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**Key issues for the EU Competitiveness Council Meeting
on 11 March 2004**

European business considers the Competitiveness Council of utmost importance to address the structural problems which the European economy faces and to reach the competitiveness goal fixed at the Lisbon Summit in 2000. In order to be effective, the Competitiveness Council must be able to give evaluations, on all dossiers with implications for European competitiveness, that contradict the opinion of other Council formations (such as Environment and Social Affairs). Furthermore, if necessary, the Competitiveness Council should have the capacity **to block legislative measures that could hamper competitiveness**, e.g. in the areas of greenhouse gas reduction, services of general economic interest or temporary agency work.

In order to really pursue an integrated strategy for competitiveness, improvements need to be made to the work structure of the Competitiveness Council. In that context, UNICE endorses the recent papers of Forfás on the work programme and functioning of the Competitiveness Council. UNICE supports the idea of appointing a **single senior Minister for each Member State** to exclusively attend Competitiveness Council meetings, recognising of course that such an appointment falls within the competence of the individual Member State itself.

At their meeting on 7 January, the Tánaiste, Mrs Mary Harney and UNICE Secretary General Philippe de Buck agreed to **close cooperation between European business and the Presidency of the Competitiveness Council ahead of each meeting, both at formal and technical level.**

In that context, UNICE would like to present its views on key items on the agenda of the Competitiveness Council meeting on 11 March:

1. Contribution to the Spring Summit

Please find attached an extensive note containing the views of European business on the draft conclusions to the Spring Summit.

2. Stimulating Entrepreneurship

The Spring Summit in March 2003 requested the Commission to produce an Action Plan for Entrepreneurship, which the Commission adopted on 11 February 2004. This Action Plan, otherwise called **European Agenda for Entrepreneurship**, shall be presented to the Competitiveness Council on 11 March.

The European Agenda for Entrepreneurship identifies the right set of action points, but most of the real action is to be done by Member States. Therefore **Member States should firmly commit themselves** to implement the explicit targets within the specified timetables as set out in the *European Agenda for Entrepreneurship*, to learn from good practices emerging from benchmarking exercises using the open method of coordination, and to take entrepreneurship issues into account in all policy initiatives.

The Commission and Member States should further **involve business organisations**, where appropriate, in the implementation of the key actions identified by the *European Agenda for Entrepreneurship*.

These commitments should be made clear in the Conclusions of the Competitiveness Council as well as in the Presidency Conclusions of the Spring Summit on 26 March.

3. Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

REACH will have a strong impact on European industry in general, given that all products are manufactured on the basis of complex and continuously changing combinations of chemicals substances. There are many examples of critical substances, which are used in downstream industries where both direct and indirect effects could be foreseen. **UNICE is extremely concerned by the fact that the overall situation has not yet been properly assessed.** It is important that such an assessment is carried out to indicate the ultimate impact of REACH on industry.

Therefore, UNICE strongly believes that a comprehensive impact assessment should be conducted on the REACH proposal. **UNICE supports the leading role being played by the Competitiveness Council in the development of the chemicals legislative package.**

UNICE calls on the Competitiveness Council to ensure that this comprehensive impact assessment happens, and that it includes a strict evaluation of the sectoral economic impacts of REACH and the effects on downstream users. It is also important to assess the consequences of REACH for Europe's competitiveness and its capacity for innovation, trade and foreign direct investment in the EU.

4. Framework Directive on Services

The European business community considers it of utmost importance to achieve the goal of an efficiently functioning European market for services. UNICE gives its full support to this initiative and offers its collaboration, in particular in the setting up of a European Forum for business-related services.

5. Community Patent

For UNICE, the Community Patent is a tool of major importance for Europe's competitiveness and innovation as part of the Lisbon agenda, and UNICE has been a fervent supporter of the Commission proposal.

Member States agreed in Lisbon 2000 *"to ensure the adoption of a Community Patent that will provide simple, inexpensive to obtain and as comprehensive in its scope as the protection granted by key competitors, Community-wide patent protection"*.

However, UNICE cannot accept a compromising of the basic principles of the Community Patent system envisaged in Lisbon purely in the interests of reaching political agreements that do not correspond to the needs of users of the patent system.

The **current package is clearly not competitive in terms of costs**, compared with patent protection granted by EU's main competitors (USA and Japan). The USA and Japan have established the clear and direct connection between the level of investments in R&D and the existence of an affordable patent system. The comparison between the EU and its major world competitors in terms of the resources devoted to R&D remains unfavourable. At a time when the EU wants to increase R&D expenditure from 1.9% to 3% of GDP, a competitive Community Patent System can contribute to this challenging goal. Nevertheless, Community Patent protection would still cost € 79,401 compared to € 17,577 in the USA, 4.5 times more expensive, according to estimates made by French industry.

Moreover, **the Community Patent is intended to be a unitary title** and therefore valid throughout the Community in the language in which it was granted.

It is therefore **unacceptable** that, depending on the translations, the Community Patent might have different effects in different parts of the Community. If this were to be the case, then the Community Patent would cease to be unitary, its scope would be uncertain and it would be very difficult to litigate. This means that the translations of the patent claims should have no legal effect and current proposals on the table giving such an effect are unacceptable for industry.

UNICE appreciates the continuing efforts of the Irish presidency to find a solution for the issue of the legal effect of translations in the proposed Community Patent Regulation. UNICE wants to ensure that any solution found serves the interests of European industry and does not create legal uncertainty. Therefore, UNICE has suggested that there should be **one authentic text for legal proceedings** and that should be the text of the language in which the patent was granted before the European Patent Office. The translated claims should be of informative nature but not legally binding and differences between the original and translated claims should have no legal effect. UNICE's strong view is that a bad Community Patent not

compatible with the principles of a unitary, cost-effective and of high quality Community Patent would be worse than no Community Patent.

6. Intellectual property rights

On the Directive regarding the enforcement of intellectual property right, a political agreement was reached at COREPER. UNICE members are currently in the process of assessing this agreement.

7. Commission Communication “Europe and basic research”

This Communication was brought forward against the background of the **emerging knowledge-based economy and society**; within the framework of the project to create a **European Research Area**, which has hitherto *not explicitly taken account of the issue of basic research*; and together with the target set by the EU of increasing its overall research effort to 3% of GDP by 2010. The Commission believes that this debate (calling for greater support from European research policy for basic research, through the setting-up of a “European Research Council”) is now ready to be brought to the political level and by presenting this Communication, it seeks both to contribute to the debate and to help launch discussion at the political level.

The Communication indicates that, in overall terms, **the level of US and European basic research efforts seems to be more or less comparable**. It is however in terms of results and performance that the difference is greatest with the US leading in the fields of basic research, where an increase in knowledge is likely to have a particularly marked effect on competitiveness. The gap is relatively small in fields such as the earth sciences, mathematics and agricultural research. On the other hand, it is relatively wide in the fields of physics and medicine, and is particularly marked in chemistry, computer sciences and basic life sciences.

The main reasons for the gap in Europe are; **a lack of a European level support mechanism for basic research; a lack of competition, of co-operation, and of critical mass projects**; the fact that most basic research is carried out at the national level with no involvement of the European level; and the fact that FP6 support for basic research is limited and finding the compartmentalized nature of national research systems.

To address this, the Commission’s proposal suggests that there should be a new approach to basic research. In particular, there should be European level support mechanism, stimulation of competition at all levels, a strengthening of support for the research infrastructure, more focus placed on the development of human resources, training and careers, improved support for collaborating and networking and an improvement in the coordination of national activities, policies and programmes.

Industry wants, first and foremost, European research of the highest quality. Increased investment in research should therefore deliver quality results. Investment in research should contribute to increasing knowledge creation within the EU but also to fostering the better exploitation of that knowledge. **Industry’s vital role in both increasing and properly exploiting knowledge creation needs to be taken into account.**

8. Regulation on consumer protection enforcement cooperation

UNICE's main position can be summarised as follows:

1. **UNICE fully supports the proposed Regulation's goal**, based on art. 95, of improving the functioning of the internal market through better enforcement of consumer protection rules limited to the context of cross-border infringements of EU legislation protecting consumers' economic interests.
2. The Regulation grants excessive and exorbitant powers to the authorities, without taking full account of the proportionality and subsidiarity principles. **Some limits and details on implementation of these powers should be set out in the regulation.**

9. Directive on unfair business-to-consumer commercial practices (item for 17/18 May Competitiveness Council)

UNICE considers the following fundamental for the directive:

1. It is based on art.95 of the EC Treaty and aims at improving internal market by harmonising national rules, clarifying the regulatory framework and ensuring a common level of consumer protection.
2. It is a maximum harmonisation directive: further fragmentation at national level of rules enacted at EU level would run counter the very objective of the Directive.
3. It provides for full respect of the internal market clause: if a satisfactory level of harmonisation is achieved, Member States should allow use of mutual recognition and country of origin principles. This is part of the backbone of the directive and is key to legal clarity.
4. The legal quality of the Directive is improved so that the room for disparate national interpretation is reduced: UNICE calls for a **more rigorous general clause, better definitions, a black list that can only be modified via revision of the directive and guidance on interaction with existing rules.**