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NOTE

From:	Trio Presidency
To:	Working Party on Competitiveness and Growth (High Level)
Subject:	Discussion paper: Competitiveness Check

Delegations will find in Annex a Trio Presidency discussion paper on Competitiveness Check, in view of the meeting of the Working Party on Competitiveness and Growth (High Level) on 16 February 2023.

ANNEX

We have seen a surge of legislative work under the COMPET Council for several years now. Unprecedented challenges, both external and internal, have demanded that the EU acts on a number of different topics. Despite the challenges, the EU has delivered results through decisive actions and necessary measures based on solidarity and common values codified 30 years ago. There is broad consensus that Europe needs to be more competitive. Consequently, the EU and its Member States have risen to meet this challenge. A flurry of legal proposals has already been adopted, others are currently being negotiated, and still more are in the pipeline. Many of these legislative acts may affect our long-term competitiveness.

While there has been a strong support among Member States that the EU needs to step up to face these challenges, a recurring topic in both the Competitiveness Council and the High-Level Group on Competitiveness and Growth has been a concern about how we can make sure that we are doing the right thing, and in the right way. When many legislative proposals are being discussed, some of which are large in both scale and scope, it can be difficult to get an overview and strategic considerations risk getting lost. Is the legislation well designed? Will it achieve its objectives? How does it relate to existing legislative acts and how does it affect our efforts for the twin transition and sustainable growth? In short: how can we make sure that we introduce rules and regulations that support our competitiveness in the long term?

The current Better Regulation Guidelines and Toolbox already require that initiatives which are expected to have significant economic, social or environmental impacts are accompanied by impact assessments. These impact assessments must include impacts on competitiveness, including a special focus on SMEs. The Better Regulation Toolbox includes specific guidance on how to assess the impacts on sectoral competitiveness, SMEs, internal market, competition, trade, innovation etc.

However, 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.

The calls for a stronger focus on competitiveness have not gone unheard. Commission President von der Leyen referred to this in a speech in October 2022. Commissioner Breton has also mentioned this on several occasions, e.g., at the Competitiveness Council in December 2022 and the Conference on the 30th Anniversary of the Establishment of the Single Market in Prague, also in December 2022. It is therefore our understanding that the Commission is working on such a tool.

That leads to the all-important question: how should a Competitiveness Check be implemented? As always, it needs to strike a balance between functionality and effectiveness on the one hand, without becoming too cumbersome and complex on the other.

The CZ Presidency requested an opinion from the European Economic and Social Committee (EESC) on this subject. The EESC produced an opinion titled: "Competitiveness Check: A Competitiveness check to build a stronger and more resilient EU economy". This paper outlines many of the issues that need to be considered when introducing an instrument like this. Some of them (this is not necessarily an exhaustive list) are highlighted below:

The design of the Competitiveness Check. The EESC suggests an instrument that operates on two levels:

– Impact assessment level (technical level), which is about assessing various ways in which policy and regulatory initiatives affect competitiveness.

– Decision-making level (political level), which is about paying due attention to competitiveness when shaping new initiatives.

A fundamental key to make a Competitiveness Check an effective tool is adequate knowledge, and access to relevant data and resources. This requires close cooperation between the Commission and Member States.

The scope of the Competitiveness Check. It should naturally cover legislative initiatives with significant impacts, but where to draw the line? The EESC suggests that it should also cover secondary legislation, fiscal measures, strategies and programmes, and international agreements.

The application of the Competitiveness Check. The EESC argues for a mandatory instrument that is fully used at each stage of the decision-making process (including negotiations with the European Parliament).

It is easy to agree with the general objectives behind the suggestions from the EESC, which however raise questions pertaining to how these ambitions can realistically be achieved in practice without creating a process that becomes unwieldy in itself.

What should the Competitiveness Check measure? It would be natural to focus on impact on business, employment, productivity, compliance costs, multiplier effects along the value chain etc. An important factor is, to the extent relevant and possible, to look at the cumulative impacts, the costs and limitations introduced by proposed legislation and its benefits, but also elements regarding how proposed rules create or reduce incentives for enterprises and individuals to engage in economic activities. It is also necessary to assess the risk of fragmentation in the Single Market. Both short-term and longer-term positive and negative impacts should be included. A better use of the subsidiarity and proportionality grid in the negotiation phase could also be relevant.

Do we need specific tools for SMEs? If the Competitiveness Check is going to achieve its objectives, it is imperative that it can correctly measure the impacts on a wide diversity of EU businesses, which may be affected in different ways. We know from experience that it is particularly challenging to do this with SMEs.

Where does the Competitiveness Check fit in the EU toolbox? The EESC encourages the Commission to prepare a specific competitiveness agenda. The Competitiveness Check would then be an integral part of such an agenda. The advantage of such an approach is of course that it would create a framework where issues regarding the Single Market, Industrial Policy in the wider definition, and international aspects are collected under the same umbrella. However, it will be important to ensure that a Competitiveness Check is not confined to a specific agenda or strategy, but is integrated in the entire institutional process, including in the negotiations within and between the institutions. If the Competitiveness Check is to achieve its fundamental objective to safeguard EU competitiveness, it needs to have a place in the broader EU context.

We suggest that HLG members consider the following four questions about the Competitiveness Check, while the main focus should be on the first question:

1. *What do you consider to be the main objectives of a Competitiveness Check?*

2. *Where do you see a Competitiveness Check fit in the EU legislative process, beyond the Commission's proposal, and how to make it complementary with the Better Regulation Guidelines and Toolbox?*

3. *How can we make sure that a Competitiveness Check can take into account the impact on a wide diversity of businesses, SMEs in particular?*

4. *What is the role of different actors in a Competitiveness Check, including the Competitiveness Council and stakeholders themselves?*