

**COMMUNICATION FROM THE COMMISSION:
TOWARDS A REINFORCED CULTURE OF CONSULTATION AND DIALOGUE**

UNICE COMMENTS

1. UNICE warmly welcomes the follow-up communications published by the Commission for better lawmaking, which are an important step towards more efficient and transparent legislation. UNICE attaches particular importance to the consultation document "Towards a reinforced culture of consultation and dialogue", intended to set out guidelines for consultation conducted by the Commission. **Consistent and more systematic consultation is very much in the interest of European business.** But it is also in the interests of the EU as a whole, because it is vital prerequisite to better and more targeted policy-making.
2. Especially in view of the very important **Lisbon-process**, aimed at making the European Union the most competitive, knowledge-based region in the world, **European business calls for a decision-making in the European Union that is simple and effective.** From a business perspective, the EU must deliver a business-friendly environment in which companies can operate and compete and adapt to the increasing challenges that globalisation brings. This will lead to wealth creation and therefore employment opportunities.
3. Consultation is necessary in order to ensure high-quality regulation, as it draws on the experience and expertise of the parties consulted. **Systematic consultation should be offered each time that new measures or a revision of existing regulations are envisaged.** For UNICE, representing the business community in Europe, **it is essential to have not only some clear and transparent criteria relevant to all consultation processes, but also the certainty that they are applied in practice.** Consultation must be more than a tick-box exercise.
4. While consultation of civil society actors undoubtedly adds expertise and legitimacy to the policy-making process, UNICE supports the view that the **consultation process can never be a substitute for political mediation.** The ultimate EU decision-making and negotiation capacity is legitimised first and foremost by its democratically, politically and administratively accountable institutions, i.e. the Council of Ministers, the European Parliament, and the European Commission. **This prerequisite does not diminish the right of the social partners to negotiate agreements as indicated in the treaty.**
5. **UNICE also calls for the better observance of the principle of functional subsidiarity.** This 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. In addition, **UNICE calls for greater use of alternative regulatory models as an alternative to traditional legislation when appropriate.**
6. UNICE also agrees that the consultation of social partners in accordance with articles 137 and 138 of the Treaty has been excluded from the scope of the general principles and minimum standards. Furthermore, **the role of the social partners at EU level is**

much broader than solely consultative and therefore social dialogue has to be treated separately. In the context of the Treaty's social chapter, the social partners have a role and responsibilities, which cannot be generalised to other policy areas or actors.

7. In the White Paper on European Governance, the Commission proposed **five general principles for the consultation relationship**: participation, openness, accountability, effectiveness and coherence. UNICE agrees with these principles, the current consultation paper, however, **is not clear enough on how these would work in practice.**
8. **The consultation document insufficiently emphasises the need for consultation to be substantive and more than a pro-forma exercise.** Therefore, **consultation should cover the need and justification for EU-level action in a particular area, as well as whether or not EU-level action should be legislative or use alternative regulatory models.** Adequate and substantive information about the justification for and the content of the consultations should be made available to the involved parties from the outset.
9. On the first principle, participation, UNICE clearly recognises the necessity for balanced and all-embracing consultations in order to ensure that all parties are heard on equal terms. However, this approach contains the problem of a very large number of involved parties, which makes the consultation process difficult to manage and could ultimately lead to less efficiency. **A balance has to be found between wide consultation and efficiency. UNICE therefore urges the Commission to focus on quality, considering the different views expressed by representative stakeholders, rather than quantity.** The Commission should also consult differently depending on the subject.
10. In the consultation document, the Commission gives no indications about how to assess the received responses and how to weight them. When evaluating the responses, **the representativeness of consulted stakeholders should be considered as a key element.**
11. In that context, in February 2002 UNICE proposed in its position paper on the White Paper on European Governance, **some qualitative criteria, against which the representativeness of consulted European organisations should be assessed.** Those criteria are the following:
 - be composed of members mandated to act at European level;
 - be representative in the great majority of Member States of the European Union;
 - represent collective interests;
 - be composed of organisations which are regarded at their respective national levels as representative of the interests they defend;
 - be capable of justifying their actions to their members;
 - be composed of members who join voluntarily, at both national and European level;
 - be - demonstrably - independent of the public authorities, at both national and European level, in terms of financial resources;
 - have an internal, well-resourced structure which allows constituents to be consulted rapidly and efficiently;
 - be able to call on the knowledge of its members in order to guarantee a certain level of expertise.
12. In addition, **UNICE calls for a flexible time scheme in the consultation process to reflect the subjects and their different natures.** This should provide **enough time for representative stakeholders to consult their members properly.** Although the exact time scheme for consultation should be determined in accordance with the subject of the

consultation, **UNICE believes that a time limit of six weeks as provided in the consultation document is not adequate. UNICE urges the Commission to consider a longer minimum consultation period**, for instance along the lines of the Mandelkern-report.

13. In order to have effective consultation, UNICE agrees that **the process has to be started as early as possible**, giving stakeholders the possibility to have their impact on the debate. In addition, **it must be guaranteed that the consultation process does not add red tape**. UNICE also regards adherence to the principle of proportionality as a prerequisite for effectiveness. Regarding the need for coherence, UNICE agrees with the Commission's idea of approaching interest groups that have mechanisms for monitoring the process.
14. UNICE welcomes the ideas that the already institutionalised consultation bodies (Economic and Social Committee / Committee of the Regions) could have a more proactive role. In UNICE's view, the Economic and Social Committee could become the adequate forum for dialogue with civil society on specific issues. Furthermore, **civil dialogue should not be confused with social dialogue**, which takes place in other fora than the Economic and Social Committee.
15. Concerning more transparency and openness, UNICE welcomes the establishment of the CONECCS database. However, according to the principle of accountability, key questions will be what issues are being considered; and what has influenced the decisions. Therefore, **the outcome of consultations and the opinions expressed should be made public**.
16. UNICE welcomes the proposals for some minimum standards. But, **as these minimum standards are not legally binding, mechanisms have to be established in order to ensure that these standards are effectively implemented**. The Commission should also determine precise guidelines about consequences of the failure to meet these standards.
17. The provisions concerning focused consultation are very general and not very clear. In theory at least every consultation should be focused. **UNICE is particularly concerned about the possibility of involving non-organised interests**, in the absence of criteria for why they are chosen and who they represent.
18. In the context of adopting a code of conduct, **UNICE reiterates its call for a comprehensive code, which should include rules for all phases of consultation and give clear guidelines for the definition of core stakeholders, purpose, content, methodology and timeframe of the consultation**. This code should be applicable to all appropriate policy areas and it should be made public.
19. Finally, **UNICE welcomes the Commission's objective of reducing the volume of Community legislation by 25%**, in terms of the number of pages and/or the number of legislative acts, by January 2005. **UNICE notes, however, that the Mandelkern-report set the more ambitious target of a 40% reduction**.
