

Position Paper

Leadership through Recovery – Recommendations for the German Council Presidency of the European Union

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Preamble

The American Chamber of Commerce in Germany (AmCham Germany) is the voice of transatlantic business – an association of 2,300 large, mid-sized and small companies as well as private individuals that are located in Germany, Europe or the USA and invest, produce and provide services in the respective foreign market. AmCham Germany supports global trade relations, which rest on the strong foundation of German-American partnership. This partnership relies on joint historical ties, mutual interests and the growing social, political and economic interdependence of our societies. Furthermore, AmCham Germany engages in transparent dialogue and advocates clearly for strong transatlantic values. In addition to free trade, competitive and open markets, issues such as freedom, democracy and the rule of law are of central importance. Open societies are no less important for economic and social innovation, stability and prosperity than the free movement of goods, data, services and people. Companies operating in the transatlantic marketplace undertake challenging entrepreneurial endeavours and fulfil social duties by employing around 1.5 million employees in the two economic areas. The experiences and analyses of these companies show that the West must further develop its strengths in order to prosper against the backdrop of current political and economic challenges.

Introduction

Europe is experiencing its deepest crisis since the Second World War. The corona pandemic has created an existential challenge for people and companies throughout the world and continues to cause severe damage to many areas of our society. Throughout this situation, it is a priority for governments to protect lives, preserve jobs and secure the steady supply of vital goods and services. Thanks to its economic strength and its excellent public health system, Germany has succeeded in this challenge so far. The greatest challenge currently is to achieve full economic recovery while protecting the health of its citizens.

With these challenges in mind, Germany will take over the Council Presidency of the European Union (EU) on July 1, 2020. According to the EU's current spring 2020 forecast, Europe's economic strength has significantly declined as a result of the crisis. Compared to 2019, the unemployment rate in Europe is rising from 6.7% to 9%. In addition, the gross domestic product is estimated to decline by 7.4% within the EU and public debt (as a percentage of GDP) will greatly increase from 79.4% to 95.1%.¹ In order to overcome this unprecedented crisis, restore employment and innovation and secure the continued existence of the EU, strong leadership and resoluteness is needed. Among the member states of the European Union, Germany is well prepared to undertake this task. Hardly any European country benefits as much from the internal market and monetary union as Germany due to its export-oriented economy. Moreover, no other country is confronted with such high expectations.

The continued impacts of the pandemic can not yet be predicted to their full extent. There are many reasons to believe that trends existing prior to the crisis – rather than new developments – will be exacerbated during the post-crisis era. For many years, we have seen innovative industries and labor be relocated from Germany and the EU to the USA. For some time now, there has also been a growing trend towards relocating to Asia, primarily the Chinese region. This is reinforced by the current geopolitical situation. Europe must find a way to hold its own ground in a changing world order, one in which the USA and China are increasing adversaries. Unmistakable weaknesses in regards to financial and technological efficiency have an impact on European prosperity. Within European societies, populist discourse is gaining ground, as many governments are focusing on national priorities and closing borders. Finally, rejection of the western liberal social order is growing as are doubts regarding the United States' role as a reliable partner. Transatlantic trade relations have also been fraught with tension over the past years due to both sides imposing new tariffs.

The American Chamber of Commerce in Germany (AmCham Germany) is the largest and oldest transatlantic organization in Europe with 2,300 members and represents the interests of global groups as well as small and mid-sized enterprises from all sectors. AmCham Germany is submitting these recommendations for the German EU Council Presidency with the goal of fostering economic recovery as well as fostering stability and reform within the European Union. AmCham Germany has outlined three principles for continued stability and prosperity:

¹ European Commission: European Economic Forecast, Spring 2020, p. 1.

- Open and value-based transatlantic relations;
- A Europe capable of acting with and showing solidarity;
- A free and rules-based world trade.

In concrete terms, AmCham Germany insists that companies have the freedom to make their own trade decisions, including where their production centers are located and how their supply chains are composed. The biggest challenges to humankind in the years to come will remain – apart from the pandemic – climate change and digital transformation. Even if the German Council Presidency's agenda changes to bring European economic recovery to the forefront, thus ensuring the economic stability of the EU, there can be no doubt that climate protection and digitalization will remain a priority. Securing and improving transatlantic relations must be of paramount importance.

Pan-European solidarity is needed for a way out of the corona crisis. What currently still appears as a national challenge will only create sharp differences in recovery without greater European cooperation. Some member states are able to spend significantly higher amounts than others on economic recovery packages. For this reason, they will recover more quickly, thereby resulting in an increase in European economic inequality. To avoid divisions within the European Union, member states must support each other – without ignoring their individual sovereignty. The German-Franco initiative can serve as an example and shows solidarity in European recovery measures – these two strong countries will point the way to recovery through cooperation and resoluteness. Citizens and companies can only fare well in a balanced and stable Europe.

Member states' coping strategies in the wake of the corona pandemic have been marked by clear tendencies towards unilateral nationalist initiatives. In addition to restricting the freedom of movement, trade restrictions have especially complicated relations between member states and citizens. Germany should commit itself to highlighting the need of solidarity-based cooperation in managing this crisis. AmCham Germany is convinced that European support of projects like the emergency program rescEU and also the German-Franco initiative for an economic recovery fund at an EU level are the right way to go.

Trade and Foreign Trade

The EU and the US constitute the largest economic areas in the world. Transatlantic trade secures 15 million jobs and accounts for approximately 30% of global trade. 54% of global investments in the US come from Europe and 64% of US investments go to Europe. For an export nation like Germany, free and rules-based trade is and remains the foundation of its economic activities and prosperity.

Global supply chains and open markets increase competition, promote innovation and reduce costs for consumers. In Germany, for example, a washing machine costs 84% less than it would be without international trade and competition.² Germany and Europe will only be able to overcome the economic challenges that the corona pandemic has presented if they advocate for open and rules-based trading relations throughout the world. Europe must harness its energy to this end and at the same time continue to be a strong interlocutor that acts on a level playing field with the US. AmCham Germany strongly advocates for multilateral global trade policies that include a clear leadership role for the European Union.

The Revival of Multilateralism

In recent years, there has been a trend towards protectionism in world trade and an abandonment of multilateralism. According to the BDI (Confederation of German Industry), the average US tariff on imports from China increased from 3.1% at the end of 2017 to 21% in early September 2019. Similar developments can be seen in the opposite direction: the average tariff burden on US exports to China has risen since the end of 2017 from 8% to 21.1% in September 2019. The US-China Phase One Deal provides only minor relief in trade relations and leaves tariff rates at a high level. Damaging repercussions for other countries, such as the EU and Germany, are already being experienced. The US government's protectionist and trade-restricting measures of recent years have jeopardized the close economic inter-relationships between Europe and the US and show a loss of confidence from the European perspective.

The corona crisis has exacerbated renationalization. During the first phase of stabilization, the German Federal Government announced, for instance, support for the local production of protective masks and concurrently imposed an export ban on protective clothing. Against the backdrop of global warming, politicians from the opposition have also been in favor of repatriating critical production areas and key industries in Europe. This trend jeopardizes international supply chains and the flow of goods. As understandable as it is to identify and retrieve critical production areas, legislators should first and foremost remove barriers to trade and strengthen trade. The German Council Presidency must advocate for the rapid reopening of borders and ensure that trade again functions smoothly in order to boost confidence. Trade restrictions introduced during COVID-19, both within the EU and also in non-EU European countries, must be lifted as soon as possible.

² European Centre For International Political Economy: <https://ecipe.org/wp-content/uploads/2018/01/Globalization-paper-final.pdf>

Strengthening the EU Internal Market

Thanks to the EU internal market, Europeans – and particularly Germans – have witnessed growing prosperity and had access to freedom of movement. However, the internal market continues to be too fragmented and does not leverage enough economies of scale. With a large and functioning internal market, Europe could enforce its own interests more strongly on a global level. The next Multiannual Financial Framework (MFF) must take these endeavors along with the strengthening of a liberal social market economy into account.

The German Council Presidency must continue to strengthen the EU internal market and ensure that after the crisis, the EU will develop its capacity for action. All member states must work together in good faith. With this in mind, integrating recovery funds diligently into the MFF will play an important role.

Swiftly Dismantling Trade Barriers with the US

Trade policy dialogue between the EU and the US must be further pursued. Punitive tariffs and non-tariff trade barriers must be dismantled and overcome within the scope of a transatlantic trade agreement. The harmonization and mutual recognition of standards, regulations and licenses would allow the US and Europe to set global regulations and create growth stimuli, which are urgently needed in the two regions. As a strong partner of the US, the German EU Council Presidency could leverage on equal footing and use positive experiences from the corona crisis in order to send a confident signal in support of free and fair trade with the potential for growth. Export restrictions – for instance, for medical protection equipment – should not pass to the responsibility of individual states. This dialogue can also serve as the starting point for a transatlantic free trade agreement, with which new growth could be generated on both sides of the Atlantic.

Self-Confidence in Dealing with China

The People's Republic of China has become an economic heavyweight and is likely to become even stronger after the corona pandemic. With its tariffs, a state-controlled political economy, the enforced transfer of technology and lacking protection of intellectual property, China has created tensions in the global trading system. Through the German Council Presidency, the EU should act together with the US in a self-confident manner to minimize distortions towards competition and unfair trade, subsidization and investment practices as well as simultaneously push for EU measures (more particularly, trade policy protection instruments, competition policy, public procurement) in order to enable fairer competition with Chinese companies.

Implementing a Trade Agreement with Great Britain

By the end of 2020, trade relations between the EU and the United Kingdom will be reorganized. During this period, the US is also negotiating a free trade agreement with the British Government. The German EU Council Presidency and the Commission must, therefore, advocate for close interconnection and compatibility between the two trade agreements with the United Kingdom. This three-point relationship must be balanced out and take into account the interests of all the concerned parties.

Digitalization

Digital Sovereignty with an Open and Vital Ecosystem as an Objective

AmCham Germany supports the efforts of the EU to remain competitive in the field of digital technologies and business models. We see these efforts within the value and norm-oriented understanding of Digital Sovereignty in line with the free EU internal market. The success of digital transformation for existing industries will depend on effective and trust-based cooperation between users and providers of digital solutions and services in the global market. Therefore, the goal of Digital Sovereignty must be to create an open ecosystem in which there is intense competition in innovation both on the provider and on the user levels. The free flow of data is also a necessary central element. The requirements of the EU General Data Protection Regulation (GDPR) must be complied with and enforced.

Moreover, free data flows should not be restricted unless they are justified for reasons related to national security or the protection of other overriding legal interests. Germany's strong political commitment to value-based multilateralism should also be reflected in EU technology policy. Digital Sovereignty should not be interpreted as meaning protectionist "technology unilateralism" but represent instead a value and norm system that secures fair competition and which is equally adhered to by all market players throughout the EU. The GDPR has already set an example for such an EU framework as a norm within a global context. The EU must take a similar role in regulating the critical applications of Artificial Intelligence, e.g. face recognition or AI-based scoring. Project Gaia-X, with its openly designed and criteria-based orientation, can likewise serve as a role model.

Promoting Innovation-Friendly Data Policy on an EU Level

The target of Digital Sovereignty should also include innovation-friendly EU data policy. With the General Data Protection Regulation, the EU has already established a comprehensive regulatory framework to preserve informational self-determination, thereby setting a global example. This must now be supplemented by shaping innovation-friendly data policy. This would ensure that a prosperous data ecosystem can be developed within the EU, which will be beneficial for both science and society as well as companies of all sizes.

There are many different areas that need to be adjusted in order to reach this goal. This starts with eliminating remaining uncertainties in data privacy law. Companies urgently require more clarity concerning legal demands for anonymization. Stronger incentives for processing pseudonymous data must be created. The development of corresponding codes of conduct, in accordance with Article 40 of the GDPR, should be supported in a targeted manner by the German EU Council Presidency.

Deviating regulations or stricter sector-specific regulations, as stipulated in the draft of the ePrivacy Regulation with regard to data processing, would again create a patchwork structure in data privacy law. This leads to different and unjustified treatment of companies and hence to legal uncertainty that weakens the horizontal, harmonized approach of the GDPR. A stronger alignment

to the risk-based approach of the GDPR is urgently necessary in regards to data processing. Individuals' protection can be guaranteed through applying technical protective measures (e.g. pseudonymization).

A European-wide Open Data strategy which includes both the public and the private sector should be another component of the data policy. The use of data from the public sector is currently facing central obstruction through the lack of uniformity in data formats. Therefore, the German Council Presidency should not only establish sectoral data rooms but in particular also make it a goal to begin the standardization of data formats within the framework of Open Data initiatives.

At the end of the day, an innovation-friendly data policy is supported by fair Internet competition in general and through the platform economy in particular. Wherever necessary, the modernization of anti-trust laws would make a great contribution towards creating an excellent regulatory framework for both the German and European digital economy.

Shaping EU Digital Security Policy

Coherent cyber security policy should be a centerpiece of Europe's Digital Sovereignty. Its objective must be that of the marketplace principle, which also results in higher protection in the internal digital market.

In the wake of the amendment to the Network and IT Security Directive, the German Federal Government should advocate within its Council Presidency for IT security not only to be safeguarded in a binding manner by the operators of critical infrastructure, but that IT security is, at the end of the day, an obligation for every manufacturer and operator of networked and networkable IT equipment and systems.

Another specific aspect of EU data policy is the question of access by authorities to digital evidence during an investigation. The creation of a legal framework which is understandable for citizens and companies alike and that guarantees a strong rule-of-law has both security and civic relevance. It is also important to preserve trust in digital services potentially affected by such access and hence should be a vital component of European norm-based Digital Sovereignty.

A central legislative focal point for such legal framework is the planned e-Evidence Regulation of the EU. In past negotiations on a Council level, Germany has already declared itself in favor of stronger rule-of-law to guarantee mechanisms for direct cross-border access to digital evidence. The German EU Council Presidency should continue to encourage the European Parliament to safeguard constitutional norms throughout the EU. This includes, more particularly, compliance with the national requirement of judicial review. National courts should continue to expressly authorize the release of data by data providers and telecommunication companies to European prosecutors. The German EU Council Presidency must now be utilized to complete the e-Evidence proposal, enhanced with additional mechanisms. This also includes the principle of double incrimination according to which it is only admissible to retrieve information if the alleged offence is reciprocally defined as such with a comparable sentence. In the wake of the Council Presidency, Germany should not abstain from this central issue but should intervene proactively.

A transatlantic agreement for mutual access of investigative authorities is also an important issue. The Clarifying Lawful Overseas Use of Data Act (CLOUD Act) in the US, as well as the proposal for

the e-Evidence Regulation in the EU, essentially pursue the same goal, i.e. to allow investigative authorities on a global level to act. However, due to the partly extraterritorial approach of these two frameworks, this potentially conflicts with the data privacy policies of different regions – more particularly, in the relationship between the EU and the US. These potential legal conflicts create a dilemma for companies working on both sides of the Atlantic, which are compliant with the corresponding policies of information in one country, but which at the same time infringe on data privacy provisions in another country due to cross-border requests for information.

At the end of the day, this conflict can only be solved by international agreements, which set clear requirements for security, data privacy, and above all, transparency of data access and compliance with basic rule-of-law principles. At the beginning of the e-Evidence process, the EU Commission promised that a transatlantic agreement would not be entered into unless corresponding EU legislation has been passed. The German Federal Government should grant the European legislative processes priority over national ones during the Council Presidency and hence express a commitment to Europe's Digital Sovereignty.

Energy and Climate Protection

AmCham Germany supports the European goal of greenhouse gas neutrality by 2050. To accomplish this, governments, the business community and society must join forces. Moreover, this goal requires an extensive transformation of large parts of the economy. For this to be implemented as a growth strategy and encompass the entire economy, certain prerequisites must be met:

The energy and climate policy at the centerpiece of the “European Green Deal” is also of decisive importance within the framework of the COVID-19 recovery program. An effective CO₂ pricing scheme should be established as a guiding tool for climate protection – in addition to normal market competition – and avoid double pricing (for ETS sectors).

While shaping this transformation, Europe should not lose sight of the need for a global level playing field and reach climate policy agreements at the least on a G20 level, with special attention to the transatlantic alliance.

Pending the creation of a global level playing field, the international competitiveness of companies as well as downstream value chains require special protection. Reliable and robust carbon leakage regulations are indispensable in this regard.

Electricity and gas will continue to play a very important role for energy supplies in the foreseeable future. The development of a robust and innovative hydrogen economy with smart solutions for sector coupling will make an essential contribution to greenhouse gas neutrality.

Climate policy agreements always require detailed industrial policy impact assessments. This applies in particular to energy-intensive processes at the beginning of many important supply chains.

Renewable energies in Europe must be developed swiftly and in line with the business market in order to respond to the foreseeable and significant increase in demand for renewably generated

power. Above all, this is vital for industrial transformation in the transportation sector and in order to sufficiently safeguard a reliable power supply. Approval procedures for projects in the energy, industry and infrastructure areas should be increased while also preserving sensitive corporate data and security interests.

Europe must be aware of this space for maneuvering both internally and externally:

- To secure its competitiveness, the internal energy market must be completed. However, the cost situation of energy supplies must not be further exacerbated against the backdrop of ongoing provisions and progression relating to this transformation.
- The demand for higher climate protection ambitions in non-EU Countries must be welcomed. However, this cannot be at the expense of the European economy – trade policy “experiments” would be counterproductive here.

Companies from many different sectors already make an essential contribution to the achievement of climate goals through their technological innovations. Europe must support innovations through good framework conditions and provide businesses with flexibility in implementing this transformation so that the potential of future technologies can be further developed.

Transformation as a macro-social task requires additional incentives for private investors. Investment gaps should be closed through increasing financial resources (including on a national level). This transformation must be understood as part of environmental aid and therefore the European energy and environmental aid law must be further developed.

Industrial Health Industry

The healthcare sector is one of the most dynamic growth markets worldwide. Companies in the fields of medicinal products and medical devices are essential drivers of progress with innovative products, processes and services. The healthcare sector contributes more than 12% to national GDP. Every sixth employed person in Germany works in the healthcare sector. The medicines and medical device industries boast high export ratios and hence make up a special contribution to Germany’s overall prosperity.

Strengthening Europe as a Manufacturing and Research Location

The corona pandemic has illustrated the importance of free trade, the European internal market and the significance of functioning supply chains for medicines and medical devices. It is, therefore, necessary to develop measures to secure and strengthen Europe’s position as an excellent location for the production of and research for medical devices and medical products for companies from all over the world. At the same time, supply of medical devices and medical products must be ensured. Close coordination with trading partners all over the world is indispensable. The plans of the EU’s “Europe’s Beating Cancer Plan” mirror German measures in the “National Decade against Cancer” plan and should be coordinated.

Taking the new EU Medical Devices Regulation (MDR) into account, it is essential to make the MDR system operational as soon as possible and hence prevent supply bottlenecks. Supply bottlenecks for medical products could be prevented by a different bidding practice. The German Federal Government should act towards changing the criteria for granting public contracts during its EU Council Presidency so that pharmaceutical manufacturing locations within Europe are promoted. Based on the experiences of the ongoing corona pandemic, the critical importance of medical devices and pharmaceutical industries for the overall economy and the European research industry should be emphasized. To strengthen Germany as a business location, there must be a clear commitment to patent protection on the EU level, access to research data and the removal of regulatory barriers.

In the US, there are signs that international pharmaceutical prices are used for price referencing. If the German discounted price became part of the reference price for the US market, the consequence could be that innovative medicines cannot be made accessible in Germany or only with significant delay. To prevent this, it is important that list prices are used in Germany as well as other EU countries.

Boosting the Digitalization of the European Healthcare Industry

Digitalization concerns all areas of medical specialists, service providers, payers and patients. The planned creation of a European health data space provides myriad opportunities to improve healthcare. Concrete measures for the promotion of data exchange, such as the definition of standards as well as the support of research and development, must be enacted. AmCham Germany advocates for uniform standards and the close integration of the industrial healthcare industry to fully maximize all opportunities. In the research field, the utilization of anonymized / pseudonymized data is of particularly high importance to further develop new products at pharmaceutical and medical technology companies and increase their overall safety.

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About the American Chamber of Commerce in Germany e.V. (AmCham Germany)

Founded 116 years ago and with more than 2,300 members, AmCham Germany is the oldest and largest business association in Germany and represents the interests of American, German as well as multinational companies from all industries and of all sizes. As the voice of transatlantic business, AmCham Germany is committed to free and rules-based trade as well as to a competitive and innovation-friendly business climate.

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