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## For a “competitiveness check” in the European decision-making process

### Concept and methodology note

#### I. Vision

2024 will be synonymous with **political renewal within two key institutions: the European Parliament**, with the European elections in June 2024, and the **European Commission**, with the election of a new College by the end of 2024. There will also be a new President of the European Council.

France Industrie hopes that this political renewal will lead to a **renewal of the European industrial approach**: industry must finally assert itself as **one of the cardinal points of the European political compass**. **Accelerating the ecological transition and reindustrialisation must not be mutually exclusive**. The Council repeats this several times in its conclusions: the transition to a carbon-neutral economy must go hand in hand with the strengthening of European industry, as this is the solution for rapidly achieving the objective of climate neutrality. In these troubled times, **strengthening Europe's industrial base is one of the only guarantees of prosperity, growth and sovereignty for our society**, particularly in the face of growing demands for economic and energy security.

The **economic threats to our industry are accelerating**: energy costs, inflation, rising charges, a shortage of skilled labour, increased supply risks, not to mention a less ambitious economic outlook in terms of growth and investment flows, as well as unfair competition from third countries... There is still time to act, but we can't afford to lose any time.

To remain a major player in the global economy, Europe needs to find competitive solutions to **support the decarbonisation of its industry**, in particular by reducing the burden of standards that weigh on businesses and hamper their competitiveness. This requires a **framework that is clear, simple, easy to apply** and provides an incentive to encourage investment by rapidly reducing production costs. In view of its ambitions, Europe must ensure that it relies fully on nuclear technology, which contributes to the competitive decarbonisation of its economy and ensures its energy sovereignty.

Faced with European industry's loss of competitiveness, choices have to be made. This term of office will have marked a turning point: the large number of initiatives launched since 2019 are now placing a heavy burden on businesses, unparalleled anywhere else in the world. While most of these regulations have **legitimate objectives** in line with the energy, ecological and technological transitions we are facing, it is the **way in which they are implemented that is causing most concern for businesses**. This has led to huge gaps in investment, which must be filled in the coming European mandate. **The European decision-making process needs to change its software, and draw inspiration from what works: providing incentives, trusting industry and the economy, and abandoning what no longer works, or works less well** (a certain idea of *soft law* by regulating to impose European standards at global level). The IRA shows the way to an effective policy.

By systematically taking these imperatives into account, "**competitiveness control**" will ensure that competitiveness-related factors are properly integrated into the decision-making process.

## II. Explanatory memorandum

Industry has long been calling for **competitiveness to be given greater consideration** in the European decision-making process. The European Union continues to **produce standards and compromises that are not very effective for industrial competitiveness**. The legislative and standard-setting proposals of recent years, while responding to legitimate challenges and expectations, have often been produced without any real assessment of the resilience of European production and economic activity. Worse still, they can sometimes exacerbate the problems associated with high production costs in the EU and the lack of profitability of investments in the medium or long term. They discourage, complicate and prolong decisions.

As in the United States, the legislator's objective must be to provide **incentives**. The European Union must include competitiveness as a central element in its decision-making in order to reconcile it with other priorities such as the Green Pact, the digitalisation of the economy or Europe's internal and external security. In this way, European objectives and policies would stop contradicting or, worse still, neutralising each other. To achieve this, it is essential to be able to **draw up a complete overview of the impact of European legislative proposals and projects on competitiveness before decisions are taken**.

**Competitiveness proofing** is an integral part of impact assessments for all new legislative initiatives. Despite being clearly developed in the Better Regulation initiative, this competitiveness proofing is, on the one hand, **poorly implemented** (it is not systematically started, and is sometimes even forgotten) and, on the other hand, **incomplete**. It is limited to the initial stage of new legislative initiatives and is not deployed at the level of comitology (implementing acts), the drafting of delegated acts and amendments by the European Parliament and the Council. Furthermore, it only looks at the impact of the planned measure, without taking into account the stock of existing legislation, which has a cumulative impact on the competitiveness of businesses. **We therefore need to improve competitiveness proofing, and even go further**, as called for by **President von der Leyen (2022)**, Commissioner Thierry Breton and the **Regulatory Scrutiny Board** (several annual reports). Industry is therefore **no longer alone in calling for radical changes to the system**.

In its **communication on long-term competitiveness** (March 2023), the European Commission announced that ***“the new competitiveness check ensures that the impact assessments of legislative proposals present in an integrated manner the expected impacts of each proposal on cost and price competitiveness, international competitiveness, and the capacity to innovate, and also on SME’s competitiveness”<sup>1</sup>***.

In a February 2023 discussion note for the Council (WP COMP), the Council presidency trio refers to the following finding that ***“the Commission’s Regulatory Scrutiny Board highlighted in their annual reports from both 2020 and 2021, that sufficient analysis and data on competitiveness is sometimes lacking in impact assessments, because costs and benefits of the initiative were inappropriately or only insufficiently assessed or evidence-based. Therefore, a stronger “Competitiveness Check” is needed. This issue has already been raised in the context of the Fit-for-55 discussions and was also included in the report from The Conference on the Future of Europe. To ensure that competitiveness is protected more clearly and systematically, a competitiveness check needs to reach beyond what exists today”<sup>2</sup>***.

As the Council states, we need to go beyond what already exists, and therefore **not limit ourselves to reforming impact assessments at the margins**. On the basis of current methods and ongoing debates, it is therefore vital to broaden the competitiveness test to make it a fully-fledged and systematic tool **for both strengthening industrial competitiveness and measuring the social acceptance of new standards**.

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<sup>1</sup> COM(2023) 168 final, March 2023.

<sup>2</sup> Reference: 5541/23.

### III. Mechanism: food for thought

There seems to be a consensus<sup>3</sup> in favour of building a **two-tier** competitiveness control system. On the one hand, the technical approach would have to be radically improved (in particular impact assessments), but a new political decision-making level would also have to be created:

- **The political level:** making competitiveness a priority and an objective criterion for political decision-making, particularly for new initiatives.
- **The technical level:** strengthening the impact study of the core legislation, but also extending it to include variations of this legislation, different scenarios, etc.

Competitiveness monitoring should, by definition, apply to **all new initiatives**. The EESC rightly proposes that the new competitiveness check should also cover secondary legislation, tax measures, strategies and programmes, as well as international agreements.

As a first step, a competitiveness check should also be carried out on **existing legislation and standards**. In addition, this check should cover **all the decisions and scenarios envisaged, as well as the conclusions of dialogues or secondary legislation**. Finally, it should include **all the burdens** that would be placed on businesses (particularly compliance).

#### a. **The political level**

- Create an **executive vice-presidency of the European Commission in charge of industry and economic competitiveness**<sup>4</sup> which, assisted by the General Secretariat, has the mandate and independence to verify the correct application of competitiveness control, and which can request revisions of texts from the administration, report to the College on a monthly basis, propose the approval/rejection of a draft text and interact with the Member States.
- **Provide the Competitiveness Council with the prerogatives to assess the extent to which the criterion of industrial competitiveness is taken into account** in the Commission's impact studies, and make legal and political recommendations to other Council configurations examining texts with a high industrial impact.
- Draw on the **independent high-level report on the future of the single market** requested by the Council (June 2023) for March 2024, and future updates. Establish a scoreboard **to monitor the Versailles Declaration agenda** (strategic dependencies).
- The link between the political and technical levels must be particularly closely monitored. However, the political level must complement the administrative level, and make it possible, for example, to pursue clear political objectives, such as ensuring that **any new legislation creates or fills investment gaps**.

#### b. **Technical level**

- **Governance:**
  - a. Within the **European Commission**, the **General Secretariat** would centralise coordination, supported by reference units in each of the DGs.
  - b. The **Council's Competitiveness WP** (PR industry advisers) would support and monitor this work. The European Commission would give a quarterly progress report to the European Parliament (ITRE, IMCO, ENVI committees, conferences of group chairmen, etc.), as part of the structured dialogue. Finally, an **advisory group of industry experts** would be set up.
  - c. As a first step, and on the basis of feedback from the advisory group of industry experts and the Council in particular, carry out a **comprehensive assessment of the 10 to 20 main pieces of legislation that are problematic in terms of application and impact**<sup>5</sup>.

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<sup>3</sup> European Economic and Social Committee, "A Competitiveness Audit to build a stronger and more resilient EU economy", December 2022 Opinion.

<sup>4</sup> - Belgium, Finland, the Netherlands, Portugal and Slovakia put forward a similar proposal in a joint non-paper on the EU's open strategic autonomy in July 2023.

<sup>5</sup> For example, REACH: what knock-on effects have they or have they not had on regulations in comparable countries? When products or production methods have been banned in the EU, have other products or production methods replaced them, or has the corresponding production moved outside the EU? ....

- At the same time, **develop a methodology and** a template based on:
  - a. **Rating and advice procedures as well as simple solutions with several degrees of implementation:** include the "one in, one out" of legislation so that they become a tangible reality; reduce the number of reporting standards; extend certain timetables; postpone implementation. Inspiration could be found in the activities **of competition authorities**, particularly in Europe, **when they analyse the effects, including prospective effects, on the market of a merger.**
  - b. **A definition of competitiveness based on:**
    - i. A **concrete comparison with existing legislation in comparable countries** (USA, Canada, Japan, South Korea, United Kingdom, Australia). This comparison should focus not only on the letter of the law but also, as far as possible, on what we know about its actual application, which is sometimes patchy.
    - ii. **Clear criteria:** profitability, attractiveness, investment gaps, existence/absence of a legal vacuum<sup>6</sup>, external competition, etc.
    - iii. **Objective data:** production costs and factors, supply and demand, positioning in the value chain, strategic value of certain products, availability of labour, imports/exports, ....
    - iv. A **long-term perspective**, in particular using the 17 key performance indicators (KPIs) linked to the 10 competitiveness drivers set out in the **communication on long-term competitiveness** (March 2023).
  - c. **Taking into account the stock of existing legislation**, in addition to the impact analysis of the proposed legislation under consideration, in order to have a cumulative view of the competitiveness issue. To do this, we need to develop a methodology for assessing the overall cost of legislation and comparing it with the company's financial parameters (added value/EBITDA).

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<sup>6</sup> All too often, the existence of such a vacuum is used as an excuse, even though there are legal resources available, albeit non-specific, but under common law. Adding a special rule to existing law creates complexity and a compliance cost that can be considered unnecessary;