

PRELIMINARY UNICE POSITION ON EUROPEAN GOVERNANCE

1. Introduction

The Commission initiative on European Governance: “*Enhancing democracy in the European Union*”, centres debate on a subject described by the Commission as a strategic objective in its work programme for 2000.

For UNICE, the concept of governance designates all the rules, processes and behaviours linked to the quality of exercise of powers, in particular accountability, clarity, coherence and effectiveness. In this context, good European and international **governance involves meeting the essential conditions of transparency, accountability and efficiency for the success of public policies**. Governance principles should cover the entire process from initial policy formulation, to consultation on draft legislation, through to its implementation and *ex post* evaluation.

Governance also concerns private players, in particular business, which is the creator of wealth and well-being in society. If the companies operating in the EU are to deliver higher growth and employment, they **need to have a quality regulatory environment supporting business competitiveness**, against the background of enhanced competition, globalisation and technological progress.

As nearly **80% of all economic and social legislation affecting business and employers emanates from Brussels, the business community must be at centre stage in the governance process at EU level**, as it is at national level. Companies and the organisations representing them must be able to have their views heard, and be effectively involved in the design and implementation of EU level decisions affecting them. This is a *sine qua non* for a satisfactory outcome of this process, for the necessary evaluation of trade-offs involved in policy-making, and, above all, for the acceptability of rules and policies.

In the specific context of the EU, the Commission should accept that **different models of governance can co-exist and are in fact necessary**. The debate should therefore not proceed on the assumption that a single model can apply irrespective of policy content (for example, economic, social or environmental policies), levels of decision-making (national, EU or international) and objectives of outcomes (binding or non-binding instruments).

UNICE welcomes the opportunity provided by the initiative of the Commission and, as the voice of European business, wishes to offer the following specific comments at this stage of the debate.

2. Conditions for consultation

If the present trend of consulting just about anybody anywhere were to continue, the EU, and the Commission in particular, would run a serious risk of making its consultation

system unmanageable. Therefore, **it is essential to set out principles and criteria to give structure to the EU consultation policy and to increase its coherence.**

The genuinely representative stakeholders affected by a decision or policy should be offered a systematic consultation each time when new measures or revision of existing regulations are envisaged. Consultations should take place as early as possible and in a transparent fashion. The outcome of consultations should be made public, and the reasons for taking account or not of the advice given should be given to the consulted parties.

In order to allow an assessment of the source and the content of responses received from bodies speaking on behalf of different components of European society, a number of criteria need to be taken into consideration. The Commission should check for each policy area which organisations are to be consulted based on the following criteria:

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

In the future White Paper, the Commission could set out the principles for a **Code of Conduct on consultation**, which would acknowledge legitimacy of representative bodies meeting the criteria defined above and require their consultation. The Commission could also establish **a register of consulted organisations** in order to provide transparent information on the fulfilment of these criteria.

The **use of new technology** can help to cut the time and costs of consultation, as well as contributing to more inclusive processes. However, certain conditions should be respected. For example, the relevant information should be transparent and made genuinely available for the public. All proposals for legislation or non-legislative measures should be open for consultation over the internet before the Commission submits formal proposals.

When a consultation is to be carried out virtually, the criteria of a representative organisation should be equally applied. That is especially important when evaluating and weighing the input coming from different sources. The Commission should also indicate which organisations are consulted via internet and make public what they have expressed in the consultation.

Before opening new forums for consultation, the Commission should take a critical look at those which already exist (e.g. comitology). Keeping all of them plus the new mechanisms runs the risk of wasteful multiple consultations.

3. Preparation and evaluation of legislation

Generally, **business needs regulation that aims at results and outcomes rather than be prescriptive in the means for achieving the goals.** 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. To that end, alternative regulatory models, such as self-regulation, negotiated agreements, co-regulation, stakeholder dialogues, or mixes of regulatory instruments can often prove to be more effective than traditional legislation and processes in delivering effective solutions to keep up with fast change in the marketplace, for example with the advent of electronic commerce. Business sees these instruments as complementary tools to traditional mechanisms, and as vital means to improve functioning of the Internal Market and increase European competitiveness.

Where EU legislation is necessary, **it should be better drafted and developed through a more open and transparent regulatory system, based on independent impact assessment and cost/benefit analysis.** The initiatives taken so far on evaluation of 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.

From the earliest stages of definition of new proposals there should be an explanation in clear and verifiable terms of how they comply with the principles of **subsidiarity and proportionality.** In its White Paper, the Commission should also address the “action deficit”, that is the reasons why certain commitments have not been put into practice. These include, in particular, the Treaty provisions on the costs and proportionality of legislation, respect of subsidiarity, transparency, and access to documents.

UNICE welcomes a Code of Conduct applicable to the three institutions aiming at **simplification of legislation.** It also welcomes a European Office for Evaluation. The office should be a non-political agency, independent from the institutions of the European Union. The office could also be in charge of monitoring proper implementation of EU rules at national level. It is of utmost importance, however, that the relevant parties (including companies) are involved in the evaluation work.

As to the **open coordination process initiated in Lisbon, UNICE supports its expansion.** The general method of open coordination, including the use of benchmarking and assessment of best practices, is applicable to a wide range of policy areas. It is consistent with the business’ approach to achieve results rather than being prescriptive in the means for achieving them, recognising that the Member States in many cases have the primary responsibility in execution (e.g. employment policies). This approach is not contradictory to keeping a central role for the EU policy-makers in areas where the community method is needed, such as the management and further development of the Single Market.

4. Social dialogue

The social dialogue at EU level is a fully structured and autonomous process of the social partners which should not be confused with, or subsumed in the general methods of consultation of the Commission. In addition, in the context of the Treaty’s social chapter, the social partners have a role and responsibilities which are not possible to generalise to other policy areas or actors.

However, the role of social partners should not be understood as being restricted only to negotiation of binding agreements at EU level. In the context of a more qualitative approach to European social policy, UNICE believes that there can be a useful role for more general discussions, for instance on the general principles of policies to combat

unemployment, provided that these discussions are focused on a real exchange of views and analysis.

It is important to reserve a separate place for social partners in the EU consultation process, notably in the context of the Luxembourg and Cologne processes regarding the employment guidelines and the macroeconomic dialogue.

5. Conclusions

From the debate on governance generally and the White Paper in particular, UNICE expects:

- ?? improvement in the quality of the European regulatory process;
- ?? establishment of a stable legislative environment favourable to the development of businesses in the European Union, in order to stimulate economic growth, and the creation of wealth and well-being in society;
- ?? a permanent dialogue characterised by transparency, coherence, accountability and effectiveness;
- ?? preparation by the European Commission of clearly expressed proposals and documents which are easier for the European business community to understand.

The European Governance debate will not move beyond the theoretical unless the Member States and the Institutions put in place a workable EU Communications Strategy. If it is to reach out to the public at large, the White Paper should be drafted with this objective in mind.