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BEGELEIDENDE NOTA

van: het secretariaat

aan: de Conventie

Betreft: Bijdrage van de heer Jacobs, waarnemer van de Conventie

De secretaris-generaal van de Conventie heeft de in de bijlage weergegeven bijdrage ontvangen van de heer Jacobs, waarnemer van de Conventie.

UNICE

Contribution from Mr Jacobs, observer to the Convention

EXECUTIVE SUMMARY

UNICE'S EXPECTATIONS

UNICE considers the process of economic integration to be the main dynamic behind the peace, stability and prosperity achieved in Europe over the past fifty years. This should therefore continue to be one of the most important priorities of the EU. From a business perspective, the EU must deliver a business-friendly environment in which companies can operate and compete on a level playing-field and adapt to the increasing challenges that globalisation brings. This will lead to wealth creation and therefore employment opportunities.

NEED FOR A CLEARER DIVISION OF COMPETENCES AND RELATED DECISION-MAKING PROCEDURES

UNICE recommends consolidation of the existing treaties into a single comprehensible and structured instrument. This should make clearer what are the basic values and objectives of the EU, the nature and hierarchy of its instruments, its general competences and related decision-making procedures, and the division of powers among its institutions. This should help the EU to refocus its actions on its main tasks. The Convention must also consider ways in which respect of the subsidiarity principle, in both its territorial and functional dimension, can be ensured strictly and systematically.

NEED TO PRESERVE THE COMMUNITY METHOD AND ENSURE AN EFFICIENT INSTITUTIONAL FRAMEWORK

Efficient functioning of the EU Institutions will be key to the success of the enlarged EU. Making recommendations on how to improve the efficiency and transparency of the EU institutions while preserving the Community method should be a priority for the Convention. Qualified majority voting should become the general rule.

NEED FOR A LIGHTER REGULATORY FRAMEWORK COUPLED WITH INCREASED USE OF CO- AND SELF-REGULATION

The objective of streamlining and simplification of legislation and rules should be more effectively included in the operating process of the EU. Co-regulation and self-regulation should be considered more often as alternatives to legislation. Impact assessment of legislation must be carried out in a systematic way by an independent body to be established. There should be more on-going and rigorous monitoring of transposition into national legislation of European rules in order to avoid disparities in implementation.

NEED TO RE-THINK THE METHOD FOR CONSULTATION OF RELEVANT STAKEHOLDERS

UNICE proposes adoption of a comprehensive code for consultation. The code should set out clear guidelines for the definition of core stakeholders, purpose, content, methodology and timeframe of the consultation. The representativeness of organisations should be duly taken into account. In addition, UNICE calls for a very clear distinction to be made between consultation of civil society and the social dialogue.

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UNICE COMMENTS

I. Introduction

UNICE is the voice of some 16 million small, medium-sized and large European companies which create, produce and distribute the resources which underlie Europe's prosperity. Its representativeness has given it the status of social partner at European level and it is in that capacity that it has observer status vis-à-vis the Convention.

In this context, and as an active supporter of EU integration for more than 40 years, UNICE is keen to contribute to the debate on the future of the EU launched by the Convention. The prosperity of the EU relies on a healthy business environment and the following paper sets out the preliminary views of UNICE on the reforms needed to best achieve this goal.

II. KEY OBJECTIVES FOR BUSINESS

UNICE supports the need for the basic values of the EU (principles of liberty, democracy, respect for human rights, diversity, fundamental freedoms, respect for the rule of law, and social and economic cohesion) to remain the underlying basis of any further European integration.

Furthermore, the main objectives of the EU must be to further promote economic growth and thereby social progress, as well as a high level of employment, and to ensure balanced and sustainable development based on market economies.

The EU must deliver a business-friendly environment in which companies, as the engine of economic growth and employment, can compete on a level playing-field, prosper and adapt to the increasing challenges that globalisation brings. This is vital if the EU is to meet its Lisbon objective of making Europe the most dynamic and competitive knowledge-driven economy in the world by

2010. In this context, **business believes that the guiding principle for shaping tomorrow's Europe must be a commitment to meet the following four objectives:**

- **Strengthening European competitiveness, adaptability to structural change and improvement of employment prospects;**
- **Strengthening Europe's economies and full realisation of EMU's potential;**
- **Successful enlargement of the EU without any distortion of the Internal Market;**
- **Strengthening Europe's hand on the international stage.**

III. EU CONSTITUTION/CHARTER OF FUNDAMENTAL RIGHTS

As a result of the various amendments to the Rome Treaty, many of the elements usually enshrined in a constitution are scattered through the existing Treaties. In order to remedy what is today an overly complex and poorly structured set of texts, **the Convention should recommend consolidation of the existing treaties into a single comprehensible and structured instrument.** This should make clearer what are the basic values and objectives of the EU, the nature and hierarchy of its instruments, its general competences and related decision-making procedures, and the division of powers among its institutions.

When discussing the possible Constitution for the EU, reference is made to the **Charter of fundamental rights**. UNICE supports the objective of making those rights and freedoms more visible to the Union's citizens. However, UNICE insists that the Charter should respect the present competences of the EU and not extend them. The current text contains elements which fall outside the ambit of EU competences and some articles on economic and social rights cannot be incorporated in a revised EU Treaty. **The existing text for the charter is not fit to become legally binding.**

IV. DIVISION OF COMPETENCES AND SUBSIDIARITY

Need for better focus on core tasks

The EU has to concentrate on those tasks which can best be resolved at Community level. These include trade and customs union, monetary policy and its common currency, consolidation and completion of the Internal Market, competition policy, environmental protection, common representation in the global economy and its institutions, the Common Foreign Policy, asylum and refugee policies and the fight against international crime.

Need for a more comprehensible structure of EU competences

UNICE is not calling for a complete overhaul of the competences of the EU, but rather for a more comprehensible and clear structure of existing EU competences. A detailed catalogue of competences would deprive the EU of the flexibility to adapt to new tasks and challenges and is in itself not a 'safeguard' for a further transfer of competences. Any discussion about the EU's current and future competences must take into consideration that the functioning of the Single Market, which is at the very heart of the EU, must not be impaired under any circumstances. The most important issue for business is a more reliable and indeed flexible legal and administrative framework for the execution of current EU competences.

Better respect of subsidiarity and proportionality principles

The debate on the division of competences and hierarchy of instruments cannot be dissociated subsidiarity and proportionality. These two principles are key to the future functioning of the EU and for bringing it closer to its citizens. **The principles of subsidiarity and proportionality are Treaty requirements (article 5 EC) but in practice they are hardly respected. The Convention has to consider ways in which their respect can be ensured more strictly and more systematically.** In this context, an independent body should be entrusted with the task of reviewing respect of the subsidiarity principle.

Subsidiarity is not only about the assessment of the most appropriate level of action at territorial level between the EU, member states, and/or regional and local levels (territorial or vertical subsidiarity).

Functional subsidiarity

There is another kind of subsidiarity based on functional criteria related to specific expertise (functional or horizontal subsidiarity). **Functional subsidiarity means that when an action is justified at EU level, there is a need to assess whether the objectives of the proposed EU action cannot be achieved by other actors than the EU institutions** (e.g. agencies, social partners and other representative actors of the civil society agreeing among themselves how best to reach a given objective).

These two levels of subsidiarity (territorial and functional) should function in tandem complementing each other, and monitoring processes should be put in place to ensure their respect.

V. NEED FOR A LIGHTER REGULATORY FRAMEWORK AND BETTER USE OF SELF AND CO-REGULATION

Better assessment of the need for regulation

There is a general tendency to increase EU regulation, and mechanisms should be put in place to better assess the impact of regulation. This task could be carried out by an independent institution. The goal of this institution would be to check the need for EU regulation, its economic impact, and its added value for the functioning of the internal market. This body could also have a role in the deregulation process by regularly checking the effectiveness of existing regulation.

In order to reduce the burden of EU regulation, it would be desirable to test new Community proposals before they come into force and see whether they are necessary, whether they go beyond the limits of EU competences and whether they infringe the subsidiarity and proportionality principles.

When legislation is considered necessary, UNICE calls for a better quality legal framework. Streamlining and simplification of legislation should be included in the operating process of the EU. Similarly, there should be more on-going and rigorous monitoring of transposition into national legislation of European rules in order to avoid disparities in implementation.

Nature and hierarchy of instruments used

Articles 249 EC provides several instruments to be used by the EC institutions to meet their missions (regulation, directive, decision and recommendation). But neither this article nor any other article of the Treaty establishes a hierarchy between these instruments. As a result, these instruments have been often used in a heterogeneous way and without real logic.

In addition, the content of these instruments has evolved. For instance, the content of many detailed directives in the context of the Internal Market is far removed from the definition of the Treaty which indicates that directives are binding as to the result to be achieved but leaving member states free choice on forms and methods to meet these results. **Greater coherency should be sought in defining what instruments are to be used for which purposes, as well as their hierarchy.**

Legislative and quasi-legislative instruments

- Regulations should be used to create EU single instruments;
- Directives should be used to meet general objectives of harmonisation and their content should focus on the main principles,
- Implementing rules, adopted in the context of comitology procedures, should lay down detailed and technical provisions, which should be easily amendable.

Non-legislative instruments

- decisions and recommendations should be used for administrative purposes

Sui generis instruments

Between the two above categories stands another category that has to be given greater recognition by a revised Treaty. This is the whole ambit of co-regulation and self-regulation.

Agreements by social partners are already recognised by the treaty. But the Convention, in UNICE's view, should recommend a greater role for other types of instruments between representative stakeholders, on specific topics (see for instance the UNICE-BEUC agreement on trustmark schemes¹). In this context, **self-regulation and codes of conducts should also find more recognition as possible instruments to reach EU objectives, instead of systematic legislation. Business is keen to assume its responsibilities in this context.** This would alleviate the legislative tasks of the EU and would democratise the rule-making exercise.

VI. Better consultation of relevant stakeholders

UNICE has already developed a detailed contribution on this subject in the framework of the debate on governance², in which **it proposes adoption of a comprehensive code for consultation.** The code should set out clear guidelines for the definition of core stakeholders, purpose, content, methodology and timeframe of the consultation. **The representativeness of organisations should be duly taken into account.** This assessment should be made taking into account whether the organisation is:

¹ [UNICE-BEUC Agreement on trustmark schemes](#)

² [UNICE position on governance 28-02-2002](#)

- composed of members mandated to act at European level;
- representative in the great majority of Member States of the European Union;
- representative of collective interests;
- composed of organisations which are regarded at their respective national levels as representative of the interests they defend;
- capable of justifying their actions to their members;
- composed of members who join voluntarily, at both national and European level;
- demonstrably independent of the public authorities, at both national and European level, in terms of financial resources;
- based on a well-resourced structure which allows constituents to be consulted rapidly and efficiently;
- able to call on the knowledge of its members in order to guarantee a certain level of expertise.

VII. SPECIFICITY OF THE SOCIAL DIALOGUE

As a social partner at European level, UNICE calls for a very clear distinction to be made between the social dialogue and consultation of civil society. The social dialogue at European level is a clearly structured and autonomous process involving the social partners. In the framework of the Treaty's social chapter, the social partners have a responsibility for political decision-making which cannot be extended to other areas or other players in civil society.

As far as the role of social partners is concerned, UNICE is very attached to the procedures of articles 137 and 138 of the EC Treaty and would strongly oppose any changes in this area.

VIII. INSTITUTIONAL FRAMEWORK

Need to improve the efficiency and transparency of its institutions

Efficient functioning of the EU Institutions will be key to the success of the enlarged EU. Implementing the highly important Lisbon objectives, for example, requires quick and efficient decision-making, thus making recommendations on how to improve the efficiency of the EU institutions, while preserving the Community method, should be a priority for the Convention.

European structures and institutions should serve the principles of democracy, legitimacy, rule of law, transparency and accountability. **The Convention should therefore ensure that an enlarged EU is able to make rapid decisions** which are transparent, which are generally supported, which can be understood by all, and which can be effectively reviewed by efficient courts.

Commission

The EU should have an independent and strong Commission which acts as guardian of the Treaty and proposes legislation to the Council and the Parliament in the interest of the whole Community. Maintaining the exclusive right of initiative for legal proposals with a fully independent Commission is a way to guarantee cohesion and efficiency for Community actions.

Administrative procedures should be effective and transparent, and ensure preservation of the rights of companies, including an effective right of recourse. The role of the Commission in the implementation of EU legislation should be reinforced. Additional instruments including the use of more stringent and effective sanctions should be made available to the Commission to oblige member states to comply with EU legislation.

Council of Ministers

Post-enlargement, the key institutional issue will be the ability for the Council to take decisions and deliver results, particularly in areas reserved for unanimous agreement of member states. **In UNICE's view, qualified majority voting should be the rule, with only a very small number of exceptions for which unanimity would be required.** Unanimity should in particular be reserved for social policy matters which are currently included in article 137 § 3 of the Treaty and new policy initiatives in the field of taxation (e.g. harmonisation of systems of taxations, as well as environmental fiscal measures).

Qualified majority voting (QMV) would be appropriate for measures relating to international trade, conclusion of negotiations on foreign direct investment, all services, intellectual property rights issues and the functioning of the Internal Market, such as adoption of specific measures in support of business competitiveness, entrepreneurship, innovation, research and technological development; implementation of measures to remove obstacles and to adapt national social security systems to the free movement of workers and self-employed persons in the single market.

Parliament

The European Parliament should be endowed with full budgetary rights and responsibilities alongside the Council. To this end, the distinction between obligatory (DO) and non-obligatory (DNO) expenditure should be abandoned and the budgetary procedure changed accordingly.

European Court of Justice

The Convention should recommend that the European Court of Justice (ECJ) be given additional resources to enable it to carry out its tasks and accelerate its procedures which are often much too slow. It is also important that fast-track procedures are put in place.

In addition, the Convention should support the possibility to create specialised chambers such as an Intellectual Property Court to deal with the Community trademark, the Community design, and the future Community patent, on the basis of Articles 225a and 229a of EU Treaty, as amended by the Nice Treaty.

Economic and Social Committee

The Economic and Social Committee is the place for civil dialogue. When discussing its role and status, it is essential to avoid any confusion between civil dialogue and social dialogue, which is an autonomous process between the social partners and takes place outside the Economic and Social Committee.

It should be ensured that ECOSOC opinions are available at an early stage of the legislative process.

IX. GLOBAL GOVERNANCE AND INTERNATIONAL DIMENSION OF THE EU

UNICE welcomes a stronger emphasis on the global dimension in the framing of EU policy. Expectations vis-à-vis the EU's ability to take more responsibility in international political and economic affairs are growing. But at the moment the EU still lacks the instruments, institutions, procedures and means to fulfil these expectations. This gap between expectations and capabilities must be closed.

Attention should be paid to consistency between internal and external EU policies, external economic policy – political relations, and the external policies of the EU and Member States.

UNICE is a firm supporter of an open multilateral trade system, governed by clear and enforceable rules. The Union's external commercial policy must be effective, coherent and applied transparently and homogeneously. **UNICE also calls for a stronger emphasis on the global dimension in the framing of EU policy** in the area of external economic relations and for a unified EU international representation to allow it to speak with one voice. **In this context, it supports giving the EU a legal personality.**

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