



# Recommendations to the Austrian Presidency of the Council of the European Union

July - December 2018



# AmCham EU speaks for

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American companies **committed to Europe** on trade, investment and competitiveness issues. It aims to ensure a **growth-orientated business** and **investment climate** in Europe. AmCham EU facilitates the **resolution of transatlantic issues** that impact business and plays a role in creating **better understanding** of EU and US positions on business matters. Aggregate US investment in Europe totalled more than **€2 trillion in 2017**, directly supports more than **4.7 million jobs** in Europe, and **generates billions of euros** annually in income, trade and research and development.

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# Message to the Austrian Presidency of the Council of the European Union



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The American Chamber of Commerce to the European Union (AmCham EU) is a staunch supporter of the work of the Council of the European Union. We believe the rotating presidency is a valuable opportunity for policy to be steered by willing EU countries, able to showcase the unity and diversity of its 28 Member States.

This third Austrian Presidency comes at a crucial moment, as Europe is facing a number of challenges that will frame the second half of the year: the multi-annual financial framework post-2020, the negotiation on the future EU-UK relationship, and the implementation of the European Security and Migration Agenda. Moreover, when Austria takes over the Presidency from Bulgaria on 1 July, it will mark the last full working period before the next European elections.

Political leadership will be critical to steer the EU through the rest of 2018. We will need a robust and consensus-building Presidency to restore confidence in the EU's ability to deliver for its citizens and play a key role on the world stage.

One of the key priorities of the Austrian Presidency will be to promote Europe's competitiveness. US companies, committed to and invested in Europe, share this vision and are confident that the Presidency will embrace this opportunity to ensure that legislation creates opportunities for business to continue to grow and create jobs.

At the same time, in an uncertain international environment, the case for strong transatlantic cooperation has never been as compelling. The EU and the US are the drivers of global growth. Our economic partnership is vibrant: it represents the largest and wealthiest market in the world. Aggregate US investment in Europe totalled more than €2 trillion in 2017, directly supports more than 4.7 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

We are looking forward to working closely with Austria during and after the Presidency to make certain we achieve our common objectives of a stronger and more competitive Europe. A Europe that creates jobs, meets consumers' needs and generates wealth for its citizens. This is why I am delighted to present these recommendations to the Austrian government on behalf of AmCham EU and our 151 member companies. We hope they will provide concrete input and direction to the Presidency's work programme. We believe that many of the issues raised by AmCham EU in this report are vital to creating sustainable economic growth.

AmCham EU has already met with a wide range of leading Austrian officials in April 2018 in Vienna and will continue to engage with them in the coming months. In our initial discussions, it was clear that we share a number of policy objectives. We are confident that Austria will make progress and close key legislative files during its Presidency.

AmCham EU and our member companies stand ready to collaborate with the Austrian government and wish the Presidency every success.

# Agenda for Action 2014-2019

The Agenda for Action offers ideas to enhance the competitiveness of Europe in the global economy.

AmCham EU calls for action in  
**five key action areas:**



- 1 Build skills for the future**
- 2 Drive integration to create an attractive internal market**
- 3 Embrace revolutionary change for industrial leadership**
- 4 Develop new models of innovation and entrepreneurship**
- 5 Lead by example towards global integration**

## Scorecard

AmCham EU uses these five key action areas to measure Europe's performance over time.

To learn more about AmCham EU's Agenda for Action Scorecard 2017, visit [amchameu.eu/A4A17](http://amchameu.eu/A4A17)

## Overall policy recommendations

- Uncertainty in Europe created by recent political events and by rising populism is a cause for real concern. EU leaders must act decisively to **bolster unity in Europe**, including by establishing a roadmap for more effective integration and placing greater emphasis on the **values and principles of the Single Market**.
- **Attracting the right talent and skills** remains a significant issue for businesses. This issue is likely to be compounded as the need for skills grows with increased digitalisation. The EU must place further emphasis on support for education and skills development, including early education, STEM skills, lifelong learning, and the portability of qualifications and professional standards.
- **Innovation** could be encouraged by a move towards greater technological neutrality, for example in public procurement. This would encourage competition and enhance efficiency.
- **Improving opportunities for entrepreneurship** and further encouraging innovation must be a priority. Currently, the outlook is mixed with new business ownership rates dropping in the past year. EU policy-makers should emphasise support for start-ups scaling up and in the event of bankruptcy. Greater access to finance for small businesses is also key.
- Europe retains a strong competitive advantage relative to much of the rest of the world. Nevertheless, concerns about insufficient **agility and flexibility in the economy** remain. Relaxing inflexible labour laws could be particularly helpful in addressing this issue.
- Europe's **commitment to free trade and open markets** is being openly challenged at home and abroad. A strong reaffirmation of the values and principles that underpin EU trade policy by EU leaders is critical to ensure the EU remains open for business to the rest of the world.

# Policy recommendations by Council configuration

## Agriculture and Fisheries

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### ISSUE

**Revision of the legal framework for veterinary medicinal products**

**Risk assessment, management and communication in the agro-food sector**

**Reform of the Common Agricultural Policy (CAP)**

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### RECOMMENDATIONS

The veterinary medicines legislation should be based on a sound benefit-risk assessment, not hazard-based approaches. It should modernise approaches to pharmacovigilance. Unnecessary, disproportionate and innovation-hampering regulation should be reduced to encourage and enable new developments and improve the functioning of the internal market. Investment in research is paramount to ensure that innovative treatments, new technologies and care options become available.

A proper balance between assessment, management and communication of risk is crucial for the integrity of the food chain. Risk management decisions should be communicated in a clear and transparent way to foster 'technology acceptance' by EU citizens. At the same time, the scientific and technical basis of risk management decisions needs to be demonstrated.

To meet growing global demand, the EU should prioritise five principles in the reform of the CAP:

1. Empower farmers and consumers through market-driven policies
2. Protect the Single Market and retain commonality of CAP
3. Promote sustainability and productivity
4. Support research and innovation
5. Promote a global level playing field



# Competitiveness

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## ISSUE

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## RECOMMENDATIONS

### Single Market

The EU Single Market is the basis of the economic success of Europe and a key determinate of US investment in Europe. Completing the Single Market could help boost EU GDP by around four percent over the next ten years. It would increase productivity, investment and trade and job creation, helping to ensure Europe maintains its position as a global economic leader.

Pressure on the Single Market has increased, particularly after the vote by the UK to leave the EU, policy challenges such as migration and an increasingly nationalised and fragmented EU decision-making process.

The will of EU policy-makers to complete the Single Market is clear - as demonstrated by the Commission's Single Market Strategy. However, urgent action at Member State level is required. Strong Member State coordination and leadership, in partnership with the EU and stakeholders, including the business community, is necessary for Europe to face head-on its challenges and be more effective.

### Industrial policy

Europe faces increased global competition for investment. To tackle the downward trend in investment in manufacturing, Member States should focus on implementing structural reforms. We need the right conditions to ensure solid infrastructure, great skills and talent, innovation, and labour flexibility at an affordable cost. The European Semester reports and recommendations should be fully leveraged at Member State level.

### Centralised customs clearance and one-stop shop

Importers should be able to handle all customs formalities through a single customs office in any EU Member State, rather than the current requirement to separately clear goods in all 28 countries.

Regulatory controls (eg veterinary, phytosanitary, agricultural) should also be managed through a single IT interface used and recognised by all Member States. This will eliminate red tape, saving time and money, as goods will be stopped only once for checks.

### Customs infringements and sanctions

Penalties for infringements should only be applied in cases of proven gross negligence or intentional fraud. These penalties should be levied on the basis of unpaid or underpaid duties, not on the value of the goods.

Both customs officials and companies need easily applicable and understandable rules, which support and expedite trade rather than hamper it. They should serve as a tool, not an obstacle, particularly for SMEs, which are the growth engines of the European economy.

# Competitiveness (cont.)

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## ISSUE

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## RECOMMENDATIONS

### Defence industrial and procurement issues

European defence markets should be opened to allow the global defence industry to participate and support efforts fostering increased transatlantic defence industrial cooperation.

The focus of Directives 2009/81/EC on Security and Defence Procurement and 2009/43/EC on Intra-Community transfers of defence goods and services, should remain on efficiency and transparency in the European market and not on protectionist measures or the creation of additional barriers.

### Supplementary Protection Certificate (SPC) for medicinal products

AmCham EU is concerned by the European Commission's recent proposal to introduce a manufacturing exemption ('waiver') to SPCs.

The SPC is an essential intellectual property right in the innovative R&D based pharmaceutical industry, which brings direct benefits to patients and helps address public health challenges. Its fundamental role is to compensate innovators for the substantial patent term lost between patent filing and the long development process as well as regulatory approval in Europe.

Such a weakening of the EU's IP incentives framework could undercut pharmaceutical R&D investment by large and small innovators alike, and put European innovators at a disadvantage with those based in countries with more competitive IP systems. The proposed waiver will not only weaken the overall IP regime in Europe but also put investment and thousands of research-based jobs at risk.

We urge the Austrian Presidency to consider the impact of the proposal on international investment and medical innovation.

### Enforcement of Intellectual Property Rights (IPRs) and tackling illegal content online

Strengthening the existing framework of IPR protection is an efficient way to secure innovation and investment in the EU. The protection of IPRs will facilitate the creation of a safe and sustainable Digital Single Market. The Commission's approach for increased cooperation among stakeholders and its commitment to a better enforcement of IPRs within the Single Market is a step in the right direction.

### Unitary patent

A fully functioning unitary patent system would signal that intellectual property is a driver of innovation, competitiveness and growth for Europe in a global economy. We encourage Member States to ratify the agreement of the Unitary Patent Court (UPC) in order to move forward with implementation of the UPC and unitary patent system. We welcome the recent ratification by the UK.



# Economic and Financial Affairs

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## ISSUE

### Capital Markets Union (CMU)

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## RECOMMENDATIONS

While building a CMU, it is crucial to take transatlantic and global financial markets into account. The roles played by non-EU investors into the EU, investment opportunities for EU investors and companies outside the EU and non-EU financial market participants in Europe are also key. Moreover, in light of Brexit, the CMU should become an even greater priority for the EU.

We welcome the Sustainable Finance Action Plan and are pleased to see that the Commission has made this a priority. The next Presidency should ensure that these initiatives take an appropriately open and outward-looking approach consistent with that of the CMU, guaranteeing equal and non-discriminatory access for third country operators and investors.

### Risk reduction measures

AmCham EU supports rules which improve prudential requirements, recovery and resolution. Our overarching objectives are ensuring consistency with global standards and avoiding undue impediments to capital allocation. EU policy-makers should engage fully in the global rule-making process to ensure that the agreed standards meet their needs. Keeping the transatlantic and global financial markets in mind while implementing the next iteration of prudential and resolution tools will be key to their success.

The Presidency should reconsider Article 21b of the Capital Requirements Directive V (CRD V) as currently drafted. The proposed EU intermediate parent undertaking (IPU) structure would present many US banks operating in the EU with a potential legal conflict. These banks are subject to US structural requirements and limitations, severely restricting the market activities that can be conducted within the same corporate ownership chain. This also includes entities holding federally insured deposits.

### Third-country aspects of financial regulation

The CCP Supervision proposal ('European Markets Infrastructure Regulation 2.0') is one of the key aspects of a newly emerging EU approach on how financial firms access European markets from non-EU jurisdictions. This may have consequences for transatlantic relations.

We welcome ESMA's enhanced supervisory role and the enhanced model of joint supervision for tier 2 CCPs. However transatlantic relations and the EU-US markets may be strongly impacted if the EU approach involves negative recognition/forced relocation. To mitigate these risks, we believe the right way forward is to pursue the joint/enhanced supervision for CCPs that are considered material for the EU, without a possibility of forced relocation/negative recognition.

There is a close link with the third country aspects of the European Supervisory Authorities' (ESA) review. AmCham EU supports the centralisation of powers as long as it stimulates a model of 'supervisor/regulator of reference' which facilitates coordination of the transatlantic regulatory relation and brings clarity to the EU's diverse supervisory landscape. Policy-makers should use the drive towards supervisory convergence as a tool for the openness of the EU market and avoid it becoming a tool for fragmentation.

The perceived push against delegation/outsourcing and risk transfer arrangements to third countries is concerning. Restricting the ability to delegate portfolio management undermines the open nature of European funds frameworks and may hurt the attractiveness of the EU market, as well as its successful UCITS brand.

## Economic and Financial Affairs (cont.)

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### ISSUE

#### Taxation policy

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### RECOMMENDATIONS

#### International tax coordination

A unilateral EU approach to the direct taxation of multinational companies could create double-taxation problems and reaffirm concerns about protectionism if it is not coordinated with the ongoing multilateral tax discussion at the OECD level. The OECD is the best forum for a coordinated and coherent approach to the taxation of multinational companies. In addition, a consistent adoption of the OECD's Base Erosion and Profit Shifting (BEPS) recommendations across the EU is a key priority. Going beyond the recommendations would negatively impact the EU's attractiveness for investment from EU and third-country companies.

#### Digital Tax

The taxation of the digital economy needs to strike the right balance between taxing value where it is created and fostering growth.

A serious, structured conversation about how new business models should be taxed should take place in a multilateral context in order to ensure widespread agreement. The EU can bring valuable expertise, but there are concerns that the short-term measures proposed by the Commission may make it more difficult for that process to succeed.

There are significant issues with the current proposals (especially a turnover-based tax), as they will probably reduce, rather than promote, the economic boost that digitalisation can bring. Turnover taxes substantially reduce the amount of company profits available for investment and reinvestment and could have a negative effect on jobs and growth in the EU.

## Employment, Social Policy, Health and Consumer Affairs

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### ISSUE

#### REFIT of consumer law

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### RECOMMENDATIONS

The Commission's efforts to improve enforcement of consumer protection rules are essential to protect consumers and ensure fair competition between traders in the Single Market. However, the proposal to introduce harmonised maximum penalties would fail to remedy the core of the issue, which is a lack of awareness of consumer rights and insufficient coordination between Member States.

#### Digital content

The proposal on digital content is a positive development. However, work is needed to ensure that the proposed rules effectively deliver the promised benefits to consumers and traders. Monetisation of data could impede, rather than boost, the data economy in Europe. There are concerns also on the disproportionate level of harmonisation. The relationship with other relevant existing rules should be further assessed.

# Employment, Social Policy, Health and Consumer Affairs (cont.)

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## ISSUE

### Sale of goods

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## RECOMMENDATIONS

The initiative to improve the quality and coherence of European contract law is a step in the right direction, particularly in light of the scope extension to offline sales of goods. Nonetheless, the proposed directive remains uneven and the Presidency should seek to strike a better balance between consumers and traders.

The Presidency should ensure that traders are protected from abuses, for example through the introduction and/or maintenance of notification obligations, and the harmonisation of the period of the reversal of burden of proof to six months. It should also guarantee that the proposed directive remains consistent with other policy priorities, including the Circular Economy and other elements of the consumer acquis, particularly the CRD and DCD.

### Improving access to health: building safe, efficient and sustainable healthcare systems

AmCham EU supports the Austrian Presidency's aim to increase efficiencies and improve access to healthcare in Europe.

In order to build safe, accessible and effective health systems and increase Europe's competitiveness, AmCham EU recommends:

- Taking a holistic approach to healthcare policy that accounts for the mix of services and products needed for treatment, as part of an integrated life sciences strategy. Strategies that look at the life cycle of health spending over a longer term period have the potential to create budget headroom for innovation and to improve access.
- Safeguarding innovation by implementing dynamic efficiency policies that balance short-term concerns (eg cost containment) with long-term concerns (eg R&D investment). Policies such as the External Reference Pricing are preventing the consolidation of equity-based pricing between markets in Europe and causing inadequate management of drug shortages. Using cost containment as a guiding principle without considering the health impacts exacerbates this problem.
- Strengthening the intellectual property incentive framework to boost innovative R&D.
- Avoiding to seek economies at any cost, eg through the promotion of economy-driven off-label use of medicines which can compromise patient safety.
- Supporting innovative partnerships between the public and private sectors.
- Taking a consumer approach to empower citizens to be innovators in their own health (including through eHealth solutions).

### Carcinogens and Mutagens Directive (CMD) review

When assessing the CMD revision and introducing new Binding Occupational Exposure Limits (BOELs) a careful assessment and consideration should be employed. Focus should be extended to scientific evidence, workplace information (protective equipment, exposure scenarios). Socio-economic impact assessments with the relevant stakeholders are also relevant in this case.

# Employment, Social Policy, Health and Consumer Affairs (cont.)

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## ISSUE

### Fighting Antimicrobial Resistance (AMR)

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## RECOMMENDATIONS

If AMR is not properly addressed, we risk facing a post-antibiotic era with limited treatment options for even the most common infections. AMR is responsible for about 25,000 deaths per year. We urgently need to find solutions to slow the rise of drug resistance globally. The EU can and should serve as a leader in the fight against AMR. Working together with business, policy-makers should put in place policies that incentivise research into new antibiotics, vaccines and diagnostics, as well as create a sustainable marketplace. This includes:

- Promote antibiotic stewardship to preserve the effectiveness of existing treatments.
- Expand and better coordinate surveillance tools and increase citizens' knowledge of the mechanisms of resistance.
- Advocate for a broader and more effective use of vaccines and new technologies such as medical devices and diagnostics.
- Develop and implement new economic models and incentives to promote antibiotic, vaccine and diagnostic R&D.

### Digitalisation of health

The Austrian Presidency's focus on the digitalisation of healthcare recognises the need to harness digital technologies to improve access and quality of treatment. Both eHealth and mHealth are key enablers of more sustainable healthcare systems in Europe. They are based on the exchange of electronic health information that will be highly personalised and focused on patient empowerment.

The steps undertaken as a result of the European Commission's April 2018 communication on the transformation of health and care in the DSM should lead to policies that engage citizens, healthcare providers and companies to enhance care outcomes, promote self-management, improve safety and lower health costs. In light of the transatlantic eHealth/health IT cooperation roadmap, efforts should be directed towards expanding the adoption of interoperable electronic health records and allowing citizens to access their medical information and related services online, including on mobile devices.

# Environment

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## ISSUE

### **Emissions Trading Scheme (ETS) reform proposal**

### **REFIT of the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation (REACH)**

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## RECOMMENDATIONS

As more focus turns to the implementation of the ETS, there is still room for improvement to support competitiveness and investment in Europe. Policy-makers should ensure a stable regulatory framework and prevent interventions which distort market mechanisms.

AmCham EU recommends:

- Adequate protection for exposed sectors against the risk of carbon leakage, through a fair split between free and auctioned allowances.
- Enhanced compensation of indirect costs for the industry.
- Consistency between funds and clarity on the eligibility of industry projects to funding.

Over the past few years, the implementation of REACH has improved and, to some extent, has become more predictable. The adoption of the Risk Management Option Analysis (RMOA) and of the Substances of Very High Concern Roadmaps are the most visible signs in this sense. Nonetheless, more could be done to guarantee REACH delivers on safety without jeopardising competitiveness and innovation in Europe.

Several aspects of REACH could be improved to ensure a more efficient system that is inclusive of all stakeholders and does not overburden industry.

1. Clarify the timelines for the different REACH processes.
2. Avoid unequal treatment by Member State competent authorities when it comes to substance evaluations.
3. Ensure ECHA does not gather 'data for data's sake'.
4. Prevent overlaps between the various REACH processes and sectoral policies.
5. Streamline authorisation and formalise the Risk Management Option Analysis (RMOA).

Competitiveness is about much more than compliance costs. Too often the impact of REACH on industry is minimised to costs only. A closer look should be taken at the impact of REACH on predictability and long-term investment in Europe, global competitiveness of Europe versus the rest of the world and innovation.

# Environment (cont.)

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## ISSUE

### Resource efficiency and the EU circular economy action plan

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## RECOMMENDATIONS

These five key principles should be the cornerstone of circular economy legislation as it moves forward:

1. More efforts need to be placed on consistent implementation across Member States and on developing the necessary infrastructure.
2. An effective single market for secondary raw materials is critical to provide sufficient scale for the development of new business models.
3. Factor in the international dimension: EU circular economy strategy should create global loops rather than close borders.
4. A proportionate sharing of costs and responsibility along the value chain and waste management chain is essential.
5. There is no one-size-fits-all solution; a sectoral approach will further promote the circular economy.

### Plastics strategy and EU legislation on single-use plastics

The plastics strategy identifies policy options to increase the re-use and recycling of plastics in Europe. Material and technology neutrality, as well as a sectoral approach that does not fragment the Single Market, will be paramount to its success. Product requirements vary from one sector to another and manufacturers should retain the ability to choose the best materials for their needs. To fully reflect the benefits that plastics bring to society, the Commission should consider all stages of a product's life, including the use phase and the proper disposal of plastic waste.

Product bans or restrictions do not address the root causes of littering, as the problem is mainly the result of a combination of improper waste management and incorrect disposal behaviour. Single-use products have brought significant contributions to quality of life and even resource efficiency. In most cases, single-use items are an answer to market needs for hygiene, consumer safety, product preservation and practicality. When properly disposed of, they can also be recovered at the end of their life. Their positive contribution should not be discounted. Alternatives need to be encouraged only if their environmental impact over the entire lifecycle of the product is lower.



# General Affairs and Foreign Affairs

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## ISSUE

### Brexit and EU-UK trade and investment relationship

The UK's impending withdrawal from the EU is raising important questions for US companies, who are heavily invested in both the EU and the UK. Business needs certainty about the path forward for the new EU-UK relationship. Significant disruption or changes to this relationship, or to the EU Single Market, could have profound effects on the ability of US companies to operate in these markets.

It is essential that the new relationship builds on the deep and comprehensive links that underpin EU-UK ties and limits disruption and uncertainty in the interim. Any agreement should preserve the integrity of the Single Market, the key driver for US investment. The American business community stands ready to provide constructive input to the EU and the UK throughout the process.

### EU bilateral trade relations

The Presidency should support the early conclusion of free trade agreements that are:

- WTO-compatible;
- ambitious in coverage;
- balanced;
- capable of strengthening and complementing the multilateral trading system;
- contributing to the development of trade and investment-friendly standards, rules and principles; and
- promoting better protection of intellectual property rights.

### Role of the World Trade Organization (WTO)

The current gridlock at the WTO is a cause for significant concern. A strong WTO acts as an important guarantor of legal rights in international trade and investment for business and society. Further market liberalisation and development of multilateral rules would boost global economic recovery for developing and developed countries alike.

The EU and its global partners should work to strengthen the principles of the multilateral trading system, through active participation at WTO-level. The EU should conclude multilateral and plurilateral agreements with global partners and promote the rule of law through a reinforced and fully-functioning dispute settlement mechanism.

### Export control of dual-use goods

As cyber threats constantly evolve, heavy-handed regulation stifles innovative responses. Labelling cyber surveillance technology as dual-use could undermine the ability of legitimate EU and foreign users to protect themselves, without effectively deterring malicious parties from accessing truly harmful technological capabilities.

Some of the proposed requirements could put a disproportionate burden on companies. A better balance of responsibilities should be struck between industry and national authorities, who are better equipped to gather intelligence on matters such as risks of human rights violations and terrorism.

As goods are traded at global level, export controls should also be regulated at global level through multilateral forums (eg Wassenaar Arrangement). Going beyond these agreements will undermine international EU competitiveness.

## General Affairs and Foreign Affairs (cont.)

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### ISSUE

#### **Enforcement of Intellectual Property Rights (IPRs) in third countries & EU Counterfeiting and Piracy Watch-List**

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### RECOMMENDATIONS

Enforcement of IPRs by the EU in third countries (China, Russia, Ukraine, etc.) and greater cooperation between the EU and the US in defining and implementing of IPR enforcement strategies need to continue. The Commission initiative to set up an IP watchlist for marketplaces outside the EU is a step in the right direction. The Council should contribute to the fight against counterfeiting and piracy (USTR Special 301 Report/Watch List) by promoting the activity of the European Observatory on Counterfeiting and Piracy.

#### **Common Security and Defence Policy (CSDP) and the European Defence Action Plan (EDAP)**

Systematic domestic preference for defence capability development in Europe, justified by the notions of 'buy European' and 'strategic autonomy' will not only harm economic growth and transatlantic defence cooperation but ultimately weaken collective security. The Commission's report on the implementation of two directives (Defence Procurement and Intra-Community Transfers) and its recent Defence Action Plan are opportunities to remedy this by:

1. Creating an open EU procurement and funding process. Encouraging US defence industry participation to reinforce enhanced transatlantic defence industrial cooperation (TADIC).
2. Considering the footprint and contributions to the European Defence Technological and Industrial Base (EDTIB) of third-country Allied entities when participating in EU funded projects.
3. Implementing the Directives on Defence Procurement and Intra-Community Transfers should focus on efficiency, transparency and avoid protectionist entry barriers.
4. Encouraging transatlantic cooperation through programmes that include US and EU partners to enhance interoperability and ensure operational superiority in the field.
5. Streamlining bureaucratic processes to create a competitive transatlantic marketplace and foster a more efficient logistical supply chain process for industry and Member States.

## Justice and Home Affairs

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### ISSUE

#### **General Data Protection Regulation (GDPR)**

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### RECOMMENDATIONS

As GDPR entered into force on May 25, it remains a key concern for AmCham EU that it is applied in a uniform and balanced way at national level. We look forward to working together with the European Data Protection Board to ensure that guidance issued on implementing GDPR supports harmonisation across the EU and does not create uncertainties.

## Justice and Home Affairs (cont.)

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### ISSUE

#### **Integrated border management**

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### RECOMMENDATIONS

The 2021 to 2028 MFF proposal foresees nearly €10 billion for an integrated border management fund. It aims to strengthen external border management, support Member States in securing EU's common external borders and finance new customs control equipment.

For integrated borders to become a reality, it is essential that a clear EU legal framework for sharing, retaining and storing data related to border protection is created. The certainty that this would provide, will help companies develop innovative technical solutions to meet security and data protection requirements.

#### **Representative actions for the protection of collective interests of consumers**

We support the Commission's efforts to facilitate access to justice and guarantee a high level of consumer protection. In some cases, it may be appropriate to achieve this through collective redress mechanisms. However, the proposal to introduce 'representative actions' does not include the full range of safeguards outlined in the Commission's 2013 recommendation to Member States. Without their full implementation, there is a serious risk that the EU will inadvertently introduce a US-style class action system, in which access to justice becomes a business, benefitting law firms and third-party funders rather than consumers.

#### **Cross-border access to electronic evidence**

Law enforcement authorities across Europe increasingly require digital evidence when conducting criminal investigations. This creates considerable legal issues for companies having to respond to government requests while ensuring a high-level of protection for European citizens' data. The EU legal framework should ensure consistent protection of technology users while providing clearer and efficient law enforcement procedures. This would benefit the Digital Single Market and also pave the way towards a better transatlantic approach. AmCham EU is currently developing detailed comments on the proposal presented by the Commission on 17 April 2018.

## Transport, Telecommunications and Energy

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### ISSUE

#### **Electricity market design**

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### RECOMMENDATIONS

The new EU electricity market design should focus on markets and not on regulation. Adequacy assessments should be made at a regional level (ideally European) and look beyond generational capacity, also considering auxiliary grid services and availability of short-term flexibility.

# Transport, Telecommunications and Energy (cont.)

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## ISSUE

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## RECOMMENDATIONS

### Electricity market design

(cont.)

A market-driven energy policy where all technologies can compete on a level playing field is needed. Therefore we call for:

- The end of support schemes for mature technologies.
- Including non-discriminatory grid network charges in the legislation to allow a large-scale deployment of storage technologies.
- Scarcity pricing, which should help identify market mismatches.
- If required, capacity mechanisms be temporary, regional, and focused on safeguarding the security of supply at minimal cost to the consumer.
- Rewarding flexibility.

### Renewable Energy Directive (RED)

The RED revision should not be seen in isolation from the 'Clean Energy for all Europeans' package'. It should respect principles of technology neutrality and cost-effectiveness and remain consistent with the objectives of the European Energy Union to secure both affordable and climate-friendly energy.

Competition and cost efficiency are paramount when promoting renewables. This requires phasing out subsidies and shifting to research and innovation for low carbon technologies and storage.

The directive should offer ways to mitigate risks for new projects. A good example is Power Purchase Agreements (PPAs) in the US. This business model has the potential to deliver the clean energy needed to meet Europe's decarbonisation objectives. So far, PPAs are not readily and easily available to businesses in Member States. The reference to PPAs in the RED 2 proposal should be linked to reporting requirements in the Governance Regulation, encouraging Member States to report on removing hurdles to PPAs. Ensuring greater transparency and harmonisation on the methods of issuing Guarantees of origin (GOs) throughout Europe, to prevent double counting, is recommended.

### CO<sub>2</sub> emissions standards for cars and vans

The transport sector is continuing its efforts to deliver emission reductions in line with the EU 2030 climate objectives. For policies in this area to meet their societal objectives, reduce emissions in transport and achieve the long-term climate change goals in a sustainable way while safeguarding EU industry competitiveness, all stakeholders should be included.

Policies should meet several key conditions:

- Recognise that the new revised test cycle, the Worldwide Harmonized Light Vehicles Test Cycle, is accompanied with regulatory challenges that will also add to the stringency.
- Set an ambition level that ensures technological and economic feasibility, cost-efficiency and technology neutrality to reduce road transport CO<sub>2</sub> emissions effectively.

# Transport, Telecommunications and Energy (cont.)

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## ISSUE

### CO<sub>2</sub> emissions standards for cars and vans (cont.)

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## RECOMMENDATIONS

- To maintain the technology neutrality of the regulation, refrain from setting mandates or imposing a penalty for not reaching the low-emission benchmark.
- Recognise the difference in CO<sub>2</sub> reduction potential between PCs and LCVs by creating separate feasible targets for each.
- Recognise the untapped potential of other measures that can contribute to the reduction of CO<sub>2</sub> emissions in transport, within an integrated approach.

### Infrastructure investment

The Commission's Investment Plan for Europe and the establishment and extension of the European Fund for Strategic Investments (EFSI) remains crucial. To keep Europe globally competitive, increased infrastructure funding is critical.

The proposal to create a new 'InvestEU' umbrella fund will simplify and optimise access to this funding. As discussions progress, policy-makers should ensure that European infrastructure funding remains focused on promoting technology neutrality, co-modality, and avoiding market distortion. Furthermore, funding at EU level should be supported and complemented by ambitious commitments by Member States.

### Digital Single Market

It is critical to build a Digital Single Market where connected machines and objects enable significant benefits for the economy and society. As we connect more and more objects, policy-makers need to evaluate all existing tools and new market realities before legislating. Technology neutrality should be the cornerstone of policy-making.

Privacy and security are crucial for all stakeholders and objectives should be implemented in a way that would not unnecessarily hamper innovation and growth. Furthermore, security and privacy policies will need to be optimised across borders to upscale technologies. Cross-border data flow is an essential condition for industries to grow across Europe and globally, be they small or large.

### Electronic Communications Code

As trilogues move into the final stages, never has it been more important to build a truly single market for electronic communication services. Fully harmonised and targeted rules for electronic communications providers are essential to adapt to the online world. The following issues are key:

- Communications providers should be able to rely on a one-stop shop and main establishment principles.
- Certainty is needed around how the Internet of Things is covered by the Electronic Communications Code.
- While some attempts have been made, the final text should consistently distinguish between business and consumer services.

# Transport, Telecommunications and Energy (cont.)

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## ISSUE

### E-Privacy

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## RECOMMENDATIONS

AmCham EU is strongly concerned by the impact of the e-Privacy proposal in its current form on data-driven innovation. Alignment with GDPR does not go far enough: the regulation focuses on regulating processing rather than interference.

More flexibility is needed on the permitted processing of communication content and metadata. A technology-neutral approach is crucial and legislators should consider the impact of the suggested restrictions beyond cookies and browsers.

### Data economy: free flow of non-personal data & 'emerging issues'

A swift adoption of the proposal will be beneficial. During trilogues, the following aspects will be critical for achieving an effective regulation:

- **A clear scope:** the regulation should cover regional and local levels, public procurement procedures as well as public authorities and public bodies. Furthermore, the Regulation should apply to mixed data sets, together with GDPR.
- **An effective notification procedure:** enforcement mechanisms are a key element of the Regulation.
- **A balanced approach to exceptions:** exceptions should be limited to public security reasons, such as defined by the jurisprudence of the Court of Justice of the European Union and Treaty provisions.
- **A market-driven approach to data portability:** portability is best ensured via industry-led initiatives.

### Cybersecurity

Since cyber threats are global in nature, maintaining and improving international cooperation with public and private partners will remain essential to keep Europe safe, secure and resilient.

We are pleased to see the EU standing up against cybersecurity being used as an excuse to raise trade barriers.

We agree with the Commission that the transposition and implementation of the NIS Directive should be as harmonious as possible. At the same time, in proposing implementing acts, the light touch approach agreed by the legislators should not be undermined.

On the EU Cybersecurity Act, going for both a voluntary and self-assessment approach to ICT certification is the most effective way to tackle the ever-growing cyber threat landscape. We hope that this approach will be preserved, and certifications will not be made indirectly mandatory at later stages. Furthermore, a strong public-private partnership is needed in the development of European certification schemes. The proposal, therefore, needs to clarify that industry should be consulted throughout the development of certification schemes. Finally, the proposal should reflect a risk-based approach. Not all applications and systems pose the same level of cybersecurity threats to the economy. Therefore, defining ex-ante assurance levels and technical security objectives makes the framework unnecessarily prescriptive.



# Transport, Telecommunications and Energy (cont.)

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## ISSUE

### Artificial Intelligence (AI)

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## RECOMMENDATIONS

AmCham EU welcomes the comprehensive approach presented by the Commission on 25 April 2018 to unleash the development and uptake of AI across Europe. Governments, companies and civil society should work together to ensure AI brings benefits to all citizens across Europe. Industry has a role to play in supporting the responsible development of AI. The Commission's proposal to bring stakeholders and expert groups together through the 'AI Alliance' will be key in assessing the technology's impact and supporting its expansion. To foster the right policy environment, existing and new regulatory initiatives should be carefully assessed to avoid unintended consequences hindering AI uptake.

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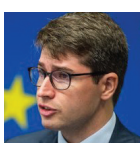
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*List accurate as of June 2018*

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