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22 June 1998

Mr Karel Van Miert,
Member of the Commission,
European Commission
BREY 08/40
Rue de la Loi, 200
B-1049 BRUXELLES

Dear Sir,

RE: PROCEDURAL REGULATION IN THE FIELD OF STATE AID

UNICE has been a strong supporter of the Commission's effort to introduce a procedural regulation in the field of state aid. Such a regulation could be a crucial step towards a more coherent and de-politicised approach to state aid.

It is therefore with great concern that UNICE has been viewing recent developments in negotiations between the Commission and the Council in relation to the reforms under Article 94, and it wonders whether the diluted proposal is worth adopting.

While the initial Commission proposal was already, in UNICE's view, fairly modest in its aspirations, every subsequent Council amendment has moved even further away from the idea of efficiency, transparency and third-party rights: reduced obligations regarding publication, incomplete codification of third-party rights (particularly in the area of in-depth investigations) and a 10-year limitation period for illegal state aid (where the triggering event is unclear) are all steps in the wrong direction.

Attempts at reforming the present situation have been limited to the area of enforcement of Commission decisions. Two major issues still seem to be under discussion:

- recovery injunctions [Article 11]: i.e. the power for the Commission to adopt a decision requiring the member state provisionally to recover any unlawful aid; and
- removal of the suspensory effect of national proceedings [Article 14(3)].

Both these reforms would drastically reduce the incentive for member states to give (and for companies to receive) illegal state aid and would create more of a level playing-field. However, even these limited reforms are under threat from the Council (either directly or through the attachment of conditions which would severely restrict their application).

In UNICE's view, should it not prove possible, in the present political climate, to preserve the Commission's proposals regarding power of recovery injunction (at least in the majority of cases of illegal aid) and the removal of the suspensory effect of national proceedings, while at the same time keeping a minimum degree of transparency (such as publication of the final decision in the major languages of the Community), then it may well be better to continue with the existing regime, with all its imperfections, rather than introducing an even less adequate new instrument.

Yours sincerely,

Dirk F. Hudig
Secretary General