UNICE
Union of Industrial and Employers' Confederations of Europe
Union des Confédérations de l'Industrie et des Employeurs d'Europe

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UNICE REACTION TO

THE COMMISSION ACTION PLAN ON FINANCIAL SERVICES

GENERAL COMMENTS

The fragmentation of financial markets in Europe has been highlighted, more than ever before, by successful introduction of the single currency and its continued success in the bond markets of Europe. This market success of the euro has increased the need to achieve further integration and efficiency of financial services – a sector with particularly strong potential for continued growth

Certainly, a strong and efficient financial services sector is a crucial requirement for business in general, through the savings and investment channel, and for allocation of resources for both issuers and investors. This sector will play its role to the full only if the regulatory framework provides the EU with a modern, effective and attractive financial apparatus which fits the needs of companies and respects a level playing field for financial services in Europe. Every action by the EU should be tested against this criterion

Both issuers and investors should benefit from a genuine pan-European capital market, and this should improve the competitiveness of the European market place. The continued existence of national regulations fragments the single market for financial services and inhibits competition. Compared with the USA, national regulations in most European countries make it more difficult, for example, for companies to minimise cross-border treasury costs (through cash-pooling), to gain access to cheaper forms of debt (commercial paper), and to diversify sources of equity capital. These regulations also make it more difficult for investors to balance portfolios on a pan-European basis. To tackle these and other issues, in May 1999 the Commission adopted an action plan for implementing a framework for financial services within the single market which outlines priorities and timescales for measures in order to:

- create a true single market in wholesale markets,
- ensure a secure and accessible retail market,
- put in place state-of-the-art prudential rules and supervision.

While UNICE warmly welcomes these objectives, it would nevertheless like to make the following general comments:

- First, the scope of the action plan seems very broad. This paper sets out UNICE's priorities, focused on the needs of business, for successful integration of financial markets. The priorities should be to:

  - facilitate access to capital markets,
  - increase transparency of information for investors,
  - promote mobility and cross-border integration,
  - foster competitiveness of European capital markets.

- Second, the financial regulatory framework should be addressed on a dynamic rather than a static basis. In particular, recent developments in technology and electronic commerce should be taken into consideration, and allowance should be made for a continued fast pace of future development.

- Lastly, as the financial services industry operates in a global and competitively driven environment, initiatives which add burdensome regulatory or fiscal measures should be avoided as these could drive business out of Europe.

BUSINESS PRIORITIES

1) To facilitate access to capital markets by:

- *Facilitating issues through the Directive on Prospectuses*: In order to facilitate access to European markets, mutual recognition of prospectuses should be a common and accepted principle. However, practical implementation under the directive is hindered by additional domestic requirements which inhibit the issuance of cross-border securities. Improvements to the directive should aim at allowing a single prospectus to be used for simultaneous issues throughout the capital markets of Europe, thus paving the way for common acceptance of shelf-registration techniques. In addition, the Commission should continue to review and adapt the directive to technological progress.

- *Adapting the directive on the prudential supervision of pension funds:* Due to national legal regulations, pension funds in some EU countries are not able to invest in the full range of risk-bearing assets, such as equity. These constraints on pension fund managers explain to some extent why the European pension fund industry lags behind the US industry in this vital area of second and third pillar retirement benefit provision. It is UNICE's view that limits on portfolio allocation should not go further than what is required under the principle of prudence. As modern techniques of portfolio risk management enable pension fund managers to spread risks, there is no need for over-stringent prudential supervision.

- *Agreeing on a harmonised definition of what constitutes private placing:* As part of the principle of more ready access to pan-European capital markets, harmonised definitions of public and private placement of securities should be established. This harmonisation should also embrace the further objectives of (1) mutual recognition of second-pillar pension funds, (2) a "passport" for cross-border fund management, and (3) the accommodation of flexible schemes for the provision of shares for employees. An effective European passport for pension funds is needed, as is already provided for investment funds. In addition, it will be important to examine the obstacles which still remain to the marketing of investment funds in Europe. National supervision authorities often continue to maintain additional rules which are in conflict with the rules of neighbouring countries, thus inhibiting the crossborder supply of these services. This creates problems for marketing.

2) To increase transparency of information for investors by:

- *Adopting an appropriate EU financial reporting strategy:* UNICE believes that companies should be able to raise capital both throughout the EU and on international capital markets on the basis of a single set of financial reporting requirements. It is generally agreed that, in most cases, IAS is the most appropriate benchmark, and it is crucial that IASC should develop into a truly global standard-setting organisation, in which European countries have sufficient influence. In UNICE's view, the outcome of the accounting standards harmonisation process ought to be that there is no need for reconciliation of a company's financial statements for any one stock market in the world.

  Should the Commission proceed with its intention of setting-up a "screening mechanism" to ensure that IAS output conforms with EU rules, UNICE would not be opposed to introduction of such a device, in which all parties concerned in standard-setting ought to be represented. It believes, however, that this body should not become a standard-setter itself, and that its main tasks should be (i) to act as a preparatory body for a European delegation in the future structure of IASC, and (ii) to discuss conditions for matters not specifically covered by international accounting standards. As stated above, reconciliation should be avoided.

- *Fostering convergence of the information to be provided in prospectuses:* Irrespective of the need to improve mutual recognition procedures, as indicated above, the issue of prospectus content should also be addressed. Information requirements vary considerably depending on the country, and UNICE believes that transparency would be greatly enhanced if a common body of information requirements were devised.

- *Enhancing market integrity:* Enhanced market integrity is an essential element of the transparency required for the market to function efficiently, and UNICE supports the principle of a Directive to address market manipulation.

- *Ensuring unhampered exercise by shareholders of their voting rights:* In the context of cross-border use of collateral, UNICE would like to draw attention to an increasingly important issue. International clearing and settlement systems are modernising extremely swiftly, a situation which impacts on the ability of shareholders to exercise their voting rights. UNICE believes that the new rules governing these systems run the risk of disenfranchising shareholders and thus may inhibit the realisation of a pan-European stock market. This would run counter to the desirable objective of developing better communication between companies and shareholders, and increased participation in annual general meetings. The Commission should give priority to this matter, which is not mentioned in the action plan, and UNICE would suggest that a working group should be set up to devise appropriate solutions to this problem, as a matter of urgency.

One final remark in the overall context of increased transparency: UNICE has noted the Commission's intention of launching a review of existing national codes of corporate governance with a view to identifying any legal or administrative barriers to development of a single EU financial market. While UNICE will undoubtedly be interested in the information this study will provide, it would like to voice unequivocally its opposition to regulatory intervention in this area. Only a non-regulatory approach can take account of the diversity of situations and the needs of companies. It is UNICE's considered opinion that corporate governance systems will develop and progress naturally, under pressure from the financial markets, and that what is really needed to face the challenges of globalisation is international convergence, not an additional layer of EU standards.

3) To promote mobility and cross-border integration by:

- *Enabling companies to move across borders within the single market*: Three important company law instruments would help achieve this aim:

  (i) the proposed 10th directive on cross-border mergers, and

  (ii) the preliminary draft for a 14th directive on the transfer of a company's registered office.

  UNICE firmly believes that adoption of these two key instruments should not be hindered because of continuing national differences regarding rules governing employee involvement. In this context, UNICE understands that a forthcoming Commission communication will suggest limiting the scope of these instruments to certain types of company.

  UNICE would warmly welcome these initiatives and can only urge the Commission to present its proposals without waiting for publication of its communication.

  (iii) the European Company Statute, a key demand of the business community for many years, would no doubt facilitate cross-border integration. However, UNICE has stressed time and again that this instrument must be attractive to companies and meet their needs. Clearly, the present compromise proposals to deal with employee involvement aspects fall short of this basic requirement and, in their present form, offer no added value for companies.

- *Providing efficient, secure and cost-effective cross-border payment systems*: UNICE agrees with the Commission that the present situation in the area of retail cross-border payments should be analysed, in particular the prices for such payments and execution time. With a single currency environment, the Commission should encourage the development of a single payments area, also for payments with low volume. In addition, concerted action is needed to ensure secure cross-border card-payments. UNICE looks forward to publication of the Commission's strategy for ensuring progress in this area.

- *Allowing cash-pooling throughout the euro zone*: With introduction of the euro, companies should be able to pool their accounts throughout the euro zone. In other words, a company with accounts in several EU states should be able to offset the debit and credit positions between its various accounts with the same bank in all euro zone countries in order to optimise returns on its assets. Ideally, this would be achieved through cross-border interest compensation.

- *Safeguarding the rights to supplementary pensions of workers who exercise their right to freedom of movement:* The directive 98/49 guarantees the transferability of rights to a supplementary pension, while ensuring that workers who exercise their right to freedom of movement are not treated differently, whether better or worse, than employees moving within a member state. However, as a result of differences in the level of deductibility an other conditions, tax discrimination (double taxation) can occur which hampers the free movement of workers. UNICE believes that the EET (exempt-exempt-taxed) system is the most suitable basis for achieving a consensus between member states to ensure the deferral of taxation to the moment the pension becomes payable and thus avoid double taxation, without the need to harmonise the level of taxation on benefits. UNICE hopes that this solution with be explored further.

4) To foster competitiveness of European capital markets by:

- *Moving towards an organisation model of stock exchange adapted to companies' expectations:* It is UNICE's strong view that the longer term objective must be creation of a genuinely pan-European market with one set of rules for admission, transactions and bids, and harmonised systems for clearing and settlement. It is vital to move rapidly towards harmonisation of a number of rules and to strengthen cooperation between market authorities. Recognising that this will take time, UNICE would, in the medium term, like the market to be organised on federal lines, which, while working to improve the liquidity of the market's securities and its access to capital, would still retain a national legal framework, national authorities and all the advantages linked to the proximity of intermediaries, analysts and advisers.

- *Developing internet platforms for trading or Initial Public Offerings (IPOs):* UNICE also emphasises the need to propose an up-to-date framework, with the development of internet platforms for trading or IPOs via the net. It is crucially important for the legislator to regulate for the future, not the past, without hindering the competitiveness of this dynamic new sector.

- *Maintaining consumer protection for cross-border retail activities:* In order to ensure the development of cross-border retail activity, the level of protection provided to safeguard the interests of retail participants should not impose unduly stringent constraints on the legitimate activities of economic operators.

- *Defining a tax environment which is more friendly to business activity:* The level of transparency brought about by the single currency will increasingly identify taxation as a key element in obtaining the benefits of the single market. The euro will further reinforce trends towards European business integration, thereby increasing the need to eliminate tax obstacles that hamper the proper functioning of the single market. Moreover, as companies are increasingly aligning their organisational structures around European wide business and product groups, the need to remove existing tax obstacles to cross-border activities is becoming more pressing. However, in its current priorities, the EU tax strategy does not reflect business needs.

UNICE hopes that current and future work within the framework of the action plan on financial services will result in a balanced and focused approach that corresponds to the needs of European companies. UNICE is ready to discuss the issues addressed in the Commission's action plan in greater detail, and would be happy to expand on the comments made above.