

## **COMPETITIVENESS COUNCIL**

### **Brussels, 20 February 2017**

The one-day Council meeting will deal with internal market and industry items.

The Council will be invited to agree on a general approach to **strengthen consumer protection** cooperation in the internal market. The purpose is to upgrade cooperation mechanisms between national administrations to prevent and reduce consumer damage caused by cross-border infringements to EU consumer law. In particular, efficient consumer protection has to respond to the challenges of the **digital economy** and the development of cross-border retail trade in the EU.

Ministers will exchange views on the regular **Competitiveness check-up**, which allows them to address key issues of the **real economy**. This time it will focus on **intangible investments in EU businesses**. Intangible assets such as skills, organisational know-how, managerial expertise, software and databases, design, brands and intellectual property, are a driver of productivity and **economic growth for companies**.

Ministers will also discuss actions to modernise **public procurement** in the context of the European Semester, with a view to enhancing the efficiency of procurement, improving the quality of spending and modernising the public administration to improve Europe's socio-economic climate.

The afternoon session will start with the presentation of the **start-up and scale-up initiative**, followed by an exchange of views. This Commission initiative seeks to create a favourable environment to allow start-ups to grow and do business across Europe. The outcome of discussions will act as a springboard for the informal ministerial meeting on competitiveness to be held in Valletta, Malta, on 5 and 6 April.

The Presidency will present a report of progress made on the ongoing work to reform the system of **type-approval and market surveillance for motor vehicles**.

Finally, the Council will be invited to take note of information on the following topics: the new proposal for a **European Defence Action Plan**, the state of play of the unified patent court and the **unitary patent protection** system; the recently released **package for services in the internal market** and competitiveness aspects in the field of **transport in the internal market**.

Moreover, the [Maltese Presidency](#) will inform the Council on the agreement reached with the European Parliament on rules to ensure cross-border **portability of online content** services in the internal market.

Without discussion, the Council is due to adopt conclusions on **patents and plant breeders' rights**.

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<sup>1</sup> This note has been drawn up under the responsibility of the press office.

The meeting will be chaired by **Christian Cardona**, Minister for the Economy, Investment and Small Business of Malta ([@ChrisCardonaMP](#)).

**Press conference:** Monday 20/2 at +/- 18.20

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*Video streaming of press conferences and public events:* <http://video.consilium.europa.eu>

*Video coverage in broadcast quality (MPEG4) and photo gallery:* [www.eucouncil.tv](http://www.eucouncil.tv)

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

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

The general objective of the proposal is to modernise the cooperation mechanisms to further reduce the consumer damage caused by cross-border infringements to Union consumer law.

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

Building on the work carried out by previous presidencies, the Maltese Presidency will submit a compromise text ([6190/17](#)) to the Council for confirmation of the agreement on a general approach.

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

The internal market and consumer protection committee of the European Parliament (IMCO) has announced a vote on its position on 21 March 2017.

With a view to further harmonising practices across the EU, the future regulation will set out a number of minimum investigation and enforcement powers that every national competent authority will have to be able to exercise in order to coordinate properly in the fight against infringements.

These powers will strike a balance between the interests protected by fundamental rights such as a high level of consumer protection, the freedom to conduct business and freedom of information.

The mutual assistance mechanism between administrations will be reinforced to establish whether an intra-EU infringement has occurred and to bring about the cessation of that infringement.

An improved alert mechanism will facilitate a competent authority to notify without delay the Commission and other competent authorities of any reasonable suspicion that an intra-Union infringement or widespread infringement is taking place on its territory that may affect consumers' interests in other member states.

Competent authorities will also be able to open investigations on their own initiative if they become aware of intra-Union infringements or widespread infringements by means other than individual consumer complaints.

### Background

On 25 May, the Commission presented the [proposal on the review of the consumer protection cooperation](#) as part of a broader package including proposals on cross-border parcel deliveries and on tackling unjustified geo-blocking.

Ineffective enforcement of cross-border infringements, in particular in the digital environment, enables traders to evade enforcement by relocating within the Union, giving rise to a distortion of competition for law-abiding traders operating either domestically or cross-border, and thus directly harming consumers and undermining consumer confidence in the single market.

An increased level of harmonisation setting effective and efficient enforcement cooperation among competent public enforcement authorities is therefore necessary to detect, investigate and order the cessation of intra-Union infringements and widespread infringements.

Currently, [regulation 2006/2004](#) provides for harmonised rules and procedures to facilitate cooperation between national authorities responsible for the enforcement of cross-border consumer protection laws.

The scope of the 2004 regulation covers 18 pieces of consumer legislation, including: provisions to protect consumers from unfair and misleading commercial communication; ensuring that consumers are adequately informed before making purchasing decisions; providing appropriate protection when entering contracts with businesses; as well as complaint and redress mechanisms and access to justice.

However, following a [review](#) on the effectiveness of that regulation, the Commission concluded that regulation 2006/2004 no longer effectively addresses the enforcement challenges of the digital single market.

The 2015 digital single market strategy identified the need to enhance consumer trust through more rapid, agile and consistent enforcement of consumer rules as one of its priorities.

During the last Competitiveness Council on 28 November 2016 ministers took note of a progress report ([14604/16](#)).

## **Public procurement**

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

The exchange of views is to take place on the basis of a Presidency paper and a set of questions inviting ministers to express views on:

- the main priorities to modernise public procurement within the European Semester
- the main actions that can be taken to improve the implementation of country-specific recommendations in order to enhance the socio-economic climate in Europe
- experiences and best practices on implemented actions leading to good results
- aspects to be better taken into account in the European Semester.

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

The Annual Growth Survey 2017 was launched on 16 November 2016 ([14357/16](#)). It marked the start of this year's European Semester process. It refers to public procurement as a prominent and key area for single market structural reforms and for enhanced competitiveness.

Public procurement is very important for the European economy (around 16 % of GDP is affected). A modern and effective public procurement policy is a powerful tool to achieve savings, enhance the efficiency of procurement, improve the quality of spending and modernise the public administration. This will contribute to improving Europe's socio-economic climate. In order to achieve these objectives, a number of priorities can be identified, which could be further developed in the European Semester process in the coming years.

## **Competitiveness 'check-up': investments on intangible assets**

Ministers will exchange views on intangible investments in EU businesses during the Competitiveness check-up part of the Council session.

They will have the opportunity to examine the contribution of intangible investments to the EU's economy and address the incentives and policy direction that can be taken to make this sector grow.

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

Data suggest that part of the productivity gap between the EU and the US could be explained by differences in investments in intangible capital, since they are closely linked to innovation and efficiency.

The data also indicate that intangible assets have proved to be resilient in times of recession, a feature which highlights their capacity as drivers of productivity and economic growth.

The 'competitiveness check-up' allows ministers to put forward priorities and respond to urgent issues and developments in the real economy.

It is a regular working method that was established in 2015 aimed at improving the role of the Competitiveness Council as regards the analysis of horizontal and sectoral economic issues as well as the monitoring of competitiveness mainstreaming.

In practice, it is based on a presentation by the Commission of the latest figures and trends related to micro-economic issues, with ministers being invited to respond and provide input on possible implications for EU companies and citizens.

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

Following a presentation by the Commission on the communication "Europe's next leaders: the Start-up and Scale-up Initiative" ([14261/16](#)), ministers will hold a debate on ways to help EU young enterprises growth and expand.

The Commission initiative, issued in November 2016, is aimed at removing barriers for start-ups and scale-ups in the single market, creating better opportunities for partnership, commercial opportunities and skills, and facilitating access to finance.

The Maltese Presidency will present a policy document ([5776/17](#)) and will invite ministers to express views on the following questions:

- 1. The Start-up and Scale-up Initiative sets out a range of concrete measures to connect and improve ecosystems with a view to fostering start-ups and scale-ups in the EU. Which of these measures need to be taken most urgently and how can governments be best involved in their implementation?*
- 2. Which national or regional incentives does your Member State have in place to support start-ups and scale-ups? Which of these incentives could in your view be "scaled up" to a European level?*
- 3. How can financial instruments be updated based on an exchange of best practices and experiences? How can national development banks play a more active role in the process?*

The Maltese Presidency is committed to push forward the actions contained in the Commission initiative to help start-ups deliver their full innovation and job creation potential.

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

On 29 February 2016, the Council adopted [conclusions](#) focusing on three key areas of the strategy which are particularly crucial for creating growth and jobs: support for SMEs, start-ups and innovative businesses, releasing the untapped potential in services and the efficient implementation, compliance and enforcement of single market rules.

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

The Maltese Presidency will report, in public deliberation, on the state of play of the ongoing examination of a [draft regulation to improve the current type-approval \(5865/17\)](#) system of motor vehicles

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

## **ANY OTHER BUSINESS**

### **Unitary patent protection system**

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

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

The unified patent package is built on three pillars:

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

The two regulations were adopted under the enhanced cooperation procedure, with Italy and Spain not participating initially. In September 2015, Italy confirmed its participation in the system. Nor is Croatia, which was not an EU member state at the time, participating yet.

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

Ratification details of the UPC can be found in the database:

<http://www.consilium.europa.eu/en/documents-publications/agreements-conventions/agreement/?aid=2013001>

To take effect, the package requires ratification of the UPC agreement by 13 member states including France, Germany and the United Kingdom.

### **European Defence Action Plan**

The Council will take note of a Commission presentation of the European defence action plan, released on 30 November 2016 ([15160/16](#)).

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

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

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

## Services package

The Council will take note of a Commission presentation of the "[Services Package](#)", released on 10 January 2017.

The package contains the following legislative proposals:

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

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

The examination of the proposals has already begun in the Council preparatory bodies.

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

## Portability of online content services

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

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

## Competitiveness of the transport sector

The Council will take note of information regarding competitiveness aspects in the field of transport in the internal market.

## Patentability of plants

Without debate, the Council is due to adopt conclusions to address recent developments in the field of patents and plant breeders' rights.

Among other things, the conclusions will refer to the Commission's [explanatory notice](#) clarifying certain articles of [directive 98/44](#) on the protection of biotechnical inventions.

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

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

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

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

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

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