

COMMISSION WHITE PAPER ON EUROPEAN GOVERNANCE

UNICE POSITION

EXECUTIVE SUMMARY

- UNICE welcomes the Commission White Paper on European governance aiming at improved policy-making and working methods in the European Union. Especially in view of the future enlargement, there is urgency for reforms to be undertaken prior to the next Inter-Governmental Conference.
- The White Paper rightly recognises the need for a reinforced culture of consultation. UNICE supports in particular the Commission's intention to set up a code of conduct for consultation. UNICE calls for a comprehensive code, which should include rules for all phases of consultation, be applicable to all appropriate policy areas and be made public. In addition, UNICE suggests a list of criteria for evaluating the representativeness of consulted European organisations.
- UNICE wants to underline the special role the Social Partners play in the context of European social policy. On the basis of the Treaty's social chapter, the social partners have a role and responsibilities, which cannot be generalised to other policy areas or actors. Therefore, the social dialogue at EU level - in its different forms - has to remain strictly separate from the civil dialogue.
- As to improving EU legislation, UNICE urges the Commission to set up a comprehensive, well-structured and transparent impact assessment mechanism. In addition, UNICE asks for a simplification programme with clear and measurable goals, concrete timetables and means for monitoring and control.
- UNICE supports promotion of the use of alternative regulatory models and mixes of legislative and non-legislative instruments as an alternative to traditional legislation. Despite the wide range of alternative regulatory instruments existing at present, it is regrettable that the White Paper focuses mainly on co-regulation as one of the leading approaches to future regulation. UNICE advocates the case-by-case assessment of all alternatives on an equal footing and based on objective criteria.
- UNICE welcomes a stronger emphasis on the global dimension in framing of EU policy. Also the proposed review of the EU's international representation to allow it to speak with one voice is in the interest of European business. However, beyond recognising these needs, the White Paper does not provide a sufficient analysis of the current situation or concrete solutions.
- As a follow-up to the White Paper, UNICE looks forward to clear proposals on the items outlined in the Paper: a comprehensive code of conduct for consultation, tools for impact assessment and simplification, guidelines for the use of alternative regulatory instruments and clarification of the EU's role in global governance.

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UNICE POSITION

1. UNICE welcomes the Commission White Paper on European governance as an important initiative to improve the functioning of the European Union. Especially in the context of completion of economic and monetary union and the future enlargement, the need for operational reforms for better governance is more urgent than ever.
2. In order to deliver higher growth, employment, wealth and well-being in society, European business needs a European Union that is simple, efficient, coherent, transparent and predictable. To this end, the White Paper comes up with several key proposals.

BETTER INVOLVEMENT AND MORE OPENNESS

3. The White Paper rightly recognises the need for a reinforced culture of consultation. **Comprehensive, timely and structured consultation is a prerequisite for a satisfactory legislative process, for evaluation of the trade-offs involved in policy-making, and finally, for acceptability of rules and policies.** This principle applies regardless of the level of decision-making, be it at Community, national or local level.
4. **Genuinely representative stakeholders affected by a decision or policy should be offered systematic consultation each time that new measures or a revision of existing regulations are envisaged.** In order to allow an assessment of the source, content and weight of responses received from bodies speaking on behalf of different components of European society, **the representativeness of the consulted organisations should be assessed.**
5. UNICE suggests the following as criteria for a representative European organisation:
 - be composed of members mandated to act 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 - demonstrably - independent of the public authorities, at both national and European level, in terms of financial resources;
 - have an internal, well-resourced 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.

6. In order to facilitate the assessment of representativeness and increase openness, UNICE welcomes the Commission **on-line database with details of civil society organisations**. A further welcome step by the Commission is the intention to establish **partnership agreements in selected policy sectors** committing the Commission to additional consultation in return for more guarantees of openness and representativeness of the organisations consulted.
7. In the context of exponentially increasing modes and fora for consultation, clear rules and principles are needed to improve the coherence of EU consultation policy. To that end, UNICE supports the intention of the Commission to review existing consultative fora and to adopt a code of conduct for consultation. **UNICE calls for a comprehensive code, which should include rules for all phases of consultation**. The code should set out clear guidelines for the definition of core stakeholders, purpose, content, methodology and timeframe of the consultation. This code should be applicable to all appropriate policy areas and it should be made public.
8. An important prerequisite for all consultation is that it should not add to the bureaucracy and timeframes included in decision-making. **A balance should be struck between comprehensiveness of consultation and efficiency of decision-making**. Consultation should focus on direction and results, not on detail.
9. For the sake of feasibility and efficiency, consultation in the form of meetings should be limited to a core group having the credentials of a representative stakeholder. Publicly accessible communications tools, e.g. internet or interactive websites, should be put in place in order to allow active participation of all stakeholders concerned. However, when evaluating the contributions collected on-line, the criteria of representative organisation should equally be applied.
10. **Transparency in decision-making and access to information at all levels are the basis for successful consultation**. The intention of the Commission to make available up-to-date, on-line information on preparation of policy through all stages of decision-making is a welcome step in that direction. UNICE urges the Council to adopt a similar approach towards openness.
11. The principle of transparency should be extended also to the consultation process: **the outcome of consultations and the opinions expressed should be made public**. In addition, there should be **a feedback mechanism** on how the advice given is taken into consideration.

Social dialogue

12. The White Paper recognises the special role of the Social Partners in the context of European social policy, which ensues from the influence they have exercised over the social and economic developments in European history. **The social dialogue at EU level - in its different forms - has to be strictly separated from the civil dialogue**. In the context of the Treaty's social chapter, the social partners have a role and responsibilities, which cannot be generalised to other policy areas or actors. This role is, on the one hand, a consultative one in the framework of the legislative procedure and, on the other hand, a contractual one if the social partners choose to conclude agreements.
13. However, the autonomous role of social partners should not be understood as being restricted only to negotiation of agreements at European level in the framework of Article 138 of the Treaty. 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.

14. It is important to reserve a separate place for social partners in the EU-coordination process, notably in the context of the Luxembourg and Cologne processes regarding the employment guidelines and the macroeconomic dialogue.
15. The European social partners issued a joint contribution on the future of social dialogue for the Laeken summit, and will continue working on the matter in order to make a proposal during the Danish Presidency.

BETTER POLICIES, REGULATION AND DELIVERY

16. **The necessity of EU legislation should be assessed on a case-by-case basis, based on the principles of proportionality and subsidiarity. 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. Business prefers regulation that aims at results and outcomes rather than prescribing the means for achieving the goals.
17. **Where EU legislation is necessary, it should be based on a systematic and independent impact assessment** providing the policy-makers with key elements to take an informed decision. Business calls for a timely, thorough and transparent evaluation of the impact of all administrative measures. To this end, a comprehensive and well-structured impact assessment mechanism, adaptable to the special circumstances of different legislative proposals, should be developed.
18. **The impact assessment should fulfil three requirements: prior examination of alternatives to regulation, simplification and publication of the analysis.** The method should cover the different aspects of society and it should be endorsed by all EU Institutions. The analysis should be carried out preferably by an autonomous body with necessary expertise, e.g. external sub-contractor. The main stakeholders affected by the planned measure should be consulted.
19. As the outcome of the EU regulatory process often differs considerably from the original proposition by the Commission, the impact analysis should be carried out also afterwards including the amendments made by the European Parliament and the Council. Once implemented, re-evaluation of existing regulation should take place on a regular basis to assess the need for keeping it in place in the changing environment.
20. For years, European business has been asking for comprehensive programmes to review and simplify legislation, and is looking forward to the Action Plan for better regulation as proposed by the Mandelkern group. **Business calls for a comprehensive and well-structured, multi-annual simplification programme.** The programme should include clear priorities, fixed and measurable goals, concrete timetables and means for monitoring and control. It should comprise a code of conduct for the EU Institutions and Member States and an annual report by the Commission. A simplification task-force reporting to the Secretariat General of the Commission should be set up.
21. Business also calls for more thorough and timely consultation of the socio-economic circles in order to specify the essential requirements of directives.
22. More flexibility in the implementation of rules suggested by the White Paper is advisable on the condition that proper functioning of internal market is safeguarded. **UNICE calls for rigorous follow-up of infringements:** the 15 must set an example for the accession countries.

23. For the sake of transparency, UNICE supports the proposal of the Commission to establish guidelines on collection and use of expert advice and publication of the advice given.
24. Prudence is recommended in the creation of autonomous European regulatory agencies. **Before setting up a new agency, it should be proved that it would clearly add value and not increase red tape.** Organisation and activities of these agencies should be vigilantly supervised. It should also be noted that the agencies do not fall within the reach of democratic control and thus do not serve to repair the “democracy deficit”.

Alternative regulatory models

25. **UNICE supports promotion of the use of alternative regulatory models and mixes of legislative and non-legislative instruments**, which often prove more effective than traditional legislation in delivering effective solutions to keep up with rapid change in the marketplace. Despite the wide range of alternative regulatory instruments existing at present, it is regrettable that the White Paper focuses mainly on co-regulation as one of the leading approaches to future regulation. **UNICE advocates the assessment of all alternatives on an equal footing and based on objective criteria.** A given model should not be granted greater attention unless it responds to the policy issue concerned, to the expertise and fora available, and to the interested stakeholders represented.
26. **UNICE reiterates the usefulness of instruments like self-regulation or voluntary agreements**, which have proved to be effective and flexible mechanisms providing rapid assessment, decisions, and implementation, while ensuring a high level of consumer protection. Good examples of already established voluntary agreements and professional codes of conduct can be found in the fields of environment, consumer matters, services (including financial services), e-commerce, social policy and technical standards.
27. UNICE acknowledges that certain improvements could be achieved as regards specific aspects of **self-regulatory activities**, notably relating to their monitoring and enforcement, and remains open to discuss these aspects. In principle, UNICE would not oppose the elaboration of some guidance on basic principles for self-regulation, applicable to all policy areas, which should remain in all cases voluntary. However, it strongly opposes self-regulation becoming an instrument to create statutory requirements since this plainly goes against its voluntary nature and autonomy of the parties.
28. As for the **stakeholder dialogue**, UNICE is of the opinion that more and better informal dialogue between stakeholders should be promoted at European level. Care should be taken to ensure that development of more formalised regulatory models or new dialogue structures would not diminish the benefits of informal types of dialogue or undermine industry’s involvement and investment in self-regulatory schemes.
29. As to the **conditions for the use of co-regulation** provided in the White Paper, and in order to guarantee successful application of co-regulatory instruments, UNICE believes that the following principles should be taken into consideration:
- The use of co-regulation should be considered on a case-by-case basis. Involvement of stakeholders at an early stage would help focus on the source of concern.
 - The objective criteria against which pre-selected stakeholders are chosen should be clarified. This applies particularly when pre-selection is based on perceived expertise or available resources.

- Stakeholder organisations engaged in a dialogue should be representative at European level, mandated to act on behalf of their constituents, and possess the necessary means to fully participate the process.
- Each dialogue should be issue-oriented, clearly defined, transparent and managed by the Commission. The process should step up, not slow down, the decision-making process.
- A dialogue should lead to key conclusions or proposals. A follow-up mechanism should be established to ensure correct implementation or execution of results achieved through dialogue.
- Parties should be clearly informed about the objectives, procedures and conditions prior to engagement in a co-regulation process.

Open method of coordination

30. **UNICE supports the expansion of the open method of coordination initiated at the Lisbon summit.** 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 on 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 with keeping a central role for EU policy-makers in areas where the community method is needed, such as the management and further development of the Single Market.
31. In addition to using the instrument "when legislative action under the Community method is possible", it should be applied when the current policy is not achieving its objectives efficiently enough. However, UNICE wants to underline that the open method of coordination should not lead to excessive regulation, to undermine national competences in practice, or to a multiplication of very work-intensive processes, which partly overlap with each other.
32. **Essential for the successful use of the tool is public and systematic evaluation of the progress made in the Member States in the form of comparative annual reports on reforms.** For the moment, the situation is highly unsatisfactory in this respect. In addition to the Members States, the economic circles and civil society have an important role to play in the evaluation and follow-up.

GLOBAL GOVERNANCE

33. **UNICE welcomes a stronger emphasis on the global dimension in framing of EU policy.** However, the suggestions of the White Paper in the area remain vague. The Commission does not provide a real diagnosis of the problems of global governance, neither does it take a self-critical look at its own governance in relation to global issues. The White Paper addresses the issue of coherence only in relation to co-operation and coherence between the activities of international organisations, but does not pay sufficient attention to consistency between internal and external EU policies, external economic policy – political relations, security and defence, and the external policies of the EU and Member States.
34. **The proposed review of the EU's international representation so that it can speak more often with a single voice is in the interest of European business.** However, beyond recognising this need, the White Paper neither analyses the current situation nor presents a method on how "a single voice" could be achieved. Currently, contrary to

Declaration 32 annexed to the Amsterdam Treaty, the Commission itself has at least four different Commissioners directly involved in external relations.

35. In the context of the next Inter-Governmental Conference, **UNICE strongly supports an extension of qualified majority voting** to issues of major importance to business, such as international negotiations and agreements on services, intellectual property rights and foreign direct investment.

REFOCUSED POLICIES AND INSTITUTIONS

36. Clearer identification of strategic, long-term policy objectives, combined with greater focus within the Institutions upon their core political tasks, are necessary elements in improving efficiency in the Union and preparing for the enlargement. Even though the methodology proposed in the White Paper for achieving these goals remains unclear, UNICE welcomes the recent procedure launched by the Commission on drafting its work programme, including inter-institutional consultation. UNICE proposes that in the future, a broader and more inclusive consultation takes place when setting the political priorities and annual work programme of the Commission, including input from the Social Partners.

FROM GOVERNANCE TO THE FUTURE OF EUROPE

37. UNICE would have expected the White Paper to give a clear description of the relationship between the current debate on governance and the next IGC, and looks forward to additional information on this aspect. The White Paper could also have come up with a more concrete contribution to the discussion on the future of Europe: at this point of the debate, a governance exercise concentrating solely on changes within the framework of the existing Treaty could be too restrictive.
38. UNICE expects that the principles of good governance outlined in the White Paper – participation, openness, accountability, effectiveness and coherence – will form the basis of the debate on the future of Europe, when the development of structures and the definition the EU objectives are addressed.

CONCLUSIONS

39. UNICE welcomes the debate on European governance as a necessary undertaking to improve the policy-making and working methods in the European Union, as well as to pave the way for the next Inter-Governmental Conference and enlargement.
 40. The White Paper includes a number of elements supported by European business. However, in several respects the Paper fails to introduce concrete measures and timetables to achieve the goals set. Therefore, as a follow-up to the White Paper, **UNICE looks forward to clear proposals on the items outlined in the Paper**: a comprehensive code of conduct for consultation, tools for impact assessment and simplification, guidelines for the use of alternative regulatory instruments and clarification of the EU's role in global governance.
 41. UNICE urges the Commission to take the measures falling into the scope of the White Paper immediately, without waiting for the 2004 Treaty revision.
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