

# EUROPEAN CONVENTION

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# UNICE POSITION PAPERS

**CONVENTION ON THE FUTURE OF  
EUROPE**

**EXECUTIVE SUMMARY**

**UNICE'S EXPECTATIONS**

UNICE considers the process of economic integration to be the main dynamic behind the peace, stability and prosperity achieved in Europe over the past fifty years. This should therefore continue to be one of the most important priorities of the EU. From a business perspective, the EU must deliver a business-friendly environment in which companies can operate and compete on a level playing-field and adapt to the increasing challenges that globalisation brings. This will lead to wealth creation and therefore employment opportunities.

**NEED FOR A CLEARER DIVISION OF COMPETENCES AND RELATED DECISION-MAKING PROCEDURES**

UNICE recommends consolidation of the existing treaties into a single comprehensible and structured instrument. This should make clearer what are the basic values and objectives of the EU, the nature and hierarchy of its instruments, its general competences and related decision-making procedures, and the division of powers among its institutions. This should help the EU to refocus its actions on its main tasks. The Convention must also consider ways in which respect of the subsidiarity principle, in both its territorial and functional dimension, can be ensured strictly and systematically.

**NEED TO PRESERVE THE COMMUNITY METHOD AND ENSURE AN EFFICIENT INSTITUTIONAL FRAMEWORK**

Efficient functioning of the EU Institutions will be key to the success of the enlarged EU. Making recommendations on how to improve the efficiency and transparency of the EU institutions while preserving the Community method should be a priority for the Convention. Qualified majority voting should become the general rule.

**NEED FOR A LIGHTER REGULATORY FRAMEWORK COUPLED WITH INCREASED USE OF CO- AND SELF-REGULATION**

The objective of streamlining and simplification of legislation and rules should be more effectively included in the operating process of the EU. Co-regulation and self-regulation should be considered more often as alternatives to legislation. Impact assessment of legislation must be carried out in a systematic way by an independent body to be established. There should be more on-going and rigorous monitoring of transposition into national legislation of European rules in order to avoid disparities in implementation.

**NEED TO RE-THINK THE METHOD FOR CONSULTATION OF RELEVANT STAKEHOLDERS**

UNICE proposes adoption of a comprehensive code for consultation. The code should set out clear guidelines for the definition of core stakeholders, purpose, content, methodology and timeframe of the consultation. The representativeness of organisations should be duly taken into account. In addition, UNICE calls for a very clear distinction to be made between consultation of civil society and the social dialogue.

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**CONVENTION ON THE FUTURE OF  
EUROPE**

UNICE COMMENTS

**I. INTRODUCTION**

UNICE is the voice of some 16 million small, medium-sized and large European companies which create, produce and distribute the resources which underlie Europe's prosperity. Its representativeness has given it the status of social partner at European level and it is in that capacity that it has observer status vis-à-vis the Convention.

**In this context, and as an active supporter of EU integration for more than 40 years, UNICE is keen to contribute to the debate on the future of the EU launched by the Convention.** The prosperity of the EU relies on a healthy business environment and the following paper sets out the preliminary views of UNICE on the reforms needed to best achieve this goal.

**II. KEY OBJECTIVES FOR BUSINESS**

**UNICE supports the need for the basic values of the EU (principles of liberty, democracy, respect for human rights, diversity, fundamental freedoms, respect for the rule of law, and social and economic cohesion) to remain the underlying basis of any further European integration.**

Furthermore, the main objectives of the EU must be to further promote economic growth and thereby social progress, as well as a high level of employment, and to ensure balanced and sustainable development based on market economies.

**The EU must deliver a business-friendly environment in which companies,** as the engine of economic growth and employment, can compete on a level playing-field, prosper and adapt to the increasing challenges that globalisation brings. This is vital if the EU is to meet its Lisbon objective of making Europe the most dynamic and competitive knowledge-driven economy in the world by 2010. In this context, **business believes that the guiding principle for shaping tomorrow's Europe must be a commitment to meet the following four objectives:**

- **Strengthening European competitiveness, adaptability to structural change and improvement of employment prospects;**
- **Strengthening Europe's economies and full realisation of EMU's potential;**
- **Successful enlargement of the EU without any distortion of the Internal Market;**
- **Strengthening Europe's hand on the international stage.**

### **III. EU CONSTITUTION/CHARTER OF FUNDAMENTAL RIGHTS**

As a result of the various amendments to the Rome Treaty, many of the elements usually enshrined in a constitution are scattered through the existing Treaties. In order to remedy what is today an overly complex and poorly structured set of texts, **the Convention should recommend consolidation of the existing treaties into a single comprehensible and structured instrument.** This should make clearer what are the basic values and objectives of the EU, the nature and hierarchy of its instruments, its general competences and related decision-making procedures, and the division of powers among its institutions.

When discussing the possible Constitution for the EU, reference is made to the **Charter of fundamental rights.** UNICE supports the objective of making those rights and freedoms more visible to the Union's citizens. However, UNICE insists that the Charter should respect the present competences of the EU and not extend them. The current text contains elements which fall outside the ambit of EU competences and some articles on economic and social rights cannot be incorporated in a revised EU Treaty. **The existing text for the charter is not fit to become legally binding.**

### **IV. DIVISION OF COMPETENCES AND SUBSIDIARITY**

#### *Need for better focus on core tasks*

**The EU has to concentrate on those tasks which can best be resolved at Community level.** These include trade and customs union, monetary policy and its common currency, consolidation and completion of the Internal Market, competition policy, environmental protection, common representation in the global economy and its institutions, the Common Foreign Policy, asylum and refugee policies and the fight against international crime.

#### *Need for a more comprehensible structure of EU competences*

UNICE is not calling for a complete overhaul of the competences of the EU, but rather for a more comprehensible and clear structure of existing EU competences. A detailed catalogue of competences would deprive the EU of the flexibility to adapt to new tasks and challenges and is in itself not a 'safeguard' for a further transfer of competences. Any discussion about the EU's current and future competences must take into consideration that the functioning of the Single Market, which is at the very heart of the EU, must not be impaired under any circumstances. The most important issue for business is a more reliable and indeed flexible legal and administrative framework for the execution of current EU competences.

#### *Better respect of subsidiarity and proportionality principles*

The debate on the division of competences and hierarchy of instruments cannot be dissociated subsidiarity and proportionality. These two principles are key to the future functioning of the EU and for bringing it closer to its citizens. **The principles of subsidiarity and proportionality are Treaty requirements (article 5 EC) but in practice they are hardly respected. The Convention has to consider ways in which their respect can be ensured more strictly and more systematically.** In this context, an independent body should be entrusted with the task of reviewing respect of the subsidiarity principle.

Subsidiarity is not only about the assessment of the most appropriate level of action at territorial level between the EU, member states, and/or regional and local levels (territorial or vertical subsidiarity).

### Functional subsidiarity

There is another kind of subsidiarity based on functional criteria related to specific expertise (functional or horizontal subsidiarity). **Functional subsidiarity means that when an action is justified at EU level, there is a need to assess whether the objectives of the proposed EU action cannot be achieved by other actors than the EU institutions** (e.g. agencies, social partners and other representative actors of the civil society agreeing among themselves how best to reach a given objective).

**These two levels of subsidiarity (territorial and functional) should function in tandem complementing each other, and monitoring processes should be put in place to ensure their respect.**

## V. NEED FOR A LIGHTER REGULATORY FRAMEWORK AND BETTER USE OF SELF AND CO-REGULATION

### Better assessment of the need for regulation

**There is a general tendency to increase EU regulation, and mechanisms should be put in place to better assess the impact of regulation.** This task could be carried out by an independent institution. The goal of this institution would be to check the need for EU regulation, its economic impact, and its added value for the functioning of the internal market. This body could also have a role in the deregulation process by regularly checking the effectiveness of existing regulation.

**In order to reduce the burden of EU regulation, it would be desirable to test new Community proposals before they come into force and see whether they are necessary, whether they go beyond the limits of EU competences and whether they infringe the subsidiarity and proportionality principles.**

**When legislation is considered necessary, UNICE calls for a better quality legal framework.** Streamlining and simplification of legislation should be included in the operating process of the EU. Similarly, there should be more on-going and rigorous monitoring of transposition into national legislation of European rules in order to avoid disparities in implementation.

### Nature and hierarchy of instruments used

Articles 249 EC provides several instruments to be used by the EC institutions to meet their missions (regulation, directive, decision and recommendation). But neither this article nor any other article of the Treaty establishes a hierarchy between these instruments. As a result, these instruments have been often used in a heterogeneous way and without real logic.

In addition, the content of these instruments has evolved. For instance, the content of many detailed directives in the context of the Internal Market is far removed from the definition of the Treaty which indicates that directives are binding as to the result to be achieved but leaving member states free choice on forms and methods to meet these results. **Greater coherency should be sought in defining what instruments are to be used for which purposes, as well as their hierarchy.**

### Legislative and quasi-legislative instruments

- Regulations should be used to create EU single instruments;
- Directives should be used to meet general objectives of harmonisation and their content should focus on the main principles,
- Implementing rules, adopted in the context of comitology procedures, should lay down detailed and technical provisions, which should be easily amendable.

### Non-legislative instruments

- decisions and recommendations should be used for administrative purposes

### Sui generis instruments

Between the two above categories stands another category that has to be given greater recognition by a revised Treaty. This is the whole ambit of co-regulation and self-regulation.

Agreements by social partners are already recognised by the treaty. But the Convention, in UNICE's view, should recommend a greater role for other types of instruments between representative stakeholders, on specific topics (see for instance the UNICE-BEUC agreement on trustmark schemes<sup>1</sup>). In this context, **self-regulation and codes of conducts should also find more recognition as possible instruments to reach EU objectives, instead of systematic legislation. Business is keen to assume its responsibilities in this context.** This would alleviate the legislative tasks of the EU and would democratise the rule-making exercise.

## **VI. BETTER CONSULTATION OF RELEVANT STAKEHOLDERS**

**UNICE** has already developed a detailed contribution on this subject in the framework of the debate on governance<sup>2</sup>, in which it **proposes adoption of a comprehensive code for consultation.** The code should set out clear guidelines for the definition of core stakeholders, purpose, content, methodology and timeframe of the consultation. **The representativeness of organisations should be duly taken into account.** This assessment should be made taking into account whether the organisation is:

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

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<sup>1</sup> [UNICE-BEUC Agreement on trustmark schemes](#)

<sup>2</sup> [UNICE position on governance 28-02-2002](#)



## **VII. SPECIFICITY OF THE SOCIAL DIALOGUE**

**As a social partner at European level, UNICE calls for a very clear distinction to be made between the social dialogue and consultation of civil society.** The social dialogue at European level is a clearly structured and autonomous process involving the social partners. In the framework of the Treaty's social chapter, the social partners have a responsibility for political decision-making which cannot be extended to other areas or other players in civil society.

As far as the role of social partners is concerned, UNICE is very attached to the procedures of articles 137 and 138 of the EC Treaty and would strongly oppose any changes in this area.

## **VIII. INSTITUTIONAL FRAMEWORK**

### **Need to improve the efficiency and transparency of its institutions**

**Efficient functioning of the EU Institutions will be key to the success of the enlarged EU.** Implementing the highly important Lisbon objectives, for example, requires quick and efficient decision-making, thus making recommendations on how to improve the efficiency of the EU institutions, while preserving the Community method, should be a priority for the Convention.

European structures and institutions should serve the principles of democracy, legitimacy, rule of law, transparency and accountability. **The Convention should therefore ensure that an enlarged EU is able to make rapid decisions** which are transparent, which are generally supported, which can be understood by all, and which can be effectively reviewed by efficient courts.

### **Commission**

**The EU should have an independent and strong Commission which acts as guardian of the Treaty and proposes legislation to the Council and the Parliament in the interest of the whole Community.** Maintaining the exclusive right of initiative for legal proposals with a fully independent Commission is a way to guarantee cohesion and efficiency for Community actions.

Administrative procedures should be effective and transparent, and ensure preservation of the rights of companies, including an effective right of recourse. The role of the Commission in the implementation of EU legislation should be reinforced. Additional instruments including the use of more stringent and effective sanctions should be made available to the Commission to oblige member states to comply with EU legislation.

### **Council of Ministers**

Post-enlargement, the key institutional issue will be the ability for the Council to take decisions and deliver results, particularly in areas reserved for unanimous agreement of member states. **In UNICE's view, qualified majority voting should be the rule, with only a very small number of exceptions for which unanimity would be required.** Unanimity should in particular be reserved for social policy matters which are currently included in article 137 § 3 of the Treaty and new policy initiatives in the field of taxation (e.g. harmonisation of systems of taxations, as well as environmental fiscal measures).

Qualified majority voting (QMV) would be appropriate for measures relating to international trade, conclusion of negotiations on foreign direct investment, all services, intellectual property rights issues and the functioning of the Internal Market, such as adoption of specific measures in support of business competitiveness, entrepreneurship, innovation, research and technological development; implementation of measures to remove obstacles and to adapt national social security systems to the free movement of workers and self-employed persons in the single market.

### **Parliament**

The European Parliament should be endowed with full budgetary rights and responsibilities alongside the Council. To this end, the distinction between obligatory (DO) and non-obligatory (DNO) expenditure should be abandoned and the budgetary procedure changed accordingly.

### **European Court of Justice**

The Convention should recommend that the European Court of Justice (ECJ) be given additional resources to enable it to carry out its tasks and accelerate its procedures which are often much too slow. It is also important that fast-track procedures are put in place.

In addition, the Convention should support the possibility to create specialised chambers such as an Intellectual Property Court to deal with the Community trademark, the Community design, and the future Community patent, on the basis of Articles 225a and 229a of EU Treaty, as amended by the Nice Treaty.

### **Economic and Social Committee**

The Economic and Social Committee is the place for civil dialogue. When discussing its role and status, it is essential to avoid any confusion between civil dialogue and social dialogue, which is an autonomous process between the social partners and takes place outside the Economic and Social Committee.

It should be ensured that ECOSOC opinions are available at an early stage of the legislative process.

## **IX. GLOBAL GOVERNANCE AND INTERNATIONAL DIMENSION OF THE EU**

**UNICE welcomes a stronger emphasis on the global dimension in the framing of EU policy.** Expectations vis-à-vis the EU's ability to take more responsibility in international political and economic affairs are growing. But at the moment the EU still lacks the instruments, institutions, procedures and means to fulfil these expectations. This gap between expectations and capabilities must be closed.

Attention should be paid to consistency between internal and external EU policies, external economic policy – political relations, and the external policies of the EU and Member States.

UNICE is a firm supporter of an open multilateral trade system, governed by clear and enforceable rules. The Union's external commercial policy must be effective, coherent and applied transparently and homogeneously. **UNICE also calls for a stronger emphasis on the global dimension in the framing of EU policy** in the area of external economic relations and for a unified EU international representation to allow it to speak with one voice. In this context, **it supports giving the EU a legal personality.**

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## **Joint contribution by the social partners' representatives in the Convention working group on social Europe**

### **Question 7: role of the social partners**

A common feature of European economies and societies is that the social partners play an important role in economic and social governance. The nature of their responsibilities, their legitimacy and representativeness together with their capacity to negotiate agreements places them in a unique position.

In view of the above, explicit references to the social partners should be included in part one of the Constitutional Treaty as well as in part two of the Treaty for policy areas which fall within their competences.

To this end, UNICE/UEAPME, CEEP and ETUC make the following proposals:

#### Part I

- With regard to governance in general, title VI of the first part of the draft constitutional Treaty contains an article 34 which sets out the general principle of participatory democracy. A clause to the effect that *"the EU recognises and promotes the involvement of social partners in Europe's economic and social governance, taking into account the diversity of national industrial relations systems. The EU promotes and support social dialogue between the Social Partners (Management and Labour), respecting their autonomy"* should be added to article 34.

#### Part II

- With regard to social policy (to be dealt with in part 2 of the draft constitutional Treaty in the section on areas where the Union has shared powers with Member States), the new treaty should incorporate, as they stand, articles 138 and 139 of the current Treaty.
- With regard to employment policy (to be dealt with in part 2 of the draft constitutional Treaty in the section on areas where the Union may take supporting action), the need to consult the social partners should be clearly stated.
- With regard to training policy (to be dealt with in part 2 of the draft constitutional Treaty in the section on areas where the Union may take supporting action), a reference to the need to consult the social partners should also be included in the new Treaty.

The European social partners would also like to recall that they are consulted on economic policy in the context of the macro-economic dialogue as well as on social protection, pensions and social inclusion. Their joint contribution to the Laeken European Council proposed that "the Standing Committee for Employment be replaced by a tripartite concertation committee for growth and employment which would be the forum for concertation between the social partners and public authorities on the overall strategy defined in Lisbon." In response to this, the Laeken European Council agreed that "a social summit of this kind would in future be held before each Spring European Council" and the Commission recently made a proposal for a decision on a Tripartite Social Summit, which the social partners support. An explicit reference to this should be made in the new Treaty.

Finally, UNICE/UEAPME, CEEP and ETUC draw the attention of the members of the working group on the recently adopted work programme for the European social dialogue (attached for information).

Emilio Gabaglio  
General Secretary, ETUC

Georges Jacobs  
President, UNICE

Joao Cravinho  
President, CEEP

**UNICE PROPOSAL TO ESTABLISH AN INDEPENDENT  
ADVISORY GROUP FOR BUSINESS IMPACT ASSESSMENT OF  
EU REGULATION**

## **UNICE COMMENTS**

### **1. EFFECTIVE BUSINESS IMPACT ASSESSMENT OF EU LEGISLATION IS ESSENTIAL**

The Praesidium of the Convention has proposed that there should not be a rigid catalogue of competences. UNICE strongly supports this proposal. But it should be counterbalanced by a much more substantial assessment of the business impact of regulation than is currently the case.

The assessment of the impact of EU legislation for business is unsatisfactory. Improvements are imperative. Deregulation and reduction of the administrative burden of European legislation and a rigorous cost-benefit analysis of legislation entail a direct cost-saving for business, and free scarce human and financial resources for more productive activities. They thus contribute to the EU's strategic goal of becoming the most competitive and dynamic knowledge-based economy in the world. In line with the conclusions of all recent summits of the European Council, deregulation and reduction of the administrative burden should be a top priority on the strategic agenda.

Earlier initiatives such as SLIM, the European Business Test Panel and BEST already aimed at relieving the regulatory and administrative burden. But they show poor results. The current Commission action plan "Simplifying and improving the regulatory environment" is encouraging, but lacks two essential features: it does not provide for a structural approach to reduce the administrative burden and deregulate European legislation, and it does not provide for an independent assessment.

### **2. OBLIGATORY ASSESSMENT BY THE COMMISSION AND AN INDEPENDENT ADVISORY GROUP**

Therefore, two things should happen. In the first place business impact assessment (BIA) should become obligatory for the Commission for new legislative initiatives. In the second place an independent advisory group should be created to stimulate and monitor assessments by the EU institutions, assuring objectivity and encouraging best practice in impact assessments across the legislative institutions. This monitoring may include opinions attached to business impact assessments or specific independently executed benchmarking assessments.

### **3. AN INDEPENDENT ADVISORY GROUP AT EU LEVEL**

UNICE proposes creation of:

- an independent advisory group of limited size (*not* an additional Community institution),
- composed of experts (lawyers, economists, public management).

Its task would be:

- in essence, providing expertise and stimulating the Commission to carry out systematic assessments, and screening the assessments carried out by the EU institutions;
- promoting the quality and the consistency of the assessments in a dialogue with the institutions, including using scoreboards, independent tests assessments to serve as benchmarks;
- carrying out assessments on existing legislation, providing the Commission, the Council of Ministers and the European Parliament with a facts-based cost-benefit assessment.

The independent advisory group should be involved in as early a stage as possible of the legislative process, and present its suggestions within a limited timeframe, in order to minimise the risk of delay.

The independent advisory group is not an aim in itself, but an instrument to improve the quality and the consistent application of cost benefit assessments by the EU-institutions, thus being an aid to, not a substitute for, political decision-making by the existing EU institutions; the advisory group will refrain from issuing a political decision of its own.

The independent advisory group could be created by the new 'Protocol on the application of the principles of subsidiarity and proportionality', mentioned in article 9 of the draft Constitutional Treaty (version of February 26, 2003). An amendment to that end has been proposed by UNICE in the Convention.

#### **4. EXAMPLES OF THE ROLE THE INDEPENDENT ADVISORY GROUP COULD PLAY**

I. The future EC directive concerning statistics of international services will require certain categories of European companies to deliver detailed information concerning the import and export of services (subdivided by type of service and by country) to their national statistical offices. It is expected that the national statistical offices are going to place high demands as to the registration requirements on the basis of the aforementioned EC directive. Companies will be forced to adapt their administrative systems and to rearrange their registration procedures, which will raise administrative costs.

Until now, the companies and business associations concerned have not been involved in the drafting phase of this directive. In addition, no business impact assessment has been made and no alternatives have been explored.

An independent advisory group would have indicated that an explicit business impact analysis of this draft directive is necessary and would have asked the Commission to explore less burdensome options.

II. The Commission is currently finalising a legislative proposal concerning the manufacturing and use of chemical substances. In essence, the proposed regulation is aimed at a regulatory system for the registration, evaluation and authorisation of chemicals (REACH). A database system will be set up to produce sufficient information on the production and use of chemicals in Europe. The sectors concerned must provide the necessary information, including risk assessments related to the chemicals they manufacture or use.

An independent advisory group would have notified there are thousands of substances for which a risk assessment and information will be required, and that the time span for delivering this information is relatively short. In addition, an independent advisory group would have pointed out that most of the costs involved in obtaining information and carrying out the tests (about 80%) will be accounted for by a minority of companies (about 20%). Such an advisory group would have concluded that the Commission had not tried to choose the least burdensome option in terms of administrative costs and would have advised the Commission to find less costly alternatives within the specific aims of the regulation.

Mr Valéry Giscard d'Estaing  
President  
Convention on the future of the European Union  
Secretariat of the Convention  
175 Rue de la Loi

B-1048 BRUXELLES

28 May 2003

THE PRESIDENT

Dear President,

As observer to the Convention, UNICE has actively followed and participated in the Convention process and has now taken note of the revised draft Treaty.

UNICE is extremely concerned about the fact that in the amended version of article 3 on the objectives of the EU, the reference to a high level of competitiveness has been taken out. This changes considerably the nature of the objectives of the EU, at the detriment of one of its main economic actors, its companies.

Each UNICE input to the Convention was based on the need to maintain a high level of Competitiveness for the EU. In this context, UNICE has very much welcomed the fact that the draft article on the objectives of the EU, presented in February 2003, made a direct reference to the fact that the EU should aim at generating high levels of competitiveness.

Companies in Europe do not understand why this reference has been taken-out of the revised draft, whilst the EU is striving to achieve the target set in Lisbon. The justifications for the amended version do not evidence any request to withdraw this reference.

This move is even more worrying that most of the proposals of the working group on Social Europe were introduced in the revised draft Treaty. This distorts the balance between social and economic objectives in an unacceptable way.

The reference to a high level of competitiveness in the objectives of the EU is key for UNICE and we urge you to re-consider inclusion of such reference in article 3 of the Treaty. Increasing Europe's competitiveness is about preventing the drain of knowledge, of research, of industrial activity, and in time, of employment out of Europe. It is about securing a sound future for the EU, and should be one of its objectives.

Social progress can only be secured by a high level of competitiveness at EU level.

I would therefore like to insist on the importance of ensuring that such a reference is reintroduced in the Treaty.

We would appreciate it if you could share this letter with the Praesidium.

I thank you in advance for your support on this.

Yours sincerely,



Georges Jacobs

4 June 2003

THE PRESIDENT

Dear Member of the Convention,

As an observer to the Convention, UNICE has actively followed and participated in the Convention process. In this context, we have taken note of publication of the draft texts on parts I, II, III, IV of the revised Treaty, and would like to make the following comments.

#### GENERAL COMMENTS

For business, it is key that the Convention proposes a Treaty on the basis of which companies, as the engine of economic growth and employment, can compete on a level playing-field, prosper and adapt to the increasing challenges that globalisation brings.

This is vital if the EU is to meet its Lisbon objective of making Europe the most dynamic and competitive knowledge-driven economy in the world by 2010.

In UNICE's view the main objectives of the EU must be to further promote economic growth and thereby social progress, as well as a high level of employment and competitiveness, and to ensure balanced and sustainable development based on open market economies.

Finally, it is key that the Convention ensures an efficient EU decision-making process.

#### UNION'S OBJECTIVES

UNICE is extremely concerned about the fact that, in the amended version of article 3 on the objectives of the EU, the reference to a high level of competitiveness has been taken out. This changes considerably the nature of the objectives of the EU, to the detriment of one of its main economic actors, its companies.

One of the values which has underpinned each UNICE input to the Convention process is the need to maintain a high level of competitiveness in the EU. In this context, UNICE very much welcomed the fact that the draft article on the objectives of the EU, presented in



February 2003, made a direct reference to the fact that the EU should aim at generating high levels of competitiveness.

Companies in Europe do not understand why this reference has been taken out of the revised draft, while the EU is striving to achieve the target set in Lisbon. The justification for the amended version does not present evidence of any request to withdraw this reference. Increasing Europe's competitiveness is about preventing the drain of knowledge, of research, of industrial activity and, in time, of employment out of Europe. It is about ensuring a sound future for the EU, and should be one of its objectives. Social progress can only be secured by a high level of competitiveness at EU level.

This move is even more worrying since most of the proposals of the working group on Social Europe have been incorporated in the revised draft Treaty. This distorts the balance between social and economic objectives in an unacceptable way.

This is why UNICE has tabled the attached amendment, which is supported by several members of the Convention.

We therefore urge members of the Convention to ensure that appropriate action is taken to reintroduce such a reference.

#### SOCIAL PARTNERS AND SOCIAL POLICY

UNICE welcomes the inclusion of article I-47 and its wording highlighting the special role of social partners and the autonomy of the social dialogue.

In the field of social policy, UNICE is opposed to the proposed extension of QMV to article III-99 (ex article 137). This is not in line with the conclusion of the Convention working group on Social Europe which recognised that there was no consensus on extension of QMV to article III-99 d) f) and g) (protection against dismissal, co-determination, and employment conditions for third-country nationals) which are highly sensitive national issues.

UNICE urges members of the Convention to stick to the current Treaty differentiation between QMV and unanimity issues in social affairs.

#### ECONOMIC GOVERNANCE

UNICE welcomes the envisaged stronger role of the Commission in implementing the objectives of the Stability and Growth Pact, as well as for excessive deficit procedures.

Regarding coordination of economic and employment policy, UNICE is of the opinion that the European Commission should only be given framework competences. The sentence "the Member States shall coordinate their economic policies within the Union" (article I-14) should be placed right at the start of the article and relate to economic, employment and social policy, not only to economic policy as in the current draft text.

#### TAXATION

UNICE's position on taxation is that unanimity should apply to new policy initiatives in the field of taxation, e.g. harmonisation of systems of taxations as well as environmental fiscal measures.

AMENDMENTS NOT TAKEN ON BOARD

Finally, UNICE has tabled a number of amendments, some of which have not been taken on board. We would like to insist on the following ones:

- Efficient functioning of the EU institutions will be key for the success of the enlarged EU. The Convention must ensure that an enlarged EU is able to take decisions rapidly. An independent and strong Commission acting as guardian of the Treaty and proposing legislation to the Council and the Parliament in the interest of the whole Community is the best safeguard for the Community method.

In this context, UNICE has tabled an amendment to ensure that the drafting of article I-25 reflects sufficiently the central role of the Commission in the institutional framework. UNICE is of the opinion that the Commission's exclusive right of initiative, except where the Constitution provides otherwise, should be more strongly enshrined in the Treaty.

- During the whole Convention process, UNICE has very much emphasised the need for the Treaty to recognise, in addition to legislative acts, greater use of self-regulation and co-regulation. It has proposed, in this context, an amendment to article I-37, which was supported orally by the Chair of the Convention Plenary meeting on 17 March 2003.

Self-regulation and codes of conduct should receive greater recognition as possible instruments to reach EU objectives, instead of systematic legislation. This would alleviate the legislative task of the EU.

- One aspect which is key for the competitiveness of companies in Europe is assessment of the economic impact of any new legislation introduced at EU level.

UNICE has proposed an amendment to the subsidiarity protocol to propose creation of an independent body which could check the need for EU regulation, its economic impact, and its added value for the functioning of the internal market.

- UNICE regrets that its amendment concerning extension of QMV to negotiation and conclusion of agreements in the fields of trade in services involving the movement of persons and the commercial aspects of intellectual property (article III-212), has not been taken on board.

I trust that you will take any action you can to ensure that the outcome of the Convention reflects our concerns.

I thank you in advance for your support on these points.

Yours sincerely,



Georges Jacobs

## AMENDMENT FORM

### Suggestion for amendment of Article I–3:

**By Mr John CUSHNAHAN, Mr Pierre CHEVALIER, Mr Göke FRERICHS, Mr Georges JACOBS, Ms Piiia-Noora KAUPPI, Mr Antti PELTOMÄKI, The Earl of STOCKTON, Mr Erwin TEUFEL, Mr Gijs de VRIES, Mr Joachim WÜRMEILING**

**Status :**        **Members, Alternates and Observer**

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### **Article I-3: The Union's objectives**

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and a single market where competition is free and undistorted.
3. The Union shall work for a Europe of sustainable development based on balanced economic growth, with a social market economy aiming at *a high level of competitiveness*, full employment and social progress.

It shall aim at a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

The Union shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

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### **Explanation (if any) :**

**A high level of competitiveness is a crucial objective if Europe is to achieve the goals set out at Lisbon and espoused by the Working Groups on Social Europe and Economic Governance. Its omission goes against the consensus reached in these groups and in the plenary discussions which followed.**

**In addition, Article 2 of the TEC already recognises the imperative for Europe to strive for ‘a high degree of competitiveness’. Removing this goal sends out the wrong message to Europe’s companies and to our trading partners outside the Union.**

# UNICE PRESS RELEASES

Brussels, 3 October 2002

**EUROPEAN BUSINESS FOR A STRONG AND COMPETITIVE EUROPE**

The Presidents of UNICE's national member federations met in a two-day seminar to reflect on the EU Convention. The seminar was preceded by a meeting with a delegation of the European Parliament. UNICE's Presidents also presented their views to the Convention President Valéry Giscard d'Estaing today.

UNICE is actively engaged in the work of the Convention with observer status. The seminar takes place halfway through the process, at the end of the listening phase. The Presidents addressed a number of key issues: Antonio D'Amato, President of Confindustria addressed competitiveness, Michaël Rogowski, BDI President talked about economic governance, Georges Jacobs about functional subsidiarity, Jacques Schraven, President of VNO-NCW, about the decision-making process, and Hans Skov Christensen, Director General of the Confederation of Danish Industries about external economic relations.

Georges Jacobs, UNICE President: *"European business has high expectations for the outcome of the Convention. It is a major challenge and demands full answers. No half-measures will help us here. Business wants to play a leading role in progress towards a strong and competitive Europe"*.

To Valéry Giscard d'Estaing, Georges Jacobs spoke on behalf of 16 million companies, small, medium and large, employing over 106 million people, who may not have heard the word "Convention" yet but who expect their Europe to be a better place to live and to work in.

UNICE's message is:

- **EUROPE MUST PROMOTE COMPETITIVENESS**
- **A SINGLE AND CLEAR TREATY TO HELP EU REFOCUS**
- **A STRONG EUROPEAN COMMISSION**
- **SIMPLIFICATION OF LEGISLATION**

Economic integration is and must remain the main dynamic behind the peace, stability and prosperity of Europe. The EU must deliver a business-friendly environment in which companies can operate and compete on a level playing-field and adapt to the increasing challenges that globalisation brings. This will be achieved through promotion of competitiveness that will lead to wealth creation and, therefore, employment opportunities.

UNICE recommends consolidation of the existing treaties in a single comprehensible and structured instrument. The basic values and objectives of the EU, the nature and hierarchy of its instruments, its general competences and related decision-making procedures, and the division of powers among its institutions must be made clearer.

The Convention must make recommendations on how to improve the efficiency and transparency of the EU institutions while preserving the Community method and a strong Commission. UNICE is for the extension of the qualified majority voting as a general rule with the exception for social policy matters and policy initiative in the field of taxation.

Business wants to play a greater role in regulating its own initiatives as a better response than inadequate legislation. Co-regulation and self-regulation should be considered more often as alternatives to legislation. The Convention must also consider ways in which respect of the subsidiarity principle, in both its territorial and functional dimension, can be ensured strictly and systematically.

The full text of the UNICE position on the Convention can be found on [www.unice.org](http://www.unice.org)

For further information, please contact:

Maria Fernanda Fau

: +32 (0) 2 237 65 62

Jérôme Chauvin

: +32 (0) 2 237 65 50

Website :

[www.unice.org](http://www.unice.org)

6 February 2003

**Business reaction to the report of the working group on social Europe in the Convention**

Reacting to the recommendations in the report presented during the plenary session of the Convention today, the President of UNICE, Georges Jacobs recalled that: *“Economic and social progress can only go hand-in-hand. The text of the future constitutional Treaty must find the right balance between economic and social aspects. The promotion of competitiveness is as important as social protection or employment policy for the well being of Europe’s citizens.”*

Member States have a lot in common in terms of values and objectives. However, the best way to live up to these values and achieve these objectives varies. Social policy is, by nature, rooted in strong national specificities. Variety will be even greater in an enlarged Europe. It is a valuable asset to be preserved.

President Jacobs’ comments on the report’s conclusion’s can be summarised as follows:

- The two articles on values and objectives should be short, concise and avoid ambiguous terms such as “social market economy”.
- UNICE fully agrees that existing competences are adequate and that action at the EU level should focus on issues related to the functioning of the single market and areas with considerable cross-border impact.
- The current wording of article 16 on services of general interests conveys the right balance between economic and social goals. UNICE is not in favour of re-drafting it.
- Including a reference to the open method of coordination in the Treaty could be useful, provided that the flexibility of the method, which is applied differently depending on the policy concerned, is preserved.
- UNICE agrees that decisions by QMV should become the general rule. However, the four exceptions for areas subject to unanimity vote in article 137 of the Treaty are still justified, especially since the Nice Treaty opens a possibility for the Council to decide to pass to QMV for all those issues, except for social security.

Last but not least, UNICE welcomed the recognishion of the specific role of the social partners and recalled the proposals it has made together with ETUC, CEEP and UEAPME in a joint contribution on the role of the social partners (attached).

For further information, please contact:

Maria Fernanda Fau:  
Website :

+32 (0)2 237 65 62  
[www.unice.org](http://www.unice.org)

Brussels, 13 June 2003

**UNICE REACTION TO FINAL DRAFT OF THE CONVENTION**

**The President of UNICE Georges Jacobs has participated as an observer during the fifteen months that the Convention has lasted, contributing actively at the level of both plenary sessions and working groups. For the first time at EU level, a democratic review of the Treaty has taken place, in which national governments, national parliaments, the European Parliament, social partners and representatives of organised civil society are represented. This strengthens the democratic dimension of the EU and is very much welcomed by business. The Convention is clearly a precedent for the future revision of treaties that marks an important development for the EU and should be taken as a reference.**

UNICE supports the final draft presented to members of the Convention by President Giscard d'Estaing on Friday 13 June. The outcome of the Convention is a good basis to allow further integration of Europe and for business to develop and prosper in the European Union. The Convention has made an historic contribution to EU integration.

The draft Treaty that is on the table should allow the EU to be more transparent, more competitive, and closer to its citizens.

The final text represents a satisfactory balance between economic and social aspects. UNICE has devoted a great deal of effort in particular to ensuring that a reference to a high level of competitiveness was included in the Treaty article 3 (highly competitive EU) and is particularly happy about the fact the Convention has responded positively to its request, and by so doing has recognised that competitiveness is necessary to ensure social progress.

UNICE also very much welcomes the fact that the Convention has given a positive answer to its request to have official recognition of the nature and role of social partners and social dialogue in the constitutional part of the Treaty.

Lastly, UNICE supports the Convention's request to have additional time to fine-tune part III of the draft Treaty. Convention members and Praesidium deserve warm congratulations on their work.

**MAJOR SPEECHES BY**  
**PRESIDENT GEORGES JACOBS**



## **MAIN CONTRIBUTIONS BY UNICE TO THE CONVENTION**

### **15 APRIL 2002 – PLENARY SESSION:**

#### **UNICE STATEMENT: HOW DO EUROPEAN COMPANIES CONCEIVE THE CONTOURS OF TOMORROW'S EUROPE?**

- Strengthen Europe's competitiveness, increase its adaptability in the face of structural change and improve its employment prospects
- Ensure the long-term success of the internal market and economic and monetary union
- Make a success of enlargement (without undermining or diluting the acquis communautaire)
- Improve its capacity to defend and promote European interests at international level
- Well-functioning institutions with application of the principle of subsidiarity, therefore need for increased use of co- and self-regulation
- Particularity of the social dialogue which must be clearly distinguished from consultation of civil society

### **17 JUNE 2002:**

#### **PUBLICATION OF UNICE POSITION ON THE CONVENTION**

- Need for a clearer division of competences and related decision-making procedures
- Need to preserve the Community method and to ensure an efficient institutional framework
- Need for a lighter regulatory framework coupled with increased use of co- and self-regulation
- Need to rethink the method for consultation of relevant stakeholders

### **JUNE 2002 – SEPTEMBER 2002:**

#### **WORKING GROUP ON ECONOMIC GOVERNANCE**

- Active participation in the working group with detailed contributions on the different points of the mandate

**24 JUNE 2002 – PLENARY SESSION:  
SPEECH AT CONVENTION PLENARY DEVOTED TO CIVIL SOCIETY**

- Need to rethink the method for consultation of relevant stakeholders, taking into account their representativeness
- No detailed catalogue of competences
- No inclusion of the Charter as the current drafting is not fit to become legally binding
- Strong and independent Commission with preservation of the Community method
- General use of Qualified Majority Voting with a very limited number of exceptions in the areas of social policy and taxation
- Systematic impact assessment of legislation by an independent body
- Give legal personality to the European Union
- Make a clear distinction between social dialogue and dialogue with civil society, which takes place within the Economic and Social Committee

**3 OCTOBER 2002 – PLENARY SESSION:  
UNICE PRESIDENTS CALL FOR A STRONG AND COMPETITIVE EUROPE**

- Convention plenary followed the UNICE high-level seminar on the Convention on 2/3 October 2002
- Economic integration is and must remain the main dynamic behind peace, stability and prosperity of Europe
- European Union must deliver a business-friendly environment in which companies can operate and compete on a level playing-field and adapt to the increasing challenges that globalisation brings
- Disappointment that Working Group I on Subsidiarity remained silent on the principle of functional subsidiarity
- Social tasks should be discussed within the plenary or in the mandate of the Working Group on “Economic Governance” rather than within a new working group, as economic and social progress must go hand in hand, and therefore should not be discussed separately

**7 NOVEMBER 2002 – PLENARY SESSION:  
DEBATE ON SOCIAL ISSUES – UNICE REPLIES TO SUBMITTED QUESTIONS**

- Social policy can only be a means towards achieving the overall objectives of the Union
- No social progress possible without a high degree of competitiveness
- Current competences of the EU in social policy do not need to be widened
- Reasons to keep areas requiring unanimity unchanged remain valid
- No need to change provisions concerning the social dialogue, whose autonomy must be protected, and the specific role of social partners must be recognised

**DECEMBER 2002 – JANUARY 2003:  
WORKING GROUP ON SOCIAL EUROPE**

- Active participation in the working group with detailed contributions on the different points of the mandate

**14 JANUARY 2003:**

**JOINT CONTRIBUTION BY THE SOCIAL PARTNERS**

- Independent and strong Commission which acts as guardian of the Treaty and has the exclusive right to make legislative proposals
- QMV must be the general rule with unanimity becoming an exception reserved for a restricted number of issues
- Concerning the European Court of Justice, put in place fast-track procedures and give additional resources
- Give more attention to functional subsidiarity in the Treaty
- Joint contribution by the Social Partners on their role and the need to anchor it in the Treaty

**6 FEBRUARY 2003 – PLENARY SESSION:**

**FINAL ASSESSMENT OF THE WORKING GROUP ON SOCIAL EUROPE**

- Promotion of competitiveness must be one objective of the EU
- No redrafting of Article 16 on services of general economic interest
- Reference to the open method of coordination in the Treaty could be helpful provided that the flexibility of the method is preserved
- Areas of social security should remain subject to unanimity vote, whereas Article 42 (on the coordination of social security to ensure the free movement of people) should be decided by QMV
- Specific role of Social Partners, which is different from organisations representing civil society; the latter are represented in the European Economic and Social Committee

**5 MARCH 2003:**

**PRESENTATION OF SEVERAL AMENDMENTS TO THE CONVENTION**

- Call that to achieve its objectives, the Union shall act in accordance with the principles of open market economy with free competition
- Energy and public health should not fall in the areas of shared competences
- Member States shall coordinate their economic policies within the EU
- The institutions shall encourage and support self-regulation and co-regulation
- The Commission should be assisted by an independent body to assess in a transparent way the cost-benefit aspects of draft legislation

**17 MARCH 2003 – PLENARY SESSION:**

**CALL TO INCLUDE PROVISIONS FOR USE OF SELF- AND CO-REGULATION**

- Amendment requesting that the institutions shall encourage and support self-regulation and co-regulation
- Reference to these alternative tools to legislative instruments should also be made in the Protocol on Subsidiarity
- Proposal that the Commission is assisted by an independent body advising on the cost-benefit of any draft legislation

**17 APRIL 2003:**

**UNICE MAKES WRITTEN PROPOSAL FOR BETTER IMPACT ASSESSMENT**

- Detailed suggestion to establish an independent advisory group for business impact assessment of EU regulation

**24 APRIL 2003:**

**PROPOSITION OF AMENDMENTS RELATING TO THE ROLE OF SOCIAL PARTNERS**

- Request for a specific article on the role of Social Partners and the social dialogue, stressing its particularity and autonomy as a unique form of participative democracy

**15 MAY 2003 – PLENARY SESSION:**

**PRESIDENT JACOBS PRESENTS UNICE AMENDMENTS ON THE INSTITUTIONS**

- Call that the Commission has an exclusive right of initiative for legislative action excluding exceptions expressly provided for in the Treaty
- Commission shall propose the Union's annual and multi-annual work programme
- Wording of the articles on European Central Bank must clearly ensure its independence
- Mixed portfolio of the Minister of Foreign Affairs (foreign policy, external relations and the coordination of the Union's external action must not lead in practice to a weakening of the Union's capacity to act and vigorously defend the Union's interests in the field of common commercial policy and investment

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**ADDRESS BY GEORGES JACOBS,  
PRESIDENT OF UNICE**

President,  
Members of the Convention:

I would like to thank you for the opportunity that UNICE has been given to express its views today.

UNICE is the voice of some 16 million small, medium-sized and large European companies. It plays this role not only vis-à-vis the European institutions but also in the framework of the social dialogue recognised by the Maastricht Treaty.

It is in our capacity as a social partner that we participate, with observer status, in the work of the Convention.

The purpose of my address is to present to you how European companies conceive the contours of tomorrow's Europe.

Missions, objectives or values

One of the main objectives of the existing Treaties is to promote economic and social progress in conjunction with a high level of employment.

Despite the ground already travelled, much remains to be done to achieve these objectives, especially in tomorrow's enlarged Europe.

Only a democratic and functional Europe whose decisions enjoy broad support will be in a position to restore a better climate of confidence and, in the longer term, to maintain peace, stability and the prosperity of our continent.

Europe has been built on values in which fundamental freedoms play a central role. Freedom to do business is one of these fundamental freedoms.

Europe needs to give itself the means to protect these values by ensuring greater synergy between its economic and social policies.

Two core projects lie at the heart of the EU's success:

- its internal market,
- its single currency.

These two projects have been the most powerful vectors for the economic and social cohesion and effectiveness that have characterised Europe for several decades.

If Europe wants to be able to put in place other projects of comparable compass, its institutional framework and decision-making mechanism must be reformed in order to:

- strengthen its competitiveness, increase its adaptability in the face of structural change and improve its employment prospects;
- ensure the long-term success of the internal market and economic and monetary union;
- make a success of enlargement (without undermining or diluting the *acquis communautaire*);
- improve its capacity to defend and promote European interests at international level.

## Avenues for action

In UNICE's view, the following avenues for action should have priority in the framework of the Convention:

### Well-functioning institutions

Emphasis should be placed on extending qualified majority voting in order to achieve this result.

This extension of qualified majority voting, which business supports, presupposes an attentive examination of the division of competences between:

- the different decision-making levels: vertical subsidiarity demarcating the respective roles of European levels (national, regional and local), but also
- between the different players (horizontal subsidiarity demarcating the respective roles of the European institutions and the social partners as recognised by the Treaty).

### Competences and nature of instruments used

In the areas where the EU will have competence to act, the question of the nature of instruments at its disposal needs to be addressed. In the past, the EU has given preference to the legislative route to the detriment of other instruments, such as co-regulation and open coordination, which should also have their place in the Convention's deliberations.

### Consultation of civil society and role of social partners

#### Consultation of civil society

If Europe wants to move closer to its citizens, including its business people, it needs to be more open and more transparent.

Every effort must be made to ensure effective consultation of the main organised players in civil society. UNICE will come back to this issue

which it has already developed in the framework of the debate on governance.

### Specificity of the social dialogue

However, as a social partner at European level, UNICE calls for a very clear distinction to be made between the social dialogue and consultation of civil society.

The social dialogue at European level is a clearly structured and autonomous process involving the social partners. In the framework of the Treaty's social chapter, the social partners have a responsibility for political decision-making which cannot be extended to other areas or other players in civil society.

### Conclusion

The Convention offers the European Union an historic opportunity to prepare its future in a rapidly changing world.

UNICE, with observer access to this Convention, will endeavour to make its contribution to seeking out solutions to the problems I have outlined.

Thank you for your attention.

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24 June 2002

**CONVENTION ON THE FUTURE OF EUROPE**  
**ADDRESS BY GEORGES JACOBS**  
**PRESIDENT OF UNICE**

President,  
Members of the Convention,  
Ladies and Gentlemen,

As a social partner, UNICE regards the work of the Convention as a priority, to which we give our highest attention. One of the issues to be addressed by the Convention is how to close the existing gap with civil society. In this context, we welcome this initiative to enable direct participation of civil society in the Convention debate.

Companies are also an important part of civil society. UNICE represents more than 16 million companies, the vast majority of which are small and medium-sized. Altogether, these companies provide employment for more than 106 million people. In addition, UNICE has links to other business associations to coordinate views.

UNICE considers the process of economic integration to be the main dynamic behind peace, stability and prosperity achieved in Europe over the past fifty years.

From a business perspective, the EU must deliver a business-friendly environment in which companies can operate and compete on a level playing-field and adapt to the increasing challenges that globalisation brings. This will lead to wealth creation and therefore employment opportunities.

Since we are today discussing the interaction between the EU and civil society, it is crucial that the Convention recommends ways to rethink the method of consultation of relevant stakeholders.

## **1. NEED TO RE-THINK THE METHOD FOR CONSULTATION OF RELEVANT STAKEHOLDERS**

The current system for consultation of civil society is not satisfactory. UNICE proposes adoption of a comprehensive code for consultation. The code should set out clear guidelines for the definition of core stakeholders, purpose, content, methodology and timeframe of the consultation. The representativeness of organisations should be duly taken into account.

In addition, UNICE, as a social partner at European level, calls for a very clear distinction to be made between the social dialogue and consultation of civil society. The social dialogue at European level is a clearly structured and autonomous process involving the social partners. UNICE believes that articles 138 and 139 provide an appropriate framework for agreements made by the social partners and do not need to be modified. However, over and above social partner agreements, the Convention should reflect on how to make room for other types of self-regulatory instruments by representative stakeholders on specific topics in other areas (than employment and social policy).

## **2. WE NEED A CLEARER DIVISION OF COMPETENCES AND RELATED DECISION-MAKING PROCEDURES IN A SINGLE TEXT**

A consolidation of the existing treaties into a single comprehensible and structured instrument would give more clarity concerning the basic values, objectives and competences of the EU.

We need a European Union capable of refocusing its actions on its main task (trade and customs union, monetary policy and its common currency, consolidation and completion of the Internal Market, competition policy, environmental protection, common representation in the global economy and its institutions, the Common Foreign Policy, asylum and refugee policies and the fight against international crime).

Nevertheless, we consider a detailed catalogue of competences as inappropriate, as it would deprive the EU of the flexibility to adapt to new tasks and challenges.

When discussing the possible Constitution for the EU, reference is made to the Charter of fundamental rights. Without question, UNICE supports the objective of making those rights and freedoms more visible to the Union's citizens. Nevertheless, the consequences of its integration into the Treaties raise questions as to its impact on individual and collective citizens' rights. The current text of the Charter contains some articles on economic and social rights which fall outside the ambit of EU competences. Thus the existing text for the Charter is not suitable to become legally binding.

The Convention must also consider ways in which respect of the subsidiarity principle, in both its territorial and functional dimension, can be ensured strictly and systematically.

Functional subsidiarity means that when an action is justified at EU level, there is a need to assess whether other actors than the EU institutions can achieve the objectives of the proposed EU action. These two levels of subsidiarity (territorial and functional) should function in tandem complementing each other, and monitoring processes should be put in place to ensure their respect.

In this context, co-regulation and self-regulation should be considered more often as alternatives to legislation.

### **3. THE UNION MUST IMPROVE THE EFFICIENCY AND TRANSPARENCY OF ITS INSTITUTIONS**

Efficient functioning of the EU Institutions is key to the success of the enlarged EU. The implementation of the highly important Lisbon objectives, for example, requires quick and efficient decision-making.

The Convention should therefore ensure that an enlarged EU is able to make rapid decisions, which are transparent, which are generally supported, which can be understood by all, and which can be effectively reviewed by efficient courts.

UNICE calls for a preservation of the Community method. The EU should have an independent and strong Commission which acts as guardian of the Treaty and proposes legislation to the Council and the Parliament in the interest of the whole Community.

Furthermore, especially in view of the enlargement, UNICE calls for the use of qualified majority voting as a general rule with a very limited number of exceptions.

#### **4. NEED FOR A LIGHTER REGULATORY FRAMEWORK**

The legislative framework must be streamlined and simplified. This is essential for business and in particular for SMEs.

Mechanisms should be put in place to better assess the impact of regulation.

Where legislation is considered necessary, UNICE calls for a better quality legal framework.

Impact assessment of legislation must be carried out in a systematic way by an independent body to be established.

#### **5. INTERNATIONAL DIMENSION OF THE EU**

UNICE welcomes a stronger emphasis on the global dimension in the framing of EU policy. The discussion in the Convention has shown the need for stronger representation in international political and economic affairs. In order to make the Union's external commercial policy more effective and coherent, UNICE supports giving the EU a legal personality.

#### **6. CONCLUSION**

I would like to thank the Presidium of the Convention for this possibility for representatives of civil society to contribute to the current debate and we encourage the Convention to maintain close links with this forum.

Thank you very much for your attention.

Brussels, 3 October 2002

**CONVENTION ON THE FUTURE OF EUROPE**  
**ADDRESS BY GEORGES JACOBS**  
**PRESIDENT OF UNICE**

President,

Members of the Convention,

Ladies and Gentlemen,

First of all, let me remind you that business, which I represent here, considers it most crucial that the Convention takes decisions which will guarantee and support Europe's competitiveness.

For this purpose, we need

- A simplification of rules and institutions
- A strong European executive
- And good economic governance

The Presidents of UNICE's member federations have met over the last two days in a Seminar to reflect on the EU Convention. There was broad consensus that economic integration is and must remain the main dynamic behind peace, stability and prosperity of Europe. The European Union must deliver a business-friendly environment in which companies can operate and compete on a level playing-field and adapt on the increasing challenges that globalisation brings. This will lead to wealth creation and therefore employment opportunities.

Turning now to the subject of subsidiarity, we feel that the proposal of Working Group 1 might in practice block or slow down the decision-making process. We are very disappointed that this working group remains silent on one of the issues that is important for the business community: the concept of functional subsidiarity.

Functional subsidiarity means that, when an action is justified at EU level there is a need to assess whether the objective of the proposed EU action cannot be achieved by other actors than the EU institutions (e.g. agencies, social partners and other representative actors of civil society agreeing among themselves how best to reach a given objective).

At a time where the EU institutions have their desks full of proposals for legislation, a better use of functional subsidiarity which is in other words a better use of self-regulatory tools or co-regulation, and other forms of stakeholder involvement could be and should be better used by the EU.

This is an opportunity to further involve further but also to make more responsible key stakeholders in the EU debate. Many good examples already exist in practice such as the UNICE/BEUC dialogue on E-confidence in the field of consumer policy but other examples exist also in other fields such as environment and the banking sector.

At present, the EU has failed to use a uniform approach to the use of these alternative tools to legislation and business could provide a valuable expertise to the EU institutions through active involvement in the process.

Therefore we urge the Convention to see how this concept could be incorporated in the current debate.

As far as the creation of a new working group on “social Europe” is concerned, it is perfectly legitimate to discuss this important issue in the Convention and UNICE wants to be part of these debates. But we believe that the plenary is the best place to have such a debate since the contributions of at least 4 existing working groups (group on governance, on the charter of fundamental rights, on subsidiarity or on competences) are relevant for this debate.

Economic and social progress must go hand in hand. If the task to prepare plenary discussions on “social Europe” was given to a working group, we would advise to entrust this task to the economic governance working group, rather than creating a new group.

Thank you for your attention.



## Convention plenary session on 7 November 2002

### Debate on social issues

#### UNICE reply to the three questions

##### Summary

#### **1. To what extent should social policy be considered to be part of the Union's overall objectives ? How should this be reflected in the Constitutional Treaty ?**

In UNICE's view, social policy can only be a means towards achieving these overall objectives. A policy, whether social, economic, environmental or other should not be considered as an objective. The substance of the objectives of the current Treaty provisions should be taken over in the new Constitutional Treaty, as suggested in article 3 of the draft presented during the plenary meeting at the end of October 2002. For UNICE, when doing so, it would be essential to ensure that the wording clearly conveys the idea that there can be no social progress without a high degree of competitiveness (as appears in the present wording of the Treaty).

#### **2.A. How, if at all should the current Treaty provisions on social policy be amended ? Should the existing areas of competences be extended ? If so, which to new areas ?**

Social Europe today is a combination of some 230 legally binding texts at EU level and of highly developed national systems of social protection, labour law, industrial relations, etc.

The EU has extensive competences to act in the area of social policy, through various means (legislation, supporting or coordinating Member States policies, providing financial support through the European Social Fund and other structural funds, etc.). In other words, social policy belongs to the areas of shared competences and areas of supporting action (to use the terminology of the draft constitutional Treaty).

According to UNICE, the current competences do not need to be widened in an enlarged Europe. The reasons for

- requiring unanimous decisions in Council for areas such as social security, co-determination, or protection against dismissals, or
- banning EU legislative intervention for issues like pay, strikes or lock outs

remain valid.

The areas subject to unanimity in Council are characterised by important national specificities, deeply rooted in cultural differences and reflecting different ways of finding economically efficient solutions to social aspirations. The very delicate nature of these issues requires to be extra-cautious when dealing with them at EU level.

One should also bear in mind that the EU can only impose minimum standards. Member States can maintain or introduce more stringent protective provisions if they so wish, without penalising those who are making considerable efforts to implement the legal acquis.

**2.B. Should other provisions such as those on the internal market or competition be amended in order to enhance social policies ?**

In UNICE's view, provisions on the internal market or on competition should concentrate on ensuring a proper functioning of the internal market and fair competition in this market. It is only if they fulfil this mission that the EU as a whole will derive the long term benefits of a well functioning internal market.

Within the internal market section of the Treaty, the title on free movement of persons is of particular relevance in this debate. In this area, articles 40 and 42 foresee decision by QMV and co-decision of the EP for measures to bring about the free movement of workers, including in the field of social security. UNICE believes that taking decisions by QMV for social security matters is fully justified for measures necessary to ensure the free movement of workers.

Similarly, article 49 on the freedom to provide services foresees decisions by QMV and co-decision of the EP including for measures on third country nationals. UNICE believes that this decision procedure is fully justified.

**3. Should current provisions for the involvement of social partners be amended?**

UNICE would like to recall the importance it attaches to articles 138 and 139 of the Treaty. These articles set the rules on consultation of the social partners on social policy issues, negotiations between them at EU level and implementation of their agreements. They were designed to

- protect the autonomy of the social dialogue,
- allow the development of a contractual area at the EU level while respecting the diversity in national industrial relations systems and in the division of tasks between the social partners and the legislator in Member States.

UNICE does not see the need to change them. On the contrary, the social partners have stated on many occasions that articles 138 and 139 should be maintained without any changes in the next Treaty.

Last but not least, UNICE has noted that the draft constitutional treaty presented during the last plenary session of the Convention contains an article on participatory democracy (article 34). It would be useful to recognise the specific role of social partners in this article, for example by including an explicit cross-reference to articles 138 and 139 of the Treaty.





**Convention plenary session on 7 November 2002**

**Debate on social issues**

**UNICE reply to the three questions**

More detailed argumentation

**1. To what extent should social policy be considered to be part of the Union's overall objectives ? How should this be reflected in the Constitutional Treaty ?**

Article 2 of the Treaty of Amsterdam sets out the objectives of the European Union, starting with *the promotion of "economic and social progress and a high level of employment to achieve a balanced and sustainable development in particular through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with this Treaty provisions"*.

Similarly, article 2 of the Treaty on the European Community sets out as the task of the Community " *by establishing a common market and an economic and monetary union and by implementing the common policies referred to in articles 3 and 4, to promote throughout the Community a balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between women and men, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of standards of living and quality of life, and economic and social cohesion and solidarity among Member States.*"

In UNICE's view, social policy can only be a means towards achieving these overall objectives. A policy, whether social, economic, environmental or other should not be considered as an objective. The substance of the objectives of the current Treaty provisions should be taken over in the new Constitutional Treaty, as suggested in article 3 of the draft presented during the plenary meeting at the end of October 2002. For UNICE, when doing so, it would be essential to ensure that the wording clearly conveys the idea that there can be no social progress without a high degree of competitiveness (as appears in the present wording of the Treaty).

**2.A. How, if at all should the current Treaty provisions on social policy be amended ? Should the existing areas of competences be extended ? If so, which to new areas ?**

What is social Europe today ?

It is sometimes stated that “social Europe does not exist”. Such statements overlook three basic facts:

- Between 1958 and July 2001 some 388 texts have been adopted at the EU level in the social field. 230 of these texts are legally binding (Directives, Decisions, Regulations, Agreements). The vast majority has been adopted since 1985 in parallel with the Single Market programme.
- Social Europe today is a combination of these 230 EU legally binding texts and of highly developed national systems of social protection, labour law, industrial relations, etc.
- Current treaty provisions show that the EU has extensive competences to act in the area of social policy, through various means (legislation, supporting or coordinating Member States policies, providing financial support through the European Social Fund and other structural funds, etc.). In other words, social policy belongs to the areas of shared competences and areas of supporting action (to use the terminology of the draft constitutional Treaty).

EU competences to legislate

With regard to the EU power to legislate, three categories of issues must be distinguished:

- issues on which decisions can be taken by qualified majority vote (QMV + co-decision of the EP),
- issues on which decisions have to be taken unanimously,
- issues which are explicitly excluded from the competences of the EU legislator.

Decisions are taken by qualified majority vote in the following (very wide) areas:

- protection of health and safety at work,
- working conditions,
- workers' information and consultation,
- integration of people excluded from the labour market,
- equal opportunities between women and men on the labour market.

Only a few areas remain subject to unanimous decisions in Council:

- social security and social protection of workers,
- protection against dismissal,
- collective defence of workers and employers (including co-determination),
- conditions of employment of third country nationals legally residing in a Member State,
- financial contributions for promotion of job creation.

Finally, three areas, which are at the heart of national industrial relations systems, are excluded from the competences of the EU legislator:

- pay,
- right of association,
- right to strike or right to impose lock outs.

Social policy is one of the areas where EU competences have progressed most rapidly since the mid-1980s to match progress in EU economic integration. In 1987, the Single European Act introduced QMV for health and safety matters in parallel with the preparation of the Single Market. In 1991, 1997 and 2001 the Maastricht, Amsterdam and Nice Treaties widened areas decided by QMV, recognised a role for social partners at EU level, introduced a new employment title as well as a new article 13 on non-discrimination and created a new employment committee and a new social protection committee to ensure some coordination or cooperation between Member States in those areas.

According to UNICE, the current competences do not need to be widened in an enlarged Europe. The reasons for requiring unanimous decisions in Council or for banning EU legislative intervention in certain areas remain valid.

The areas subject to unanimity in Council are characterised by important national specificities, deeply rooted in cultural differences and reflecting different ways of finding economically efficient solutions to social aspirations. The very delicate nature of these issues requires to be extra-cautious when dealing with them at EU level.

One should also bear in mind that the EU can only impose minimum standards. Member States can maintain or introduce more stringent protective provisions if they so wish, without penalising those who are making considerable efforts to implement the legal acquis.

## **2.B. Should other provisions such as those on the internal market or competition be amended in order to enhance social policies ?**

### Internal market

In UNICE's view, provisions on the internal market should concentrate on ensuring a proper functioning of the internal market. It is only if they fulfil this mission that the EU as a whole will derive the long term benefits of a better functioning internal market (which is not yet a reality in important areas despite the fact that the deadlines set for adopting certain key measures are long passed).

The title on free movement of persons is of particular relevance in this debate. In this area, articles 40 and 42 foresee decision by QMV and co-decision of the EP for measures to bring about the free movement of workers, including in the field of social security. UNICE believes that taking decisions by QMV for social security matters is fully justified for measures necessary to ensure the free movement of workers.

Similarly, article 49 on the freedom to provide services foresees decisions by QMV and co-decision of the EP including for measures on third country nationals. UNICE believes that this decision procedure is fully justified.

## Competition policy

In UNICE's view, provisions on competition policy should concentrate on ensuring fair competition in the internal market. It is only if they fulfil this mission that the EU as a whole will grasp the long term benefits of fair competition in the internal market.

### **4. Should current provisions for the involvement of social partners be amended ?**

UNICE would like to recall the importance it attaches to articles 138 and 139 of the Treaty. Articles 138 and 139 of the Treaty on consultation of the social partners, negotiations between them at EU level and implementation of their agreements were designed to

- protect the autonomy of the social dialogue,
- allow the development of a contractual area at the EU level while respecting the diversity in national industrial relations systems and in the division of tasks between the social partners and the legislator in Member States.

UNICE does not see the need to change them. On the contrary, the social partners have stated on many occasions that articles 138 and 139 should be maintained without any changes in the next Treaty.

Last but not least, UNICE has noted that the draft constitutional treaty presented during the last plenary session of the Convention contains an article on participatory democracy (article 34). It would be useful to recognise the specific role of social partners in this article, for example by including an explicit cross-reference to articles 138 and 139 of the Treaty.

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**ADDRESS BY MR GEORGES JACOBS  
PRESIDENT OF UNICE  
MEETING OF THE CONVENTION  
ON MONDAY 20 JANUARY 2003**

President,  
Colleagues,

The European Union's institutional framework is important for the companies that UNICE represents because it guarantees the smooth functioning of the Union.

With that in mind, the Convention must ensure that an enlarged European Union is capable of taking rapid and transparent decisions which are met with general support and can be reviewed by effective courts.

For UNICE, it is important that the EU has an independent and strong Commission which acts as guardian of the Treaty and which makes legislative proposals to the Council and to the Parliament in the interest of the entire Union.

Maintaining an exclusive right in legislative matters with a fully independent Commission represents a means for guaranteeing the cohesion and effectiveness of Community actions. The synthesis report

published recently by the Commission evaluates progress made towards achieving the Lisbon objectives and rightly highlights the failure of Member States to implement them.

The internal market will only become more integrated if the Commission encourages Member States more to respect their undertakings.

After enlargement, it is UNICE's view that qualified majority voting must be the general rule, unanimity becoming an exception reserved for a restricted number of issues. More specifically, unanimity should apply for the social policy questions currently enshrined in article 137 § 3 and to new initiatives in the field of taxation.

It is important for companies that the European Court of Justice receives additional resources to allow it to perform its tasks properly and to accelerate its procedures which are still too slow. It is also important to put in place fast-track procedures.

In order to guarantee the flexibility and dynamism that the EU will require if it wants to achieve the competitiveness objectives set in Lisbon, UNICE would also like to reiterate its call for more space to be given in the Treaty to horizontal subsidiarity. It is important to allow economic and social players to find their own solutions in order to stimulate greater flexibility and more integration of the internal market. There are numerous good examples in this area in most Member States.

On this subject, I would like to point out that UNICE and its partner UEAPME representing small and craft-based businesses have adopted a

joint contribution with the European trade unions and CEEP on the role of the social partners. The existence and the role of the current social partners which can be regarded as being completely representative of the interests of employers and of their employees must be explicitly incorporated in part I of the constitutional Treaty and more as well as more specific references must also be included in part II of the Treaty.

Thank you for your attention.

Brussels, 6 February 2003

**CONVENTION ON THE FUTURE OF EUROPE**  
**ADDRESS BY GEORGES JACOBS**  
**PRESIDENT OF UNICE**

President,  
Colleagues,

In its contributions to the working group on social Europe, UNICE has constantly underlined that economic and social progress can only go hand-in-hand. The promotion of competitiveness will also need to be included in article 3 of the constitutional treaty.

Mr Katiforis deserve praise for his work but the task of those who will have to translate the recommendations of working group XI into short and sharp Constitutional treaty language will not be easy.

Since the group did not have the opportunity to formally approve the final version presented today, I would like to make 5 remarks

1. On the objectives: The group was unanimous in wishing to have a short and concise article. Two things could help in this respect:



- avoiding repetitions of certain notions in the articles on values and objectives (as is the case for “social justice”);
  - deleting the reference to “social market economy” on which there was no consensus in the group.
2. On the competences: we fully agree that existing competences in the social field are adequate but we are not in favour of re-drafting article 16 on services of general interests.
  3. On the open method of coordination: we agree that including a reference to the open method of coordination in the Treaty could be helpful provided that the flexibility of the method (which is applied differently depending on the policy concerned) is preserved.
  4. On qualified majority vote: we believe that the areas, such as social security, which remain subject to unanimity vote in article 137 deserve to be treated as exceptions to the general rule of decisions by QMV (due to national specificities). We are not in favour of going beyond the compromise reached in Nice. By contrast, article 42 (on the coordination of social security to ensure the free movement of people) should be decided by QMV and not by unanimity.
  5. On the role of the social partners: We welcome the fact that the report of the working group clearly recognises the specific role of the social partners. Our role is different from organisations representing civil society, which are represented in the European Social Committee. In a joint contribution of UNICE,

UEAPME, CEEP and ETUC, we made specific proposals on how recognise the role of the social partners in part 1 of the Constitutional Treaty. We also asked that the social partners' role be acknowledged in relevant chapters of part 2 of the Constitutional treaty. As far as the social chapter is concerned, the wording of the report is ambiguous. Our request is to integrate both articles 138 and 139 as they stand. Last but not least, the role of social partners at EU level cannot be limited to negotiating agreements. The Laeken European Council agreed that Social summits would take place ahead of the Spring European Council to take stock of the implementation of the Lisbon strategy and the Commission recently made a proposal for a decision on a Tripartite Social Summit, which the social partners support. An explicit reference to this should be made in the new Treaty.

Thank you for your attention.

**ADDRESS BY MR GEORGES JACOBS PRESIDENT  
OF UNICE  
PLENARY SESSION OF THE CONVENTION  
ON 17 MARCH 2003**

Thank you Mr President,

Dear Conventionals,

As you know, the issue of co-regulation and self-regulation is very close to the heart of UNICE. Several times I have taken the floor here to ask for better recognition of these tools as an alternative to regulation.

Therefore, we regret very much that no reference whatsoever is made to them in the articles concerning the instruments of the EU.

In this context, UNICE has tabled an amendment to article thirty-two which suggests that a third indent be added, which would read, “The Institutions shall encourage and support self-regulation and co-regulation”.

These instruments must be given recognition by the Treaty as possible ways of reaching EU objectives, instead of systematic legislation.

At a time when the EU Institutions have their desks full with proposals for legislation, better use of co- and self-regulation would help to alleviate their legislative tasks and would democratise the rule-making exercise.

This is also a golden opportunity to involve key stakeholders further and also to make them more responsible in the EU debate and process.

UNICE has also suggested in its amendments that a reference to these alternatives tools to legislative instruments be made in the Protocol on Subsidiarity, in order to ensure that the horizontal nature of subsidiarity is also properly taken into account and respected.

I trust that members of the Convention will carefully study the UNICE proposal which could give recognition to the important tools of self- and co-regulation as alternatives to regulation.

In addition, I would like to draw your attention to the fact that UNICE has tabled an amendment in order to require that the Commission is assisted by an independent body advising on the cost-benefit aspect of any draft legislation.

I thank you in advance for your support on this.

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**PRESENTATION BY MR GEORGES JACOBS  
PRESIDENT OF UNICE  
PLENARY SESSION OF THE CONVENTION  
15 MAY 2003**

Thank you Mr President,

Dear Conventioneers,

The smooth functioning of the institutions in a Europe of twenty-five or more will be the key for its success and this will only be possible if the reform of its institutional framework enables it to pursue its integration. In this regard, Europe needs to be able to act rapidly and efficiently.

In this context, UNICE has always spoken out firmly in favour of defending the Community method, centred on a fully independent and strong Commission with an exclusive right to initiate legislation, complemented by the co-decision procedure. This is indispensable to guarantee the cohesion and effectiveness of Community actions.

On this subject, UNICE believes that the formulation of article 18, on the European Commission, inadequately reflects the dimension that must be assigned to the Commission and that the wording of its paragraph 2 in particular has to be reviewed.

We have proposed an amendment to that end, such that the current formulation would be replaced by the following:

“The Commission has an exclusive right of initiative for legislative action excluding exceptions expressly provided for in the treaty.”

UNICE also believes that article 18 should make reference to the fact that the Commission proposes the Union’s annual and multi-annual work programme.

We regard these amendments as necessary to ensure the pivotal role of the Commission in the institutional triangle.

Lastly, it is important that the mixed portfolio of the Minister of Foreign Affairs (foreign policy, external relations and coordination of the Union’s external action) does not lead in practice to a weakening of the Union’s capacity to act and vigorously defend the Union’s interests in the field of the common commercial policy and investment.

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# UNICE AMENDMENTS



AMENDMENT FORM

Suggestion for amendment of Article : 3. 4

By Mr Georges Jacobs - UNICE

Status : Observer

*Text of the Praesidium*

**Article 3: The Union's objectives**

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall work for a Europe of sustainable development based on balanced economic growth and social justice, with a free single market, and economic and monetary union, aiming at full employment and generating high levels of competitiveness and living standards. It shall promote economic and social cohesion, equality between women and men, and environmental and social protection, and shall develop scientific and technological advance including the discovery of space. It shall encourage solidarity between generations and between States, and equal opportunities for all.
3. The Union shall constitute an area of freedom, security and justice, in which its shared values are developed and the richness of its cultural diversity is respected.
4. In defending Europe's independence and interests, the Union shall seek to advance its values in the wider world. It shall contribute to the sustainable development of the earth, solidarity and mutual respect among peoples, eradication of poverty and protection of children's rights, strict observance of internationally accepted legal commitments, and peace between States.
5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union by this Constitution.

*Proposed Amendments*

**Article 3: The Union's objectives**

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall work for a Europe of sustainable development based on balanced economic growth and social justice, with a free single market, and economic and monetary union, aiming at full employment and generating high levels of competitiveness and living standards , ***in accordance with the principles of open market economy with free competition.*** . It shall promote economic and social cohesion, equality between women and men, and environmental and social protection, and shall develop scientific and technological advance including the discovery of space. It shall encourage solidarity between generations and between States, and equal opportunities for all.
3. The Union shall constitute an area of freedom, security and justice, in which its shared values are developed and the richness of its cultural diversity is respected.
4. In defending Europe's independence and interests, the Union shall seek to advance its values in the wider world. It shall contribute to ***the promotion of free trade,*** the sustainable development of the earth, solidarity and mutual respect among peoples, eradication of poverty and protection of children's rights, strict observance of internationally accepted legal commitments, and peace between States.
5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union by this Constitution.

Explanation (if any) :

**Paragraph 2 : The reference to open market economy and free competition is to incorporate the current principles of article 4 of the EC Treaty.**

**Paragraph 4. : The main competence of the Union in external relations has been trade and it should adequately be expressed in the Union objectives as well. This provides a good balance in regard to the Unions activities in external relations.**

**Suggestion for amendment of Article I-3:**

**By Mr John CUSHNAHAN, Mr Pierre CHEVALIER, Mr Göke FRERICHS, Mr Georges JACOBS, Ms Piiia-Noora KAUPPI, Mr Antti PELTOMÄKI, The Earl of STOCKTON, Mr Erwin TEUFEL, Mr Gijs de VRIES, Mr Joachim WÜRMEILING**

**Status :** Members, Alternates and Observer

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**Article I-3: The Union's objectives**

1. The Union's aim is to promote peace, its values and the well-being of its peoples.

2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and a single market where competition is free and undistorted.

3. The Union shall work for a Europe of sustainable development based on balanced economic growth, with a social market economy aiming at *a high level of competitiveness*, full employment and social progress.

It shall aim at a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

The Union shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

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**Explanation (if any) :**

A high level of competitiveness is a crucial objective if Europe is to achieve the goals set out at Lisbon and espoused by the Working Groups on Social Europe and Economic Governance. Its omission goes against the consensus reached in these groups and in the plenary discussions which followed.

**In addition, Article 2 of the TEC already recognises the imperative for Europe to strive for ‘a high degree of competitiveness’. Removing this goal sends out the wrong message to Europe’s companies and to our trading partners outside the Union.**

**Suggestion for amendment of Article 10:**

**By Mr Georges Jacobs - UNICE**

**Status: Observer**

*Text of the Praesidium*

**Article 10: Categories of competence**

1. When the Constitution confers on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union.
2. When the Constitution confers on the Union a competence shared with the Member States in a specific area, the Union and the Member States shall have the power to legislate and adopt legally binding acts in this area. The Member States shall exercise their competence only if and to the extent that the Union has not exercised its competences.
3. The Union shall have competence to coordinate the economic policies of the Member States.
4. The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.
5. In certain areas and in the conditions laid down in the Constitution, the Union shall have competence to carry out actions to coordinate, supplement or support the actions of the Member States, without thereby superseding their competence in these areas.
6. The Union shall exercise its competences to implement the policies defined in Part Two of the Constitution in accordance with the provisions specific to each area which are there set out.

*Proposed Amendments*

**Article 10: Categories of competence**

1. When the Constitution confers on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union.
2. When the Constitution confers on the Union a competence shared with the Member States in a specific area, the Union and the Member States shall have the power to legislate and adopt legally binding acts in this area. The Member States shall exercise their competence only if and to the extent that the Union has not exercised its competences.
3. ***Member States shall coordinate their economic policies at EU level.***
4. The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.
5. In certain areas and in the conditions laid down in the Constitution, the Union shall have competence to carry out actions to coordinate, supplement or support the actions of the Member States, without thereby superseding their competence in these areas.
6. The Union shall exercise its competences to implement the policies defined in Part Two of the Constitution in accordance with the provisions specific to each area which are there set out.

**Explanation:**

**This is consistent with the amendment tabled by UNICE concerning article 13**

## AMENDMENT FORM

**Suggestion for amendment of Article 12:****By Mr Georges Jacobs - UNICE****Status: observer***Text of the Praesidium***Article 12: Shared competences**

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .
2. The scope of shared competences is determined by the provisions of Part Two.
- ~~3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.~~
4. Shared competence applies in the following principal areas:
  - internal market
  - area of freedom, security and justice
  - agriculture and fisheries
  - transport
  - trans-European networks
  - energy
  - social policy
  - economic and social cohesion
  - environment
  - public health, and
  - consumer protection.
5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.
6. In the areas of development cooperation

*Proposed Amendments***Article 12: Shared competences**

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 11 and 15 .
2. The scope of shared competences is determined by the provisions of Part Two.
- ~~3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.~~
4. Shared competence applies in the following principal areas:
  - internal market
  - area of freedom, security and justice
  - agriculture and fisheries
  - transport
  - trans-European networks
  - ~~– energy~~
  - social policy
  - economic and social cohesion
  - environment
  - ~~– public health, and~~
  - consumer protection.
5. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.
6. In the areas of development cooperation and humanitarian aid. the Union shall have

common policy; however, the exercise of that competence may not result in Member States being prevented from exercising their competence.

that competence may not result in Member States being prevented from exercising their competence.

**Explanation:**

**Public health should not become a shared competence but remain an area of supporting action.**

**Withdrawal of energy from Art 12. is based on the following considerations:**

~~— lack of clarity in the definition of shared competence.~~

~~— uncertainties created regarding the possibility for Member States to face their responsibilities adequately regarding energy policy.~~

- more information needed on the planned energy legal basis. A legal basis granting special status to energy products, divorcing them from the general legislation and leading to an excess of rules and rigidities would be problematic.

- an exclusive competence for the internal energy market already exists in art.11

**UNICE's position on energy might develop in the light of the future Convention work.**

AMENDMENT FORM

Suggestion for amendment of Article 13:

By Mr Georges Jacobs - UNICE

Status: Observer

*Text of the Praesidium*

**Article 13: The coordination of economic policies**

1. The Union shall coordinate the economic policies of the Member States, in particular by establishing broad guidelines for these policies.
2. The Member States shall conduct their economic policies, taking account of the common interest, so as to contribute to the achievement of the objectives of the Union.
3. Specific provisions shall apply to those Member States which have adopted the euro.

*Proposed Amendments*

Article 13: The coordination of economic policies

1. ***Member States shall coordinate their economic policies within the EU***, in particular by establishing broad guidelines for these policies.
2. The Member States shall conduct their economic policies, taking account of the common interest, so as to contribute to the achievement of the objectives of the Union.
3. Specific provisions shall apply to those Member States which have adopted the euro.

**Explanation:**

**First paragraph: this is to stick to the spirit of articles 98/99 of the EC Treaty, which should not be changed. It should be recalled that the final report of Working Group on Economic Governance (CONV357/02), as endorsed by the Convention Plenary, did not present any majority view on the need to change existing arrangements for the current Broad Economic Policy Guidelines process, with the exception of giving the European Parliament the right of formal consultation on the draft BEPG.**

AMENDMENT FORM

Suggestion for amendment of Article 18:

By Mr Georges Jacobs - UNICE

Status: observer

*Text of the Praesidium*

**Article 18: The European Commission**

1. The European Commission shall safeguard the general European interest. It shall ensure the application of the Constitution, and steps taken by the institutions under the Constitution. It shall also exercise coordinating, executive and management functions as laid down in the Constitution.
2. Except where the Constitution provides otherwise, Union acts can be adopted only on the basis of a Commission proposal.
3. The Commission shall consist of a President and up to fourteen other members. It may call on the help of Associate Commissioners.
4. In carrying out its responsibilities, the Commission shall be completely independent. In the discharge of their duties members of the Commission shall neither seek nor take instructions from any government or other body.

*Proposed Amendments*

**Article 18: The European Commission**

1. The European Commission shall safeguard the general European interest. It shall ensure the application of the Constitution, and steps taken by the institutions under the Constitution. It shall also exercise coordinating, executive and management functions as laid down in the Constitution. *It shall propose the annual and multi-annual programme of Union activities.*
2. *The Commission shall have an exclusive right of initiative for Union acts, except where the Constitution provides otherwise.*
3. The Commission shall consist of a President and up to fourteen other members. It may call on the help of Associate Commissioners.
4. In carrying out its responsibilities, the Commission shall be completely independent. In the discharge of their duties members of the Commission shall neither seek nor take instructions from any government or other body.

**Explanation:**

**A strong and independent Commission is key for business. UNICE is of the opinion that the current drafting of article 18 does not reflect sufficiently the central role of the Commission in the institutional framework.**

**UNICE believes that the reference to the fact that the Commission proposes the annual and multi-annual programme of Union activities should be enshrined in the Constitutional Treaty.**

**UNICE is also of the opinion that the exclusive right of initiative of the Commission, except where the Constitution provides otherwise should more strongly be written down in the Treaty.**

AMENDMENT FORM

Suggestion for amendment of Article 21:

By Mr Georges Jacobs - UNICE

Status: observer

*Text of the Praesidium*

**Article 21: The European Central Bank**

1. The European Central Bank shall direct the European System of Central Banks, of which it, alongside the national central banks, forms part.
2. The primary objective of the Bank shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support general economic policies in the Union with a view to contributing to the achievement of the Union's objectives.
3. The Bank shall define and implement the monetary policy of the Union. It alone may authorise the issue of the Union currency, the Euro. It shall conduct other Central Bank tasks according to the provisions of Part II of the Constitution.
4. The Bank shall have legal personality. In the exercise of its powers and for its finances, it shall be independent. Union institutions and bodies, and the governments of the Member States, shall undertake to respect this principle.
5. The Bank shall adopt such measures as are necessary to carry out its tasks in accordance with the provisions of Articles [A-B] of Part II of the Constitution, and with the conditions laid down in the Statutes of the Bank and of the European System of Central Banks. In accordance with these same provisions, those Member States which have not adopted the Euro, and their central banks, shall retain their powers in monetary matters.
6. Within its areas of competence, the Bank

*Proposed Amendments*

**Article 21: The European Central Bank**

1. The European Central Bank shall direct the European System of Central Banks, of which it, alongside the national central banks, forms part.
2. The primary objective of the Bank shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support general economic policies in the Union with a view to contributing to the achievement of the Union's objectives. ***The Bank shall act in accordance with the principle of an open market economy with free competition.***
3. The Bank shall define and implement the monetary policy of the Union. It alone may authorise the issue of the Union currency, the Euro. It shall conduct other Central Bank tasks according to the provisions of Part II of the Constitution.
4. The Bank shall have legal personality. In the exercise of its powers and for its finances, it shall be independent. Union institutions and bodies, and the governments of the Member States, shall ~~undertake to~~ respect this principle ***and not seek to influence the members of the decision-making bodies of the Bank or of the national central banks in the performance of their tasks.***
5. The Bank shall adopt such measures as are necessary to carry out its tasks in accordance with the provisions of Articles [A-B] of Part II of the Constitution, and with the conditions laid down in the Statutes of the Bank and of the European System of Central



- national level; and may given an opinion.
7. The organs of the Bank, their composition and operating methods are set out in articles X to Y of Part II, as well as in the Statute of the Bank.

not adopted the Euro, and their central banks, shall retain their powers in monetary matters.

6. Within its areas of competence, the Bank shall be consulted on all proposed Union acts, and all proposals for regulation at national level; and may given an opinion.
7. The organs of the Bank, their composition and operating methods are set out in articles X to Y of Part II, as well as in the Statute of the Bank.

**Explanation:**

**Art.21 paragraph 2.:**

*“The Bank shall act in accordance with the principle of an open market economy with free competition.”*

This phrase is in the current Treaty (Art. 105 I) and it is important for UNICE that this principle is reinstated in the constitutional text.

**Art.21 paragraph 4.:**

- The wording “undertake to” weakens the wording of the article.
- *”and not seek to influence the members of the decision-making bodies of the Bank or of the national central banks in the performance of their tasks.”* This wording can be found in the current article 108 I TEC and should also be introduced in the new article concerning the ECB to ensure its independence.

AMENDMENT FORM

**Suggestion for amendment of Article : 25.1**

**By Mr : Georges Jacobs - UNICE**

**Status : Observer**

*Text of the Praesidium*

**Article 25: Legislative acts(\*)**

1. European laws and European framework laws shall be adopted, on the basis of proposals from the Commission, jointly by the European Parliament and the Council in accordance with the rules of the legislative procedure referred to in Article X (*Part Two of the Constitution*). If the two institutions cannot reach agreement on an act, it shall not be adopted.  
Specific provisions shall apply in the cases referred to in Article Z (*ex-third pillar*).

*(\*)Article 29 will stipulate that legislative acts cannot be used for the CFSP.*

2. In the specific cases provided for by the Constitution, European laws and European framework laws shall be adopted by the Council
3. When acting under any procedure for the adoption of a European law or a European framework law, the European Parliament and the Council shall meet in public.

*Comments*

***Article 25.1 mentions that specific provisions shall apply in the cases referred in Article Z (ex-third pillar).***

***UNICE is of the firm opinion that this article should make clear that specific provisions should not only apply to the current third pillar but also to other areas which have been identified by Convention working groups as requiring specific provisions in terms of procedures or voting conditions, such as certain areas of social policy or taxation policy.***

**Explanation (if any) :**

AMENDMENT FORM

**Suggestion for amendment of Article : 32**

**By Mr Georges Jacobs - UNICE**

**Status : Observer**

*Text of the Praesidium*

**Article 32: Principles common to acts of the Union**

1. Unless the Constitution contains a specific stipulation, the institutions shall decide, in compliance with the procedures applicable, on the type of act to be adopted in each case, in accordance with the principle of proportionality set out in Article 8.
2. European laws, European framework laws, European regulations and European decisions shall state the reasons on which they are based and shall refer to any proposals or opinions required by this Constitution.

*Proposed Amendment*

**Article 32: Principles common to acts of the Union**

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2. European laws, European framework laws, European regulations and European decisions shall state the reasons on which they are based and shall refer to any proposals or opinions required by this Constitution.
3. ***The institutions shall encourage and support self-regulation and co-regulation.***

**Explanation (if any) :**

*Between the legislative and non-legislative acts stands another category that has to be given greater recognition by a revised treaty. This is the whole ambit of co-regulation and self-regulation.*

***The Convention, in UNICE's view, should recommend greater role for other types of instruments between representative stakeholders, on specific topics (see for instance the UNICE-BEUC agreement on trustmark schemes). In this context, self-regulation and codes of conducts should also find more recognition as possible instruments to reach EU objectives, instead of systematic legislation. This would alleviate the legislative tasks of the EU and would democratise the rule-making exercise.'***

AMENDMENT FORM

Suggestion for amendment of Article 24: deletion of paragraph 4.

By Mr Georges Jacobs - UNICE

Status: observer

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**Article 24**

It is proposed to delete paragraph 4 of Article 24, which reads:

4. For the negotiation and conclusion of agreements in the fields of trade in services involving the movement of persons and the commercial aspects of intellectual property, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.
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**Explanation:**

**UNICE does not support this exception since it believes that these areas should be covered by the qualified majority rule.**

AMENDMENT FORM

Suggestion for amendment of Article 33:

By Mr Georges Jacobs - UNICE

Status: observer

*Text of the Praesidium*

**Article 33: The principles of democratic equality**

The Union's operation shall be founded on the principle of the equality of citizens, who shall receive equal attention from the Union's institutions.

*Proposed Amendments*

**Article 33: The principles of democratic equality**

The Union's operation shall be founded on the principle of the equality of citizens.

**Explanation:**

**The last part of the sentence is redundant with the principle of equality of citizens and does not bring any added value, whilst making the text unnecessarily heavy and confusing.**

AMENDMENT FORM

Suggestion for amendment of Article 34:

By Mr Georges Jacobs - UNICE

Status: observer

*Text of the Praesidium*

**Article 34: The principle of participatory  
democracy**

1. Every citizen shall have the right to participate in the democratic life of the Union.
2. The Union institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their opinions on all areas of Union action.
3. The Union institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

*Proposed Amendments*

**Article 34: The principle of participatory  
democracy**

1. Every citizen shall have the right to participate in the democratic life of the Union.
2. The Union institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their opinions on all areas of Union action.
3. The Union institutions shall maintain an open, transparent and regular dialogue with ~~representative associations and~~ **organised** civil society.

**Explanation:**

**The drafting of paragraph 3 as proposed to the Praesidium is unclear as it seems to oppose representative associations and civil society. UNICE suggests that in paragraph 3 the reference is made to organised civil society. This paragraph has to be read in the light of sub-paragraph 2 which deals specifically with representative associations.**

**In this context, UNICE in a position paper of 17 June 2002 has expressly proposed criteria for representativeness of organisations, which are as follows :**

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

AMENDMENT FORM

Suggestion for amendment of Article 34 bis:

By Mr Georges Jacobs - UNICE

Status: observer

*Text of the Praesidium*

*Proposed Amendments*

**Article 34 bis: Role of social partners**

The EU recognises and promotes the involvement of social partners in Europe's economic and social governance, taking into account the diversity of national industrial relations systems. The EU promotes and supports social dialogue between the social partners (management and labour), respecting their autonomy.

**Explanation:**

UNICE is of the strong opinion that the role of Social Partners and Social Dialogue, as a unique form of participative democracy, must be singled out and mentioned specifically in Title VI of the Treaty as suggested in the joint contribution of Messrs Gabaglio and Jacobs of 14 January 2002.

AMENDMENT FORM

**Suggestion for protocol : Subsidiarity**

**By Mr : Georges Jacobs - UNICE**

**Status : Observer**

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**DRAFT**

**[PROTOCOL] ON THE APPLICATION OF THE PRINCIPLES OF  
SUBSIDIARITY AND PROPORTIONALITY**

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union.

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as enshrined in Article 8 of the Constitution, and to establish a system for monitoring the application by the institutions of those principles.

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

1. Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 8 of the Constitution.
2. Before proposing legislative acts, the Commission shall consult widely, except in cases of particular urgency or confidentiality. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged.
3. The Commission shall send all its legislative proposals and its amended proposals to the national parliaments of the Member States at the same time as to the Union legislator. The European Parliament and the Council shall send their legislative resolutions and common positions respectively, upon adoption, to the national parliaments of the Member States.
4. The Commission shall justify its proposal with regard to the principle of subsidiarity. Any legislative



proposal should contain a detailed statement making it possible to appraise compliance with the principle of subsidiarity. *As a part of the subsidiarity check, alternative non-binding instruments and the possibility of relying on self-regulation should be examined.* This statement should contain *an* assessment of the proposal's financial impact and, in the case of a framework law, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level must be substantiated by qualitative and, wherever possible, quantitative indicators. The Commission shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

*In carrying out these tasks, the Commission is assisted by an independent body advising on the cost-benefit aspects of draft legislation. This advice is to be made public*

5. Any national parliament of a Member State may, within six weeks from the date of transmission of the Commission's legislative proposal, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the proposal in question does not comply with the principle of subsidiarity. It will be for each national parliament to make the internal arrangements for consulting each chamber in the case of bicameral parliaments and/or, where appropriate, regional parliaments with legislative powers.
6. The European Parliament, the Council and the Commission shall take account of the reasoned opinions of the national parliaments.

Where at least one third of national parliaments issue reasoned opinions on the Commission proposal's non-compliance with the principle of subsidiarity, the Commission shall *immediately* review its proposal. After such review, the Commission may decide to maintain, amend or withdraw its proposal. The Commission shall give reasons for its decision.

7. The national parliaments of the Member States may also, during the period between the convening of the Conciliation Committee meeting and the holding of that meeting, issue a reasoned opinion stating why they consider either that the Council's common position does not comply with the principle of subsidiarity or that the European Parliament's amendments do not so comply. At the Conciliation Committee meeting, the European Parliament and the Council shall take the fullest account of the opinions expressed by the national parliaments of the Member States.
8. Under Article [current Article 230] of the Constitution, the Court of Justice shall have jurisdiction to hear actions brought by Member States on grounds of infringement of the principle of subsidiarity, where appropriate at the request of their national parliaments, in accordance with their respective

constitutional rules. Under the same Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts on which it was consulted.

9. The Commission shall submit each year to the European Council, the European Parliament and the Council a report on the application of Article 7(3) of the Constitution. This annual report shall also be forwarded to the Committee of the Regions and to the Economic and Social Committee.

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**Explanation (if any) :**

**Article 4 :**

*The Convention, in UNICE's view, should recommend greater role for other types of instruments between representative stakeholders, on specific topics (see for instance the UNICE-BEUC agreement on trustmark schemes). In this context, self-regulation and codes of conducts should also find more recognition as possible instruments to reach EU objectives, instead of systematic legislation. This would alleviate the legislative tasks of the EU and would democratise the rule-making exercise.'*

*There is a general tendency to increase EU regulation, and mechanisms should be put in place to better assess the impact of regulation. This task could be carried out by an independent institution. The goal of this institution would be to check the need for EU regulation, its economic impact, and its added value for the functioning of the internal market. This body could also have a role in the deregulation process by regularly checking the effectiveness of existing regulation.*

**Article 6 :**

*In order to ensure that the early warning mechanism shall not unduly delay the legislative process, UNICE suggests that where at least one third of national parliaments issued reason opinion on the Commission proposal, the Commission be given a limited timeframe in which it will have to review its proposal. This is why UNICE suggests to incorporate the word "immediately" in order to avoid slowing down the legislative process.*