

29 June 2005

Mr Günter Verheugen
Vice-President of the European Commission
Rue de la Loi 200
B-1049 Brussels

THE PRESIDENT

Dear Commissioner,

Further to your letter of 15 April setting out action in the field of better regulation, UNICE is pleased to inform you about its views regarding the simplification process.

Regulations should create workable and affordable solutions for clearly identified problems which do not harm the competitiveness of European business. The setting of a level playing field where commercial transactions can take place in a pro-competitive stable and low-cost environment is an important objective of legislation. What is key is that legislation is cost-effective.

Impact assessments are crucial for getting an idea about the cost-effectiveness of legislation and especially measurement of the size of existing administrative burdens is an important information-based tool for identifying simplification priorities. Information about the size of existing burdens will also help raise awareness about the need for simplification and generate support for simplification proposals. There is significant know-how available in the EU as regards the clear and transparent evaluation of administrative costs on the basis of which policy-makers can make well-informed decisions for growth and jobs, and UNICE has made concrete suggestions in this respect in its response to the Commission's Communication on Better Regulation for Growth and Jobs in the EU.

UNICE supports the Commission launching a framework of action to reduce the volume of the Community 'acquis' to simplify existing legislation and screen pending proposals and we appreciate your contribution to this by actively seeking priorities for simplification. Simplification should render legislation cost-effective by effectively reducing burdens and we understand that the Commission envisages doing this through deletion and modification of existing rules, as well as of pending proposals. Our response to your request takes account of this important notion.

Too much red tape is one of the most common complaints from businesses. The need to comply with an increasing amount of regulations, and the costs linked with the enforcement of these rules, compel European businesses to invest time, energy and professional fees in learning about new rules, to fill in forms, report statistics and other information, and also to offer arrangements, for example for employees and extra health and safety measures which do not always generate additional benefits. The cumulative effect of many regulations and formalities is to slow down business responsiveness, divert resources away from productive investment, reduce innovation and job creation and discourage entrepreneurship.

Regarding simplification, UNICE would like to raise a point which it considers of fundamental importance, namely that targets for cost reductions and related simplification proposals should really reduce costs for businesses and not increase burdens, for example by forcing enterprises to invest more time and resources in adapting to the changes or, worse, by forcing them to comply with new requirements added as a result of the legislative process.

It is thus of vital importance that the Council and the European Parliament modify their working methods so that simplification proposals can be dealt with quickly and do not become burdens in themselves. In this context, it is also important that stakeholders are continuously consulted throughout the process of developing, determining and adopting simplification measures.

Having said this, a preliminary survey of our work revealed widespread concern about the burden of EU environmental legislation, especially in the field of waste and energy efficiency. The REACH proposal is a particular piece of legislation which we would like to see changed, as you are well aware. Other priority areas for reform include employment and social affairs. Financial services regulation poses problems too. Pieces of existing legislation and pending proposals of concern are set out in the enclosed annex and we are ready to discuss with you and your services how best to improve the cost-effectiveness of these pieces of legislation.

Another issue that we should mention is the issue of 'gold-plating'. Member States often go beyond what is necessary to comply with EU legislation and significant burdens are introduced when transposing EU rules into national law. The Commission and the Member States should address this issue since it could seriously undermine the effectiveness of the Commission's better regulation agenda.

Simplification of legislation is a continuous and ongoing process. We are embarking on a long journey, which has only just begun. At this early stage, it is especially important that some concrete results are achieved and that effective cost reductions in important areas are realised. Quick wins will boost confidence in the overall worth of the project. This letter is just a first response to your request and we intend to inform you on a regular basis about problem areas. In doing so, we hope to help ensuring that genuine progress is made towards reducing the costs of legislation and to achieve better regulation for growth and jobs in the EU.

Yours sincerely,

(original signed by)
Jürgen Strube

Encl.

Annex I

Existing legislation

UNICE has concerns about the following pieces of **existing legislation**. UNICE is ready to provide detailed comments and observations regarding these concerns and to discuss how best to improve the cost-effectiveness of these pieces of legislation.

Equal Treatment

Directive amending Directive on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Concerns relate to burdensome information obligations regarding a company's policy on equal treatment and the extension of legal protection of former employees.

Transparency Directive

Directive on transparency requirements for issuers whose securities are admitted to trading on a regulated market.

Concerns relate to increased legal disclosure obligations; too short time limits for the disclosure of financial reports; and inadequate transition provisions. Electronic disclosure on the internet should be possible.

Unfair Commercial Practices

Directive concerning unfair business-to-consumer commercial practices in the internal market

Concerns relate to vague general clauses and broad notions that leave much scope for divergent national interpretation.

Financial Services

*Market Abuse Directive
Investment Services Directive*

Concerns relate to provisions regarding insider dealing; missing respect of the two-tier system with regard to its deciding structure; requirements for financial institutions to achieve the best result for their clients; and prescriptive and detailed provisions relating to order execution policy and execution arrangements.

Company Law

Commission recommendations on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board and on the appropriate regime for the remuneration of directors of listed companies.

Concerns relate to too detailed recommendations and increased reporting requirements. The recommendations disregard the specificities of the dualistic systems as well as the conventions and practices of well-run companies; they interfere in an area where many Member States wish to co-operate on a basis of good understanding with companies.

Waste

Waste Framework Directive

Concerns relate to the cumbersome and complex legal framework, unclear definitions and the need to achieve a greater degree of harmonisation. There is a particular necessity to ensure that definitions do not prevent the recovery and recycling of products.

Energy efficiency and CO2 emissions

Directive establishing a scheme for greenhouse gas emission allowance trading within the Community.

Directive on the promotion of cogeneration based on a useful heat demand in the internal energy market; Directive on the promotion of electricity produced from renewable energy sources in the internal electricity market.

Concerns relate to the imbalance and inconsistencies between different legislative instruments related to climate change and the IPPC Directive. Divergent national approaches lead to high and differential burdens on business.

Environmental Liability

Directive on environmental liability with regard to the prevention and remedying of environmental damage

Concerns relate to the large scope of the Directive, especially the liability related to biodiversity damage and the lack of a procedure for monetary assessment of such damage. Other concerns relate to burdensome cost recovery procedures and the absence of defences.

Health and Safety

Health and Safety Directives

Concerns relate to the fact that the legislative 'acquis' in this field is extremely complex and in many instances too detailed.

Working time

Directive concerning certain aspects of the organisation of working time

Concerns relate notably to the complexity of rules on the reference period for calculating weekly working time, which should be averaged over 12 months as a general rule.

Research and Development

Seventh Framework programme for research, technological development and demonstration activities

Concerns relate to complex and costly participation rules, cumbersome procedures and disproportionate information requests and control measures.

Community Framework for State Aid for Research and Development

Concerns relate to the distinction between industrial research and precompetitive development activities which is no longer in line with current R&D conditions. Other concerns relate to the need to facilitate co-operation between industry, research institutions and universities.

Export Controls on Dual-Use Goods

Regulation 1334/2000 on the control of dual-use items and technology

Concerns relate to the need for a common EU approach to create a level playing-field in the EU.

Statistics

Commission regulation 1901/2000; Council regulation 3330/91; and Commission regulation 2256/92 – Intrastat

Concerns relate to costs for information gathering by importing companies related to the coding and volume of imported goods to comply with statistical information obligations.

Annex II

Pending proposals

UNICE has concerns about the following **pending proposals**. UNICE is ready to provide detailed comments and observations regarding these concerns and to discuss how best to improve the cost-effectiveness of these proposals.

Community Patent

*Proposal for a Regulation on the Community Patent
Proposed Community Patent Jurisdiction*

Concerns relate to the proposed legal effect of the translations of the patent claims, the extension of the involvement of National Patent Offices in search activities, and the costs of the Community Patent and the proposed Community Patent Jurisdiction.

Protection of Designs

Proposal amending the Directive on the legal protection of designs

Concerns relate to the fact that the proposal weakens intellectual property law protection in the EU.

Company Law

Proposal for amending the Directive on the formation of public limited liability companies and the maintenance and alteration of their capital (2nd Company Law Directive)

Concerns relate to the fact that the proposal increases burdens and does not provide for streamlining provisions as envisaged by expert groups on company law.

Proposal for amending the Directives on annual accounts of certain types of companies and consolidated accounts (4th and 7th Company Law Directives)

Concerns relate to burdensome disclosure requirements which should not be applicable to SMEs, non-listed and affiliated companies. Other concerns relate to provisions which go beyond or diverge from international accounting rules.

Proposal for a Directive on statutory audit of annual accounts and consolidated accounts (Audit Directive)

Concerns relate to the requirement to introduce an audit committee for public interest entities and provisions related to rotation of auditors.

Non-contractual obligations

Proposal for a Council Regulation on the law applicable to non-contractual obligations – Rome II

Concerns relate to the scope of the Regulation which should be restricted to torts only, inconsistencies in terminology with respect to other private international law instruments and burdensome legal uncertainty with respect to the applicable law provisions, especially for cross-border media content providers.

Sales Promotions

Proposal for a Regulation concerning sales promotion in the internal market

Concerns relate to increased information requirements imposed on companies.

Consumer Credit

Consumer Credit Directive

Concerns relate to provisions for responsible lending and borrowing, the wide definition of credit intermediaries, the ceiling for the amount of credits and excessive information requirements.

REACH

Proposal for a chemicals legislative package

Concerns relate to the costs and lack of prioritization of registration, the impact on formulators and downstream users, disruption in the supply of substances, and the loss of intellectual property to “free-riders”.

Health and Safety

Proposal for a Directive on the minimum health and safety requirements regarding the exposure of workers to the risk arising from physical agents (optical radiation)

Concerns relate to the extension of the scope to include optical radiation from natural sources (such as solar radiation) which will lead to legal uncertainty, disproportionate costs and unnecessary administrative burdens.

Temporary Workers

Proposal for a Directive on working conditions for temporary workers

Concerns relate to requirements to extend non-discrimination between temporary agency workers and comparable workers of the user company as a general rule and to allow the comparison with a worker of the same agency by derogation only.

Taxation

VAT

Commission proposal for simplifying value added tax obligations

Commission consultation on the place of supply of services to non-taxable persons (B2C services)

Concerns relate to the handling of cross-border payments by traders and the need for an extension of the reverse charge mechanism to all transaction within groups. B2C proposals should be closely linked with the one-stop shop and implemented simultaneously.

Direct taxation

Proposal for amendment to Interest and Royalty Directive

Concerns relate to the need to include both direct and indirect shareholdings within the definition of 'associated company' and to lower the holding required for eligibility from 25% to 10%.

Customs Control

Modernised Community Customs Code

Concerns relate to the risk of diversions of traffic due to possible divergences in interpretation and application of the rules and the transfer to operators of more responsibilities (and burden) because of security.