

10 September 2004

UNICE COMMENTS**IN RESPONSE TO 4 EXPERT-GROUP REPORTS****ON SECURITIES, BANKING, INSURANCE AND PENSIONS AND ASSET MANAGEMENT**

UNICE welcomes the opportunity to comment on the expert-group reports and the Commission's initiative to launch a public debate on the issues raised in these reports. Strong and efficient European capital markets and financial services are crucial for the competitiveness of European industry. Companies as important users of financial services benefit strongly from financial market integration, because increased competition and economies of scale lead to

- reduced cost of raising capital through deeper and more liquid financial markets,
- lower trading costs for investors which in turn translates into lower financing costs,
- increased rates of return on capital,
- easier access for SMEs to capital and finance,
- wider provision of financial services and products for issuers and investors,
- increased stability of the financial system and a better adjustment to external shocks,
- greater prosperity, more growth and employment for the European society.

UNICE has set out its views on the key principles required to develop a European financial market in a previous paper: "THE EUROPEAN FINANCIAL MARKET: THE POINT OF VIEW OF COMPANIES" dated June 2003. These are:

1. Let market forces work,
2. Regulation should adapt to market developments and not markets to regulation,
3. Regulation should follow these general principles – understandable and risk-based rules, fair competition, macro and micro prudential stability as well as proper enforcement and implementation and consideration of non-legislative methods in line with better regulation,
4. Legitimacy by involvement of the European Parliament,
5. Consultation.

UNICE is in favour of a European capital market which is a globally competitive market that will be able to attract capital from other parts of the world. It should be a key goal for European policymakers to ensure that Europe's markets remain attractive to European and international issuers to ensure economies of scale, with lower costs for companies and wider choice for investors.

Overarching themes from the reports

Europe has made significant progress towards integration of financial services. Where areas are not integrated, however, it is important that any future proposals are based on evidence of market failure and an analysis of the different systems operating in different member states so that it can be seen whether the barriers are really legislative or rather cultural. Further action must be specifically targeted.

There is a strong case for a legislative pause for companies which have to adapt to International Accounting Standards, new rules under the Financial Services Action Plan such as prospectus and market abuse, as well as dealing with many other EU proposals such as company law, corporate governance, environment, etc.

The emphasis should now be on implementation and enforcement rather than new measures. The Commission's proposals as put forward in the ESC [see page 17 of the securities group report] would seem sensible. And any new measures should be subject to a full cost-benefit analysis with an explanation of the problem that the legislation is designed to solve. This means that there should be detailed and good quality research, which should be published before proposals are made. This can only improve the quality of the proposals. In some cases competition law or self-regulation may be better solutions than legislation.

More work needs to be undertaken by policymakers to identify the existing content of laws and rules in member states and financial markets and that the presumption should be for no regulatory action in the absence of evidence of a problem. Better understanding can help different groups to find common solutions - by understanding the reasons why some markets operate as they do, it may be possible to explore alternative ways to achieve the same result. It also gives companies the opportunity to see where there may be better systems in other countries and thus to find a European solution whereas they may otherwise be inclined to want to stick with the national system they know. This should be done before the preparation of formal proposals.

More consideration needs to be given to Europe's global competitiveness and to the overlap with other jurisdictions and greater freedom of contract for companies with less prescription under public law is desirable.

Specific proposals by the expert groups

There are already a significant amount of proposals in existence and it will be important to focus on these rather than on significant new proposals.

a) Securities Group

It is as yet too early to judge whether the overall result of the FSAP will be positive for European companies. We agree that the EU should conduct a full and public impact study on the FSAP and should be willing to make changes where experience has shown that other solutions might be better or where the regulations are disproportionate to their aim. For example, UNICE supported choice for companies in the prospectus directive but the directive eventually allowed choice for debt but not equities. This should be reviewed in four years' time to see whether this limitation of choice has restricted competition and to consider what are the cost implications of this for companies and investors.

How should securities markets regulation be developed in the future?

Although corporate governance is related to securities regulation, UNICE views this as more closely related to national company law and sees subsidiarity as more important here (see UNICE statement of 27 July 2004 "PRINCIPLES FOR AN EU APPROACH TO COMPANY LAW AND CORPORATE GOVERNANCE"). Companies' corporate governance is the product of a complex system, which has its roots in the political, cultural and institutional background of each country in which these companies are incorporated. It is a system that derives from a combination of laws, regulations, self-regulation, accepted practices and, more generally, of

the legal framework and, above all, the economic culture prevailing in each country. It is important to ensure that the European Commission retains an appropriate balance between the need to establish a common European framework and its stated intention of respecting member states' arrangements. UNICE therefore believes that EU corporate governance should be taken forward together with company law rather than as part of securities regulation.

Regarding financial reporting, UNICE agrees that a market based solution to disclosure of corporate information would be most appropriate. UNICE has commented separately on the 4th and 7th company law directives (see UNICE response of 4 June 2004 "COMMISSION CONSULTATION ON BOARD RESPONSIBILITIES AND IMPROVING FINANCIAL AND CORPORATE GOVERNANCE INFORMATION"). However, the key points are set out below:

Board responsibilities – The question of responsibility is intricately intertwined with that of liability and is an extremely complex area. These are matters dealt with at state level in the US and so harmonisation is not necessary for the functioning of an internal market.

Financial reporting – listed companies are currently preparing for the introduction of international accounting standards and the implementation of various directives under the Financial Services Action Plan such as the prospectus and market abuse directives. This means that they are already dealing with a huge volume of change in financial reporting and issues of access to and regulation of capital markets. It is important that accounting issues are wherever possible dealt with in the context of IAS rather than in separate EU requirements.

Corporate governance statement – UNICE does not support legislation detailing what should be in such statements. This would be contrary to the Commission's stated intention not to impose an EU code but to allow national codes to work. A recommendation that member states should have a comply or explain regime for national codes would be more appropriate than a directive.

More generally, more work will be needed on International Accounting Standards and on convergence with US GAAP.

UNICE agrees that the EU needs to recognise that European securities markets operate in a globally competitive environment and should take into account global developments so that firms are better able to plan around deadlines at national, EU and international level and should try to ensure greater coordination both internationally and between the EU institutions.

The aim for EU capital markets should be to ensure the Lisbon goal of becoming the most competitive world economy with the EU as the securities market of choice for capital from other parts of the world. It should be a key goal for European policymakers to ensure that Europe's markets remain attractive to European and international issuers to ensure economies of scale, with lower costs for companies and wider choice for investors.

To this end, however, it is important to look closely at the direct and indirect costs for listing, including the costs of regulation, on EU markets compared with others. UNICE is concerned, however, that some of the regulation from the Commission and from CESR is overly detailed and that this could harm both companies' ability to innovate and the attractiveness of the EU to third country issuers around the world. We welcome the increased dialogue between the EU and US but there are many businesses operating in the EU from other countries that should not be forgotten. We agree that EU legislation needs to take greater account of the needs of non-EU users of its securities markets and that international competitiveness should be one of the EU's future main guiding principles.

Furthermore, UNICE is worried that the increasing level of regulation may prove detrimental for the ability of stock exchanges to compete in providing finance for business. The declared goal of the Alternative Investment Market at the London Stock Exchange and similar considerations at other exchanges of establishing as Multilateral Trading Facilities (MTF) instead of as “regulated markets” are a sign of this development. If companies are to remain and improve their global competitiveness they have to be able either to attract share capital or to trade existing shares without excessive regulatory requirements driving up administrative overhead cost.

Getting the Lamfalussy process right

While UNICE supports the objective of the Lamfalussy process and its extension to banking and insurance, there is a need for better consultation with issuers in particular, to ensure less haste and better quality of proposals. To this end, it would also be helpful to companies if consultation documents could contain clear executive summaries, which identify the key issues for different types of business, rather than leaving it to the companies to wade through the detail to find the relevant sections.

UNICE agrees with the specific proposals of the group in point 3.1 to improve the workings of the process by publication of work programmes, consultation, feedback statements, etc. and with the proposal that Level 3 should provide feedback about bad or unworkable legislation so that amendments can be made.

The securities group has pointed out the need for a better balance between speed and quality of legislation and for fast track solutions to remedy bad legislation. UNICE agrees with this and believes that it will be important to concentrate on improving these before looking to new proposals. UNICE agrees with the securities group that the framework legislation at Level 1 is too detailed and may and may inhibit flexibility and innovation. Attracting more staff to the Commission with securities industry experience might assist in preventing this in future legislation.

There should also be a debate about the precise role and objectives of the various committees, CESR, CEBS and CEIOPS, to which UNICE would be happy to contribute. For example, UNICE does not support CESR having responsibility for corporate governance issues. The boundary between company law, financial reporting and securities legislation needs to be made clearer. There are, for example, elements of the transparency directive, which may not truly be appropriate for CESR to deal with such as the amount of detail delegated to CESR on accounting matters. A public debate is required in order to define these committees’ objectives more closely.

It is important that CESR, CEBS and CEIOPS do not act without a clear legal mandate. The CESR standards on enforcement of financial standards are an example of issuing a standard that is not legally binding on member states and thus is only a political statement.

The greater consultation by CESR should also be encouraged at international level where the Commission or member states are engaged. UNICE also agrees that it would be helpful for the Council to publish justifications for significant amendments during the legislative process in the same way as the Parliament.

So the most important developments for European securities regulation should be to concentrate on improving the Lamfalussy process and the global competitiveness of EU capital markets. UNICE would also support the establishment of a forum including market participants to review implementation by the member states and for companies to be able to raise concerns anonymously. However, UNICE would like to reiterate that CESR should not deal with corporate governance issues.

b) Banking Group

We agree with the banking group that the EU should focus its efforts on priorities rather than trying to do too much at once and that it should take a risk-based approach with more realistic objectives.

The main areas for banking are:

- a) The new Capital Adequacy Directive,
- b) Greater supervisory convergence within different sectors and across financial sectors with the development of “lead supervisors” and greater disclosure by supervisors of their approaches and procedures,
- c) Clearing, settlement and payments work and
- d) Anti-money-laundering legislation.

We do not see a need for additional legislation for retail banking, where national culture is likely to be more of an issue. Existing legislation must be the priority together with competition and the principle of mutual recognition. In addition, however, where examples such as the banking expert group highlights of around 40 kinds of information needing to be disclosed to borrowers, consideration should be given to simplification of the different requirements rather than to the creation of new ones. We agree with the securities group that no new proposals should be brought forward without a proper public debate, bearing in mind the need for the EU to focus on priorities. Furthermore, special regulation in member states in order to protect the “general good” can often be more detrimental to cross-border activities. It should be reviewed by the Commission in light of recent Court rulings on freedom of establishment.

c) Insurance and pensions group

UNICE agrees that existing legislation should be completed and that a regulatory pause thereafter would be helpful to insurance companies. Any further actions should be subject to proper research and non-legislative alternatives considered and international competitiveness should be a key factor for consideration.

The use of a lead supervisor together with more efficient reporting would simplify the regulatory framework and make EU companies more competitive. There should be greater mutual recognition of “fit and proper persons” to simplify administrative burdens.

Data protection should be administratively simplified so that notification in one EU country for data protection purposes should suffice and it should be made easier to use client data.

Many of the same comments regarding better regulation, the need for consolidation and simplification apply here as to securities and banking.

d) Asset management group

Again the same comments apply. UNICE agrees with the group that a flexible, principle-based approach would offer the best framework. Regulatory arrangements should be sufficiently flexible to cover different business models in different member states and to allow these to develop in line with market developments. The functional, risk-based market

approach suggested by the group would seem to be sensible since the product-focused approach means that 30% of the industry is now outside UCITS.

Any proposals for legislation should be based on the Lamfalussy framework and should be evidence-based with consideration being given to the need to maintain European competitiveness and to attract investment from around the world into the EU. UNICE notes that the group did not feel that sufficient statistics for the industry were available and believes that development of such statistics should be a priority for the future so that future proposals can be properly evidence-based.

With regard to the corporate governance of the asset management industry itself, UNICE agrees that principles are best developed by the industry taking the lead, with publication of its codes and principles on which investors would then be able to comment.

Efforts to improve the competitiveness of financial institutions should avoid building new barriers. Business should be able to choose freely to be an eligible counterpart or a professional investor when negotiating with banks. The requirements for business to be seen as eligible counterparts or professional investors must not pose barriers to competition.

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