

## REFORM OF THE BUSINESS IMPACT ASSESSMENT SYSTEM

### UNICE PROPOSAL

UNICE participated, together with Eurochambres, in the Fair Regulation Campaign hearing on business impact assessment held on 28 November 2000 in Brussels, attended by representatives from the business community as well as representatives from DG-Enterprise, DG-Internal Market and the OECD. To support this collective initiative, we would like to bring to your attention some UNICE views on the important issues debated.

The Council of Ministers has expressed on several occasions an expectation that legislative and regulatory proposals produced by the European Commission should be subjected to assessment of their impact on business and other sectors<sup>1</sup>. The European Council committed itself to a better regulation agenda at the Lisbon Summit in the first half of 2000 (the Declaration referred to paying "particular attention to the impact and compliance costs of proposed regulations").

Commissioners Liikanen and Bolkestein have already committed themselves to reviewing and improving the Business Impact Assessment (BIA) system. In September 2000, they announced that DG-Enterprise would establish an 18-month pilot project to examine the effectiveness of the application of the BIA process to six business-related measures.

European business organisations have welcomed the Commissioners' commitment but have concerns about the way the pilot project appears to have been established:

✍️ The 18-month timescale seems too long; action to progress the agenda should be taken as quickly as possible in order to avoid unnecessary burdens being placed on EU enterprises.

✍️ Business organisations, legitimate representatives of the business community, have offered to assist officials in reviewing the Business Impact Assessment systems but have not been properly consulted on these issues. It is important that senior officials in DG-Enterprise and all relevant departments of the Commission share their Commissioners' enthusiasm for reform.

As a means to improve acceptability and effectiveness of rules applicable to enterprises, the Commission should offer a systematic and timely consultation of representative organisations each time new measures are envisaged. Consultations should take place as early as possible and in a transparent fashion. The outcome of consultations should be made public and full account taken of advice given by those concerned. The legislation process should be adapted with a view to the following considerations:

<sup>1</sup> Council Resolutions of 27 May 1991, 13 July 1992, 3 December 1992 and 30 June 1998 and Council Decision of 9 December 1996; Amsterdam Treaty Declaration No 18

1. There should be compliance, on a verifiable and objective basis, with the principles of **subsidiarity and proportionality** from the earliest stages of definition of new proposals.
2. Business needs legislation that **aims at results or outcomes rather than being prescriptive** in the means for achieving the goals.
3. Regulation should only be used **if there is not a better alternative**, and when used, it should offer flexibility to companies in order to allow them to innovate profitably. There should be an assessment of whether legislation/regulation is needed, considering that **alternative regulatory models**, such as self-regulation, negotiated agreements, co-regulation, or mixes of regulatory instruments often prove more effective than traditional legislation.
4. Where EU legislation is necessary, it should be **better drafted** and developed through a more **open and transparent regulatory system**, based on **independent cost/benefit analysis**. The initiatives taken so far on evaluation of existing legislation have been steps in the right direction, but are not sufficient. Business calls for a timely and thorough assessment, including a reliable calculation expressed as a monetary amount, of the likely impact of an administrative measure on business.
5. All of these techniques, including independent impact assessment and cost/benefit analysis, are currently used by the Commission. In addition, we believe that, in appropriate cases, a **business-based Test Panel** should be made responsible for obtaining impact and benefit data as part of the BIA process. This assessment should evaluate impacts on a “whole business” basis (taking account of administrative costs of compliance with the proposal and of impact on margins, sales, consumer prices and domestic and international competitiveness). The **strong business representation on Test Panels** should also contribute to more reliable methodologies, since it should be assumed that the members would have a close understanding of their sectors, and will give a greater stimulus to consultees to devote time and resources to the provision of more detailed, better sourced responses.
6. Assessment instruments should be used to evaluate new legislation, but also cover **existing regulations**. It is essential to improve the entire regulatory environment to make Europe more competitive, as stated in the *conclusions of the Lisbon European Summit*. It is not sufficient to assess the new layers of regulations, but it is essential to take full account of the overall regulatory burden and compliance costs for European enterprises.
7. In coordination with the SLIM programme, variance of actual impacts with those projected in the BIA should be **reviewed regularly** (every three years for instance) in order to make sure that the Panel does not impose a much greater burden than anticipated.

In order to improve the coverage of the assessment tools developed within the European Commission, and to facilitate its use by all DGs for any relevant piece of legislation, UNICE supports the idea that **supervision of the system should be dealt with at the highest level and pass to the Secretariat General of the European Commission**. This would include ensuring compliance with this procedure and acting as a forum for appeal in cases where data or procedural compliance are alleged to be deficient. Given that the Secretariat General is currently revising the *1999 Guidelines on Legislative Policy* and its responsibility for the *Code of Good Administrative Procedure*, this subject would fall naturally within its remit.

UNICE welcomes a **Code of Conduct** applicable to the three European institutions aiming at simplifying new and existing legislation. UNICE is also in favour of a European Office for Evaluation, which is presented in the Commission work programme towards the White paper on European Governance. The office should be a non-political agency, independent from the EU institutions and involving all relevant parties, and especially the business community. This office should as well be in charge of monitoring proper implementation of EU rules at national level.

In this context, UNICE welcomes any progress made by the European Commission on this capital issue of business consultation and impact assessment in order to reach concrete results for a better and simpler regulatory environment for business in Europe. This is one of the keys to reach the ambitious goals set out by the Council of Ministers in Lisbon in March 2000 to make Europe the most competitive, innovative and entrepreneurial place in the world.

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