

27 August 2001

THE PRESIDENT

Dear Member of the European Parliament,

### **European Company Statute**

The purpose of this letter is to draw your attention to a key issue in the debate on the Regulation on the Statute of the European company (SE) ahead of your decision on the European Parliament report, prepared by Mr Mayer and submitted for adoption during the plenary session in September 2001.

Creation of an appropriate SE could have a significant positive impact on the competitiveness of European companies in global markets and could help companies to align with the logic of the single market and the euro. European business has therefore consistently supported the creation of such a statute, and welcomed the political breakthrough achieved in Nice last year. Yet there is still some way to go to bring a useful SE into being. Without agreement on a suitable accompanying tax regime, the SE will have a limited impact.

To this effect, it is essential that the European Parliament includes strong and unambiguous calls for the Commission to bring forward a proposal which should make it possible, in particular, to achieve EU-wide consolidation of taxable results as soon as possible. Another important aspect is the need for amendments to the (tax) Merger Directive in order to remove the fiscal obstacles to the conversion to an SE.

Without the strong support of the European Parliament, there is little hope of seeing progress on the fiscal aspects of the SE. Without an appropriate fiscal regime, the SE is unlikely to make a difference in practical terms to the operation of pan-European companies, and its interest will therefore be limited. Europe must not miss this opportunity of helping its companies to improve their competitiveness.

For ease of reference, you will find enclosed UNICE's comments on the package agreed by the Council on the Statute for a European Company, of 29 March 2001. This gives our overall assessment of the package proposed by the Council, highlights some areas in which a simplification should be possible without unsettling the compromise reached in Council, and points to some issues on which clarification will be necessary in the future.

Yours sincerely,

Georges Jacobs

**EUROPEAN COMPANY STATUTE**

*Proposed Regulation on the Statute for a European Company Proposed Directive on the involvement of employees*

**UNICE COMMENTS**

**I. GENERAL ASSESSMENT OF THE REGULATION AND DIRECTIVE**

Since the first proposal for a European Company Statute in June 1970, UNICE has repeatedly stressed the positive impact that creation of an appropriate European Company Statute could have for the competitiveness of European companies on global markets.

An instrument facilitating cross-border mergers is more necessary than ever at a time when transborder cooperation between companies is growing and is becoming more and more important. The existence of an optional legal form of this type would facilitate cross-border reorganisation and integration of business structures, aligning them as much as possible with the logic of the single market and the euro. UNICE therefore very much welcomes the fact that the political agreement reached in Nice made it possible to break the deadlock on this dossier.

However, in its previous comments, UNICE stressed that companies would only opt for this form of company if the proposed statute is sufficiently attractive and corresponds to their needs. UNICE is of the opinion that the compromise reached in Nice has four weaknesses in this respect:

- it does not include an agreement on a suitable tax regime,
- it harmonises only limited aspects of company law and falls short of providing companies with a genuine Community law instrument but rather creates fifteen different statutes,
- the complexity of the solutions found may discourage companies from opting for a European Company Statute and could put existing European companies at a competitive disadvantage vis-à-vis newcomers who will be able to create a European Company more easily and more quickly,
- since most EU Member States have no provisions for worker participation in corporate bodies, members from those countries express strong opposition to the so-called "reference" rules which would systematically and immediately apply in the event of failure to agree. In UNICE's view, immediate and automatic application of pre-ordained "reference" rules, which prescribe a form of co-determination alien to the majority of Member States, may have the effect of distorting the negotiating balance from the outset.

UNICE would also like to stress that the compromise reached on the social aspects of SE in the context of an optional Statute would be totally unacceptable in the framework of the

debate on other instruments which are not optional, such as the tenth and fourteenth Directives.

While welcoming the political breakthrough achieved by the Council, UNICE therefore calls on the EU institutions to pursue their efforts and build on the progress achieved in order to improve the attractiveness of the European Company Statute. In this context, UNICE urges EU Institutions to progress rapidly on this dossier.

## **II. SPECIFIC COMMENTS**

### **1. ON THE FISCAL ASPECTS**

UNICE would like to reiterate its views that the European Company Statute will offer no significant economic benefit without agreement on a suitable tax regime.

It is essential that the Commission brings forward a proposal on this matter in the near future. UNICE stresses that the arrangements to be proposed should meet companies' needs and expectations in particular with regard to the central objective of achieving EU-wide consolidation of taxable results. If properly structured, such consolidation would eliminate a large number of existing tax obstacles to cross-border activity and business integration.

UNICE has already suggested concrete proposals in this respect in its 3 April 2000 memorandum on cross-border company taxation obstacles in the Single Market.

### **2. ON THE COMPANY LAW ASPECTS**

UNICE understands that a delicate balance had to be established at political level but regrets that the proposed Regulation only harmonises limited aspects of Company Law. Substantive aspects of the Regulation are left to national laws. This will have as a result that at least fifteen different statutes will be applicable. The proposed Statute therefore falls short of providing companies with a genuine Community law instrument.

The delicate balance that was established at political level also led to extremely complex solutions being introduced both in the Regulation and in the Directive. This complexity, in itself, may discourage companies from opting for a European Company Statute. Efforts should therefore be made to reduce this complexity where possible. This is notably the case for articles 8 and 12 of the draft Regulation on the registration and transfer of registered office, for which the drafting needs to be more structured.

### **3. ON THE SOCIAL ASPECTS**

Because of the diversity of existing systems for employee information, consultation and/or participation in Member States, harmonised solutions in this field are neither possible nor desirable.

UNICE is convinced that the best and simplest way to decide on how to involve employees in the decision-making process of a European company (SE) is through negotiation between management and workers of each SE concerned. It therefore welcomes the priority given to such negotiations in the Directive. However, the freedom to negotiate tailor-made solutions should not be limited by reference rules applying in the absence of agreement.

Moreover, UNICE believes that the requirements of the Directive are sometimes unnecessarily complicated. For example, article 3 of the proposed Directive on the special negotiating body is so complicated that considerable time could be lost before the special negotiating body can be set up. UNICE understands the need to have a proportional representation of workers in the special negotiating body but believes that the complex system of percentages foreseen in article 3 should be replaced by

the system foreseen in article 5 of the European Works Council Directive (i.e. at least one worker per country plus one additional worker in proportion to the workforce up to a maximum of eighteen in total).

As stated above, UNICE would like to stress that the compromise reached on the social aspects of SE in the context of an optional Statute would be totally unacceptable in the framework of the debate on other instruments which are not optional, such as the tenth and fourteenth Directives.

### **III. CONCLUSION**

In the light of the above comments, UNICE would like to

- confirm that it welcomes the fact that the political agreement reached in Nice made it possible to break the deadlock on this dossier,
- reiterate its call on the EU institutions to pursue their efforts and build on the progress achieved in order to improve the attractiveness of the European Company Statute and to allow rapid adoption of a Statute that meets companies' needs.

Finally, UNICE would like to stress that the proposed SE is not designed to answer the needs of SMEs. It recalls the proposal for a Private Company Statute made by UNICE's French member federation and calls on the Commission to present as soon as possible such an additional optional statute to respond to SMEs' needs.

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