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Dear Minister,

RE: 5 June TTE Council Conclusions on Shaping Europe's Digital Future

BusinessEurope released its [digital response](#) to the COVID-19 crisis on 2 April. Europe's digital capacity has been and continues to be vital in enabling citizens to continue their private, professional and academic lives as best as possible during this challenging moment. We highlighted crucial areas to improve short-term cooperation with policy makers to better enable us to play our role to battle this crisis.

It is also important for Europe to keep an eye on its long-term strategic vision to plan for the next phase of digitising industry, this does not negate recent initiatives on [Shaping Europe's Digital Future](#), the [European Strategy for Data](#) or the [White Paper on Artificial Intelligence \(AI\)](#), in fact, its success depends on these initiatives and vice-versa.

Therefore, in advance of the TTE Council Conclusions of 5 June, BusinessEurope would like to highlight its long-term view on how to support Europe's Digital Capacity.

1. The Next Phase of Digitising Industry

Europe's [Digitalisation of Industry initiative](#) (2016) has supported Europe's bid to surmount its leading position in various business-to-business (B2B) sectors. Coordination of priorities across the Member States has been achieved through the high-level industrial roundtables this initiative set up. Horizon 2020 investment grew a network of Digital Innovation Hubs scaling up local competences. Successful public-private partnerships (PPPs) were launched to support research and development (R&D) in numerous critical areas.

However, some aims were not fully achieved:

- Europe's citizens continue to broadly lack the **digital skills** needed to succeed in a fully digitalised world. On average, 57% of EU citizens only have basic digital skills and this greatly diverges across Member States (eg. Denmark 70% and Bulgaria 29%). This is a concern as around 1 million technology expert vacancies remain unfilled which is delaying investment in Europe as a result. This also slows the uptake of digital services by citizens. The human capital we possess needs to be taken more seriously. National and local governments should invest in making the best possible use of new technologies in the learning process and deliver outcomes that respond to labour market needs. These actions should be coordinated with other policy areas



so that barriers for workers are removed to ensure greater fluidity of labour across the continent.

- **Investment** in Europe's digital transformation is also not sufficient. To attract the investment required to support Europe's digital capacity, public funding in critical technologies is key. The €9.2 billion Digital Europe Programme was a first of its kind in this regard and the €94.1 billion Horizon Europe Programme portrayed the most ambitious R&D funding instrument ever presented. Yet Multi-Annual Financial Framework (MFF) discussions are still ongoing and risk losing or delaying funds which would otherwise support digital transformation, AI, cybersecurity and digital skills. The current delay and revision of the MFF is an opportunity to realise how important Europe's research and digital capacity have played in battling the current COVID-19 health crisis (or any other) and how they can continue to aid its long-term economic recovery if funded properly.

Telecommunication networks and digital services have shown to be strategic pillars for the economy during this crisis. The importance of relying on resilient infrastructures imply the need to actively invest in them to keep them up to date. Regulatory interventions that disproportionately divert resources away from this will lead towards investment erosion and pressure on the entire digital value chain risking sustainability of the digital sector as a whole. As a result, another key element of the next phase of digitalising industry should be in:

- Creating opportunities for all through broad and **rapid deployment of 5G** should not stop with Europe's digital leaders or its largest cities. This powerful tool will enable increased data traffic at lower latencies. It will also increase the speed of data, allowing the connection of millions of devices and pave the way for industrial hardware to reap the full benefits of the next phase of digital transformation. Costs of broadband roll out should be reduced through simplifying and streamlining administrative permits. Network sharing and other co-investment models can also assist rapid 5G deployment. Member States should continue to implement the [5G toolbox](#), specifically enabling legislation related to risk assessments of suppliers and service providers. National security decisions should be taken autonomously and independently, by competent authorities. Each assessment should be: depoliticised, objectively based on criteria of the toolbox, allow vendor diversification, be proportional, have effectively clear processes to market participants and give predictable decisions. Member States should also launch large information campaigns based on scientific evidence about the potential of 5G and the benefits it will offer the economy and society to fight against the current flurry of disinformation and fake news that blames 5G for a range of illnesses including cancer and COVID-19. In addition, we recommend to speed up progress on a 5G security certification scheme, which will greatly improve trust and transparency for products and critical infrastructure.

Further to this, BusinessEurope calls for a coherent, tech-neutral, robust and innovation friendly legal framework to incentivise greater private investment in digital technologies. Regulatory sandboxes should be developed within Member States and introduced at EU level. Our digital standardisation framework¹ should be enhanced to ensure trust, safety

¹ in accordance with Regulation 1025/2012 and 765/2008



and sustainability in industrial value chains through utilising the NLF in support of the Commission work programme. A closer link between non-harmonised standards and research should also be established to facilitate the transfer of innovative solutions to market.

2. Leading the Data Economy

Europe should capitalise on the exponential growth (33 zettabytes in 2018 to 175 zettabytes in 2025) of the global data economy, particularly as other markets (US \$12.3 billion) continue to open their lead compared with the EU (\$3.2 billion).

The economic power of data can be demonstrated in its access and re-use. Simply holding large amounts of data alone doesn't necessarily derive societal benefits. It's worth is demonstrated when an innovative way of using it brings a practical benefit to market that is profitable enough to make its delivery economically viable in the long term. Concentrating the global data economy with a small number of players that choose to not share data on fair, reasonable and non-discriminatory terms, will lead to untapped opportunities that will not be realised by Europe. Member States should safeguard fair competition in the provision of digital services to ensure market entry barriers for new players do not exist and a level playing field is upheld.

The proposal for a framework to govern common European (B2B and B2G) data spaces in critical areas of the economy will be useful to enable a greater amount of voluntary data sharing which is often limited because of either technical (eg. interoperability or infrastructural issues) or legal (eg. lack of clarity on co-creation use or other sector specific constraints) constraints. This framework should support governance through high-level rules to enable transparent, open and structured stakeholder and decision-making processes. This could be complemented by fostering 'data porting' and 'interoperability'. We encourage Member States to support the envisaged €6 billion funding alongside the efforts of the Commission and industry in order to execute this pan-European solution. This should aim to make it technically easier and legally certain to voluntarily share data within and across the sectors identified.

In addition, further work is needed to encourage individuals and ensure that they can play an active role in the data economy. Allowing individuals to share their data more effectively would allow them to benefit from its re-use and unlock greater data-driven competition and innovation. We encourage Member States to support the Commission's exploration of enhancing individual's right to portability. This should make portability an effective tool for the modern data economy.

At the same time, businesses sometimes do not share data for economic or strategic reasons (eg. lack of incentive or fear of 3rd party misappropriation). This is the most important issue to solve for the data strategy to succeed. The common European data spaces should make monetisation schemes available, taking existing regulatory frameworks and intellectual property (IP) rights into account, to incentivise B2B and B2G data sharing. Data sharing for free without any return will not offer incentives for companies to make data sharing happen. Any initiative should therefore support voluntary data sharing through maintaining fair and balanced conditions for contractual negotiations, creating win-win scenarios for all involved. It should avoid the creation of data monopolies.



Therefore, consideration of sector-specific mandatory data sharing obligations should only be pursued if demonstrable market entry barriers or failures exist as a result of the failure to incentivise voluntary data sharing through the creation of common European data spaces and the governance framework that will oversee them (above). If necessary, proportionate legislative action should fully respect IP rights of all businesses involved.

3. Leveraging Artificial Intelligence (AI)

To support AI in Europe and avoid overregulation that would hamper its development and adoption, we support the initiative to create a European approach in the global AI race through the Commission's recent White Paper. Particularly as it recognises European investment in AI lags behind the US and Asia. Improving this will rely on creating conditions to permit businesses to: research, test, acquire a skilled workforce, exist in a vibrant data economy, have appropriate infrastructure to build upon and a legally beneficial framework to exist within.

AI in Europe can be supported through focussing efforts on specific challenges that it may present to avoid overregulation hampering development. Taking a risk-based approach to determine which AI applications are covered by any legislation is a pragmatic start to achieve trust and excellence while enabling early AI development to flourish. This correctly recognises that we are predominantly experiencing narrow applications of AI. But as more advanced forms of AI are likely to reach markets in the next 5 years our frameworks should be prepared to set requirements for potentially high societal risk applications. The cumulative approach in determining "high-risk" is beneficial in this regard, particularly focussing on the intended use of AI and whether a significant material risk is likely (we are concerned about the broadness of including "immaterial damage"). At the same time, the risk-based approach should support clarity and not create legal uncertainty or burdens for businesses, particularly SMEs. As a result, broad ranging and vague "exceptional circumstances" should be avoided, as they will negate a risk-based approach in practice. We will soon release further details on how "high-risk" AI should be defined. These applications should be carefully considered in order to define the responsibilities of the actors involved. Any requirements foreseen should be supported by market-relevant harmonised standards under the New Legislative Framework.

The intention to only set provisions for demonstrable legal gaps or update existing rules for new realities correctly recognises that Europe already has an extensive legislative framework that can be applied to AI. A potential gap to explore relates to players not currently defined under existing laws relating to liability that influence high risk AI either before or after it is placed on the market. These are businesses that cannot be defined as "producers" under the existing Product Liability Directive (PLD).

4. Upholding Accountable Digital Services

Europe's platform economy has flourished under the existing [eCommerce Directive](#) through benefitting the scale-up of business opportunities and creating greater choice for consumers. However, we recognise the context in which this was adopted has changed. We therefore support the Commission's intention to update this to ensure market fairness and solve the issue of illegal content online. Yet as content itself and what is illegal can vary greatly, we believe this should be tackled in separate initiatives. We should also recognise the impact of other frameworks in this area (eg. market surveillance, IP enforcement) even if their enforcement is fragmented. Upholding a level



playing field between the online and offline economy is crucial. Amending the eCommerce Directive should focus on continuing to lower single market barriers.

Updated requirements regarding notice and take-down procedures could be envisaged. Codifying liability for platforms that do not uphold their duties to take down illegal content once notified would be useful, depending on the size of the platform, their technical ability to do so, the type of services they offer and the potential impact on society for not acting. As would effective supervision, cooperation and a set of sanctions to ensure proper enforcement. At the same time, providers should be exempt from liability if they can demonstrate appropriate and timely actions were taken on the basis of a notice even if they have failed. It is important to ensure coordination of all EU initiatives in this respect. We remain sceptical about the broadness of the initiative to include “harmful” content that is not necessarily illegal as it would be impractical to codify and potentially go against European values.

Concluding Remarks

We realise Europe will soon enter a recovery phase from this crisis. Long-term public-private collaboration is critical as we aim to fully restart the economy. Digitalisation of the economy will be key for Europe’s recovery and our policy making should support this going forward. In this regard, we implore policy makers to continue to adapt to current realities and prolong extensions of all digital related initiatives and consultations. The last thing Europe needs is detrimental legislation due to poorly informed consultations. You can count on the full support of BusinessEurope and its members to aid Europe’s fight to overcome the COVID-19 crisis while maintaining and contributing towards a long-term vision for Europe’s Digital Policy.

Yours sincerely,

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