key in order to strengthen investors’ trust in the Euro area, while giving the fullest support possible to member states who wish to orientate their budgets towards investment and growth-supporting expenditure.

- **A full banking union must be put in place**, with rapid agreement and implementation of an EU deposit insurance scheme, alongside the existing supervision and resolution pillars to address the continued fragmentation of EU savings and credit markets. Member states have now implemented the bank recovery and resolution directive and are creating harmonised deposit insurance systems. In addition, further asset quality reviews of all banks are necessary steps before establishing a common system. Moreover, **implementation of a comprehensive Capital Markets Union** improving access to diversified funding sources can also reinforce resilience to asymmetric shocks.

**Regarding the important issues of the stabilisation function for the Euro Area**, we support strengthening the long-term stability of EMU and its ability to handle asymmetric shocks to one or more of its economies through access to a Euro Area stabilisation fund, fully conditional on Members States implementing structural reforms and there being no increase in the overall tax burden. To ensure the stabilisation fund is effective, support should be **rapid and temporary**

### **3. A dynamic and ambitious EU trade and external affairs policy**

We call on the Bulgarian presidency to prompt the EU to continue pursuing a dynamic and ambitious trade policy that would support growth and competitiveness. There is a continuous need to address rising protectionist trends and ensure that the EU's trade negotiation agenda is conducted in an efficient manner. This includes not only moving rapidly towards the ratification of the long-awaited agreements with Singapore and Vietnam, and a successful conclusion of the negotiations for an ambitious agreement with Mercosur. It also means a swift translation and legal scrubbing of the deal with Japan that was recently concluded. We also expect the EU to be able to conclude the modernisation of the Mexico and open negotiations for the revision of the Customs Union with Turkey. In both cases we have long standing agreements that urgently need to be adapted to today's trade reality. Delivering an ambitious trade agenda also means implementing our trade agreements faster and better and we hope this can be already achieved for the recently finalised EU-Japan agreement.

We also need to ensure that we have rules that are fit to the trade and investment reality of the 21st century. The EU needs to take a leading role in developing trade rules in key areas such as digital trade and e-commerce. We need to rapidly define a position on data flows in trade agreements to make sure we can shape the world trade in this area and effectively address the protectionist trends that are affecting our companies' ability to develop in new markets and business opportunities.

Furthermore, we should not neglect the Africa. 2018 is an important year, marking the launch of the negotiations for a post-Cotonou Agreement. We should ensure that the revised framework forms our bilateral relations with the region for the decades to come in a win-win manner. Promoting and taking full advantage of the Economic Partnership Agreements between the EU and the region is also crucial.



#### **4. Maintain a high-profile for an EU industrial strategy**

The European Commission issued a Communication, in September 2017, for a renewed industrial strategy for Europe. This is an important first step, but we now need a structured way forward that must be built with the support of both EU and Member States.

A strong industrial base is fundamental for strong economic activity across all sectors of the economy including services. European industry faces enormous challenges and increased competition from other areas in the world. Moreover, we are facing very quick changes in terms of technological innovation that will bring profound changes to our society – both citizens and companies. We must be prepared to face it and ensure these become positive transformations.

The smoothly functioning energy sector has traditionally been the cornerstone for a robust European industry, hence, the Presidency shall pay close attention to the upcoming trilogies regarding the Clean Energy Package.

We believe it is of fundamental importance for the Bulgarian Presidency to ensure this topic continues to deserve the necessary commitment and attention, and ensure there is a meaningful follow-up from the EU industry day on the 22 and 23 February.

#### **5. Advance with discussions of the MFF**

The proposal for the next MFF will only be published in May 2018 at the earliest and the time frame for discussion will be tight. But many of the issues of for discussions are clearly identified and it is therefore fundamental that the Bulgarian Presidency tries to advance in some issues.

The Multiannual Financial Framework (MFF) post-2020 will need to reflect the new context and speed-up the important transformations which have been steadily occurring in the EU budget, namely an increased focus on areas with clear EU added value, greater role for innovation and interconnections, focus on results, not forgetting EU objectives on cohesion. The proposal on the next MFF must be made on the basis of a thorough assessment of the current budget, in order to identify both strengths and areas for improvement.

Member States must work together in a logic of common benefits, which must be fully explained, rather than reducing discussions to how much money each member retrieves. We believe that it is important that the discussions on the next MFF are not divisive, but rather create a moment where European leaders can show their solidarity and responsibility, listening to the voices of citizens and social partners, avoiding any additional upward pressure on overall taxation, focusing on what is important to strengthen the efficiency and competitiveness of the European Union as a whole.



## **6. Keep entrepreneurship high in the agenda**

BusinessEurope counts on the Bulgarian Presidency for keeping the promotion of entrepreneurship high on the EU agenda. The planned new Commission Recommendation on the definition of SMEs should address the negative impact that the current EU SME definition (dating from 2003) has on access by innovative SMEs to venture capital and/or on growth prospects once venture capital has been obtained.

## **7. Digital tax on the basis of global taxation principles**

In recent months, the Commission raised the possibility of developing new taxes on the digital economy, responding to a request from a number of member states. We believe that developing an efficient tax framework that is embedded in a competitive business environment to support the take-up and innovation of digital technologies for the whole economy and society is essential. It is particularly important that governments and businesses work together to ensure that the international tax system remains fit for purpose as the global economy and technology evolve.

However, initiatives regarding digital taxation must both respect member states' competences to set their own tax policies, and be developed on the basis of global taxation principles. We believe it is essential that any proposals in this area are agreed internationally through the OECD, to be possibly implemented in a common and coordinated manner at a European and global level. This will ensure European companies' competitiveness and guarantee a global level playing field.

## **8. Get the country by country reporting right**

BusinessEurope supports the European Commission's objective to fight tax fraud and evasion. We support the OECD recommendations regarding the reporting of financial information to tax authorities by companies on a country-by-country basis and the sharing of that information between tax authorities. The Commission's proposal for the EU to unilaterally require public country-by-country reporting would not help to address tax evasion as it would undermine the role of the tax authorities who have the expertise, and, supported by the OECD agreement, the information to properly enforce tax rules. By requiring public disclosure of country by-country reporting (CBCR) information, the EU may jeopardise the willingness of other countries who have signed up to the OECD proposal to share taxpayers' country-by-country reporting information. Public CBCR could put companies with an EU presence at a competitive disadvantage and damage the attractiveness of the EU as an investment destination.



## **9. Rapid adoption of the free flow of data proposal**

Building a European data economy is one of the greatest challenges our digital single market faces. Our data economy is rapidly growing and if the right conditions are set it could continue to grow and be worth more than 106 billion EUR by 2020<sup>2</sup>. This will impact our growth, jobs and competitiveness. As a vital resource, it also has the ability to enable key technologies to function that will provide vast benefits to our societies. Such as the Internet of Things (IoT), Artificial Intelligence (AI) and the industrial internet, which will not be possible without it.

That is why BusinessEurope supports the Commission's recent free flow of data proposal and promotes its rapid adoption by the Bulgarian Presidency as a priority. Council should uphold its ambitious call earlier this year to enable the free flow of data in Europe. Restricting the free flow of data can only be justified on the basis of public security. This ambition should not be watered down through adding additional exceptions at the expense of Europe's growing data economy.

Moreover, we call on the Bulgarian Presidency to ensure that data portability deserves necessary attention at Council level in order to overcome lock-in situations between service providers.

## **10. Strengthen European cybersecurity**

BusinessEurope supports the Commission's intention to update ENISA's mandate and set up a framework to identify specific cybersecurity schemes that could meet pan European application.

We count on the Bulgarian Presidency to ensure that the proposal champions innovative solutions, encourages all players in the value chain to ensure products, services and systems are cybersecure from the earliest stage in a dynamic way while enabling a smooth transition to a fully digitalised economy.

Moreover, we call on the Presidency to guarantee the active involvement of Member States in the response to the threat of ICT-enabled theft of intellectual property, including trade secrets or other confidential business information. The cost of industrial IP and trade secrets theft is expected to cost between 1-2% of GDP and result in a loss of competitiveness, reduced R&D investments and jobs. Therefore, we urge the Bulgarian Presidency to include an action on ICT-enabled theft of intellectual property also in the Council Action Plan for the implementation of the Cybersecurity Communication.



## **11. Make Europe fit for energy transition and an efficient energy market place**

We believe the main task of the Bulgarian Presidency should further work to improve the coherency of the clean energy package and make it an enabling framework to incentivize investment in the power sector. We believe upcoming trilogues are a good opportunity for this,

From BusinessEurope's point of view, more decentralized and distributed energy system will require complex solutions with active role of consumers and more flexibility. The necessary cost-effective interconnections and infrastructure at all levels is an integral part of this objective. The integration of the renewable energy in the energy system is one of the main tasks. Electricity market must also provide incentives for low-carbon sources contributing to supply security, as stable and uninterrupted supply of electricity is crucial for proper functioning of European economy.

BusinessEurope welcomed the more European approach present in proposals, which should be based on market integration and cooperation at all levels. This shall contribute to a more efficient energy system and lower costs for consumers. Despite the general agreement on the overall approach, some improvements are needed as far as balancing responsibility, regional cooperation, adequacy assessments and capacity mechanisms, are concerned. Concerning upcoming trilogues on energy efficiency files, we would like to emphasise that European business has always stood at the forefront of efforts to make the whole economy more energy efficient. At the same time we believe that these efforts should be translated into a coherent framework without overlaps of EU legal instruments and with due account of impacts on the industry. BusinessEurope therefore considers the increase of the energy efficiency ambition level beyond 30%, with binding nature, as proposed by the Commission, as a wrong signal for investors and society. Such decision could undermine the current structure of energy and climate policies and in particular the leading role of the EU ETS to trigger investments into low carbon technologies. Impact on industry has not been quantified. Trilogues should take account of these concerns. Besides the appropriate level of ambition, maintaining flexibility after 2020 is needed to ensure a choice of cost-optimal solutions and measures on different levels.

The proposal on the Governance of the Energy Union represents one of the key building blocks of the EU energy and climate policies. The Bulgarian Presidency should therefore ensure the EU maintains its true role – to enforce the policies and to effectively solve the issue of overlaps of individual policies. As such, it shall not serve as an instrument to bypass other parallel legislative processes and political agreements. The proposal should also put the competitiveness dimension back among the main objectives to ensure viable and cost-effective delivery by all stakeholders.



## 12. Make the transition towards Circular Economy a business-friendly deal

The Estonian Presidency made it possible to close the long-awaited reform of waste legislation, that European business closely followed since the presentation of the Commission proposal two years ago. Now it is time for the Bulgarian Presidency to focus on its implementation. This is why we will focus very much our attention on the forthcoming package including a EU strategy on plastics, the monitoring framework on circular economy and the waste-chemicals interface.

We particularly appreciate the added value the Commission recognizes to 'plastics' and the need to act on a global level to be effective in reducing its negative environmental impacts. In this respect, in order to make the Plastics Strategy a concrete leverage to foster industry's circularity, some issues shall be taken into account:

- Promote research and innovation to create circular economies of scale. This includes increasing the uptake of industry-relevant innovations and providing investment certainty.
- Encourage more cooperation and communication within and across value chains.
- Encourage more cooperation and communication within and across value chains.
- Make life cycle assessments (LCAs) and cost-benefit analyses (CBAs) when assessing products made from plastics or any other material.
- Support the development of market-based economically-viable alternatives for fossil fuel feedstocks.
- Minimise landfilling.
- Ensure that producers, recyclers and users of plastics secondary raw materials can effectively comply with the same legislative framework as producers of virgin raw materials.
- Push major trading partners to converge with Europe's ambitions.

On a final note, we look forward working with your Presidency to further promote circular economy in Europe. We created the European Circular Economy Industry Platform ([www.circularity.eu](http://www.circularity.eu)) in May last year and have already published more than 100 examples of how European business adds to the circular economy and what challenges it faces to become even more circular.

## 13. Strengthen European research & innovation

The ongoing work on the new framework programme (FP9) should build on the achievements of Horizon 2020, maintaining the three-pillar structure and support to all-sized enterprises and take the following views into consideration:

- *Strong support for Horizon 2020*: It brings major achievements such as support over the whole ecosystem of research and innovation and a more targeted progress (e.g.

the two-stage evaluation procedure). Despite the need for further improvements, in particular tackling the oversubscription, the robust structure covering the whole ecosystem of research & innovation and stronger focus on close-to-market activities are among key features.

- *Double the budget*: Despite all kinds of financial constraints, the EU should not step back on the financing but rather accelerate R&I investment by both public and private sector.
- *Strengthen industry participation and collaborative approach*: Industry is key to bring great ideas and results of excellent basic research into market and benefit the society. Maintaining support to innovation, close-to-market activities and public private partnerships is therefore key. The pillars of ‘societal challenges’ and the ‘industrial leadership’ foster cooperation between public and private actors and leverage the necessary funds for large-scale European projects.

BusinessEurope therefore calls on the Bulgarian Presidency to engage in this discussion and support the framework programmes as one of the key growth-enhancing instruments.

#### **14. Better and more innovation-friendly regulation**

In order to support economic growth through investments, it is essential to make the regulatory process more innovation-friendly. The Innovation Principle could be a guiding principle to take full account of policies’ and decisions impact on innovation. Hence, it should ideally be implemented on multiple levels. The Better Regulation agenda is key to make it work in practice, but it is only an initial step in assessing the way regulation is impacting innovation. The Innovation Principle should ideally be applied in all stages of the legislative process.

#### **15. Strengthen stakeholder engagement and bring clarity on key climate files**

This year will be the most important year in global climate negotiations (COP) since the Paris Agreement was brokered in December 2015, with the *2018 Facilitative Dialogue* on measuring progress in reaching the global climate targets taking place at COP24 in Katowice, Poland. It is imperative that the European Union, with the Bulgarian Presidency in the driving seat, pushes for significant progress on *finalising the “Paris Rulebook”* during the intersessional meetings in Bonn in May 2018. This Rulebook sets out the rules and procedures needed to achieve the objectives of the Paris Agreement, is crucial for transparency and gives shape to global carbon markets. Furthermore, Europe should continue to push other major economies to *converge their climate ambitions* as soon as possible with those of the European Union, which has the most ambitious climate targets out of any major economy. Only by doing so will the world be able to achieve real emissions reductions and secure a global level-playing field for European business. Finally, in order to



successfully implement the Paris agreement, we urge the Bulgarian Presidency to continue the *strong involvement of business* and other stakeholders in the process.

Europe's efforts should also continue within its own borders. Now that the European Emissions Trading System (EU ETS) reform has been concluded, the next important file will be to achieve lower emissions in Europe's transport systems while retaining their global competitiveness. With the Commission's "*Clean Mobility Package*" published in November 2017, it is now important that the Bulgarian Presidency makes the first steps in developing the Council's position so that trilogue negotiations can start later next year. We urge the Presidency to:

- Focus on ensuring *technology and fuel neutrality* so that different solutions can compete together to achieve low-emission mobility in Europe.
- Apply an *integrated approach*, with impacts assessments focusing on both environmental benefits, jobs, security of supply, and with an aim to work towards internalising all benefits and costs of the different options for low emission mobility.
- Focus on applying *the Innovation Principle* and to secure sufficient public financing to create a critical mass for new ideas.

Given the scale of the challenges, which are environmental, socio-economical and geopolitical, it is also crucial here that the Bulgarian Presidency continues the *strong dialogue with business* and other stakeholders in the policy pathway towards low-emission mobility.

## **16. Defend a simple and effective transparency register**

The 2016 Commission proposal for an inter-institutional agreement for a mandatory transparency register remains concerning for both companies and representative associations. We have supported the register from the outset and continue to support its political objectives, promoting it among our member federations and companies. But we need simple and effective rules to facilitate such dialogue in a spirit of mutual trust. We have engaged with constructive proposals, such as on information obligations for representative business associations (30% rule), and have expressed justified concerns on disclosure of individual members' contributions (10% rule) or the issue of double/triple counting. So far, these were simply ignored without any convincing explanations. Now that the Council has decided to enter into talks and has adopted its negotiating mandate, we count on the Bulgarian Presidency to engage in a constructive dialogue with business on the way forward to bring the EU closer to companies and citizens.

## **17. Advance discussions on goods package**

The realisation of the free movement of goods in the Single Market is not self-evident and requires a sustained effort: it is key that no unjustified national barriers are imposed, and that market surveillance is carried out effectively throughout the Single Market. The Goods Package presented by the Commission on the 19 December 2017 contains proposals for a



new Regulation in the area of mutual recognition and for a new Regulation in the area of market surveillance. Considering the importance of this file for the functioning of the Single Market, we call on the Bulgarian Presidency to take up the goods package as a priority in the Council discussions.

### **18. Single Market Information Tool (SMIT)**

We strongly oppose the introduction of the Single Market Information Tool (SMIT) procedure. We oppose additional obligations on companies to provide highly sensitive business information without a clear justification or explanation how and for which precise objectives the Commission intends to use this information, and under the threat of sanctions. Moreover, it is absolutely unacceptable that the Commission is solely deciding at all stages of the SMIT procedure on the next steps. No other party is empowered to even check, scrutinise or appeal a decision throughout the SMIT process (accept perhaps going through lengthy and costly court procedures). Also given the penalties, this kind of power on one side is unacceptable.

We call on the Bulgarian Presidency to take seriously into account these considerations from the business community and the significant concerns about the proposal already shared by a large number of Member States.

### **19. Reach a balanced compromise on the Mobility Package**

Secure the proper functioning of the Single Market by reaching a balanced compromise on the Mobility Package released by the European Commission on 31 May 2017. As it was underlined by the Presidency, the Presidency believes that the proper functioning of the Single Market is a condition for economic progress and social cohesion. It is crucial for the new Presidency to elaborate a reasonable approach to the issue of posting of workers in the transport sector, directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC, and rules regarding the minimum requirements for maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods. Elaboration of the balanced approach will reduce the significant legal uncertainty in this sector of economy as well as disproportional administrative burden imposed on transport employer due to their nationality. It is expected that the Bulgarian Presidency will lead to elimination of any discrimination practices based on the nationality of employers in the process of rendering international transport services.



## **20. Company law package**

BusinessEurope has been an advocate of bringing EU Company Law into the XXI century. This means facilitating the use of digital technologies throughout a company's lifecycle (particularly in their interaction with authorities) and guaranteeing the full use of their fundamental freedom of establishment. The comprehensive evidence gathering and consultation in the past year identified and justified the need for efficient EU rules for cross-border operations of companies. In our view, this can be achieved by streamlining the cross-border mergers directive and by introducing specific frameworks on cross-border divisions and on cross-border conversions. We count on the Bulgarian Presidency to ensure speedy but good Council discussions of the file, ensuring it reflects these important points on digitalisation and mergers.

## **21. Empower the competition authorities of Member States**

Competition is crucial for business; it provides the best incentive for efficiency, encourages innovation and guarantees consumers the best choice. BusinessEurope therefore supports creating a genuine common competition enforcement area. National competition authorities should have key investigative powers and the ability to impose effective fines albeit not without appropriate procedural guarantees to counterbalance these powers. Competition authorities should not only respect minimum rights of defence but aspire at setting the highest standards for due process.

This should not be jeopardised by the proposal for a Directive which will apply to and therefore should respect existing organisation structures which, for example, combine an administrative and a judicial system. Among those national procedural rights not to be undermined by the adoption of the proposed Directive, it is of particular importance that the Legal Professional Privilege, as provided under national rules, is preserved. With respect to leniency, BusinessEurope has always supported an effective leniency program which provides incentives to companies which are able to provide relevant information about serious and harmful restriction of competition. Unfortunately, both the Commission and national competition authorities apply different systems which negatively affects the effectiveness of the programmes. BusinessEurope welcomes the attempts of the Commission to try to solve this but more is needed to introduce a one-stop-shop or binding marker system. The Bulgarian presidency must ensure the right balance is struck between enforcing effective competition and protecting essential procedure safeguards.

## **22. Continue efforts to ratify the unitary patent**

The rapid entry into operation of the Unitary Patent and the Unified Patent Court would provide a major boost to competitiveness, economic growth and job creation in Europe and remain a priority for all of our members except two who have a different view. We urge the

forthcoming Bulgarian Presidency to work with Member States to ensure further progress with the ratification of the Agreement of the Unified Patent Court and the entry into force of the Protocol on its Provisional Application as soon as possible.

### **23. Defend key aspects of the digital content proposal**

In this file, it is important that the Bulgarian Presidency defends the following key lines:

- *Endorse the original proposal's full harmonisation approach.* While we applaud the effort to fully harmonise the legal guarantee period for digital content, we regret that minimum harmonisation has been proposed for goods with embedded digital content. Different rules will not simplify cross-border shopping.
- *Align contract rules for 'digital content' and 'goods', to the greatest extent possible,* because this is the most effective way of ensuring that legislation remains future-proof in the case of goods with embedded digital content; and that legislation continues to be clear and easy to understand.
- *Maintain consistency with the existing European data protection rules, and clarify data aspects.* We appreciate the efforts to align the rules with the General Data Protection Regulation, as recommended by the European Data Protection Supervisor and as proposed by the Council. We agree that it is best if this proposal only covers personal data with respect to portability.
- *Refrain from regulating lifespan and durability in contract law.* While we are committed to improving sustainability and durability of goods, such policies are best pursued via product specific rules and not via contract law which serves different purposes. Companies should remain free to decide whether to provide commercial guarantees and inform about the duration of lifespan, as to foster competition. They need to rely on a simple and predictable legal environment to be able to offer best remedies and service to their consumers.

### **24. Implement the European pillar of social rights through the European semester process**

Following the Social Summit in Gothenburg on 17 November, the European Commission and Swedish government made clear in their concluding report that the European Semester should be the main framework for taking the discussions on Europe's social dimension forward. BusinessEurope calls on the Bulgarian Presidency to foster discussions in EPSCO Council on how to improve the implementation of structural labour market reforms in the Member States. This includes the role of mutual learning between the Commission, Member States and social partners; and a better use of benchmarking of national policy responses to unlock situations where there is a lack of progress. This work should take into account the interlink with economic policy objectives, and the focus on an improved delivery of structural reforms in the recent Commission's EMU package.



#### **25. Work-life balance: Change the EU policy focus from leaves to improved (child)care infrastructures**

We count on the Bulgarian Presidency to support our efforts to change the policy focus at EU level from leaves to investments and coordinated national policies to improve the availability and functioning of childcare infrastructures and infrastructures for the elderly. Council discussions should avoid increasing the cost of workers on leaves for Member States' social security systems and/or employers. Whereas reducing the tax wedge on labour remains a key priority for many Member States, more costly leaves would worsen the situation and be detrimental to job creation. On childcare more specifically, we would welcome the opportunity to discuss with the Commission and Council how investments can be unlocked and service provision improved, to better meet the needs of working parents and caregivers. This is how Europe can progress most quickly towards the objective of increasing women's employment participation.

#### **26. Codify ECJ case law as part of revision of social security coordination regulation 883/04**

We regret that the discussions in Council to date did not allow for an agreement between Member States on codification of the relevant ECJ case law as regards economically inactive citizens' access to certain social benefits. This is a missed opportunity. Whilst acknowledging the difficulty of finding an agreement on this in the Council, we hope that the Council will reconsider its position and that, together with the European Parliament, a solution will be found on this.

#### **27. Posting of workers trilogue: 24 months needed to avoid negative effects on cross-border trade in services**

Any compromise on a revised posting directive as part of the ongoing trilogue negotiations must avoid negative effects on cross-border trade in services by discouraging or reducing the scope for cross-border postings. In particular, to ensure clarity of the rules, we support Council's views that only universally binding collective agreements should be applicable to posted workers, and that the existing legal basis should remain unchanged. But the Bulgarian Presidency should recognise that making it possible to extend the period of posting to at least 24 months is essential for business. Moreover, there should be some space for bilateral agreements between governments, similarly to what is possible under EU social security coordination rules.





## **28. Respect the nature and purpose of the written statement directive**

We count on the Bulgarian Presidency to ensure that the proposed revision of the Written Statement Directive will respect the nature and purpose of this directive, which is to inform workers about their working conditions. The revision should focus on modernising the directive to make it simpler and adapt it, where needed, to make sure it delivers its intended benefits for companies and workers. However, introducing minimum rights for workers in different forms of employment, which do not respect the nature of this directive, is unacceptable for business. We also strongly object to the proposal to include a European definition of the notion of “worker” in the directive. This definition should remain of national competence to adapt to different realities and work organisation practices across Europe.