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UNICE RESPONSE TO THE COMMISSION PUBLIC CONSULTATION ON THE FUTURE OF THE INTERNAL MARKET

INTRODUCTORY REMARKS

The Internal Market¹ is a cornerstone of Europe's prosperity and one of its greatest achievements, based on the four freedoms of movement – for goods, services, people and capital. UNICE shares the Commission's analysis about the future of Europe that policy priorities in a "citizens' agenda" should address the issue of the internal market needed for the 21st century², considering that "citizens" include both individuals and entrepreneurs. The Commission has committed, in that communication, to remove remaining barriers to an internal market and to enable citizens to enjoy the full benefits of the EU. UNICE will follow with great interest the Commission's initiative to present a report – *The single market in the 21st century* – to the Council and the European Parliament next year, including proposals for future action.

Much action is still needed as the Internal Market remains incomplete and not sufficiently known as regards its opportunities, particularly for SMEs; hence the need for European institutions and Member States to step up its completion and awareness about it.

However, UNICE believes that the most important challenge for the European Commission is to generate political attention and understanding for the fact that a well functioning and dynamic Internal Market is one of the main elements for competitiveness and in particular for the EU growth and jobs strategy. Such political attention and understanding is in particular important at Member-State level.

The key concepts for the renewed Internal Market Strategy should be:

- **Completion**, because the integration of European markets has lost momentum.
- **Enforcement** of existing rules and a stronger focus on Member States' responsibility.
- **Efficiency**, through, for instance, the limitation of harmonisation to essential requirements and an ambitious and broad programme on better regulation.
- **Awareness**, because Internal Market achievements pass largely unnoticed by the public.

¹ With the EEA Agreement, the Internal Market was in 1994 extended to include the three EFTA countries: Norway, Iceland and Liechtenstein. The Internal Market today consists of 28 countries (the EU 25 plus the aforementioned three).

² *A citizens' agenda*, Communication from the Commission to the European Council, COM (2006) 211 final.

PART I – THE INTERNAL MARKET TODAY: ACHIEVEMENTS AND CHALLENGES

Question 1

Do you agree with the preliminary analysis of the current situation of the Internal Market and the challenges it is facing? If not, what is your analysis?

UNICE fully supports that preliminary analysis stating the achievements and challenges of the Internal Market.

As regards the achievements, the Internal Market has undoubtedly yielded huge benefits for businesses and citizens. For example, the opening of national markets has brought down the price of national telephone calls and airfares. EU GDP was estimated to be 1.8% (€ 164.5 billion) higher than it would have been without the Internal Market. Employment in 2002 was estimated to be 1.46% higher, equating to the creation of circa 2.5 million extra jobs³.

It is true that the Internal Market also faces some major challenges as described in the consultation paper: lack of completion, enlargement, globalisation, rapid technological change and internal threats such as national protectionism.

Question 2 and question 5

In which ways have you benefited from the opportunities offered by the Internal Market? Where, in your view, does it function well? Where do you see shortcomings?

In your experience, does the Internal Market offer sufficient opportunities for businesses? Why (not)? Where do you see barriers?

The Internal Market has been essential for companies

The Internal Market is a fantastic asset for the European Union. It has delivered substantial benefits for companies in different ways. First, the development of an Internal Market with over 450 million people has allowed businesses to benefit from significant economies of scale. Second, the Internal Market has made it easier and cheaper for companies to do business across Europe⁴. Third, Internal Market principles have helped to overcome technical barriers to trade. Conflicts between some 100,000 sets of national technical specifications that existed in the mid-1980s

³ European Commission. "The Internal Market - Ten Years Without Frontiers." SEC/2002/1417.

⁴ The dismantling of EU borders has saved industry time and money through a reduction in administrative burdens. For instance, before the Internal Market was put in place 80-100 million customs documents had to be filled and checked each year within Europe. The tax system alone required 60 million customs clearance documents annually; these are no longer needed. These savings amount to about 0.7% of the value of intra-EU trade, or 5 billion ECU per annum, (European Commission. "The Impact and Effectiveness of the Internal Market." COM (96) 520. 1996).

have partly been overcome, either by mutual recognition of different national rules or by harmonisation and the development of EU standards. Fourth, the Internal Market has reduced input costs for business and industry. Due to the liberalisation of network industries in the Internal Market, the costs of business inputs such as transport and telecommunications have fallen to below US levels.

For instance, companies as important users of financial services already benefit strongly from financial market integration, because increased competition and economies of scale have important implications for the financing and transaction costs of issuers and investors, for capital market returns and for global financial stability.

More precise examples of the benefits of the internal market are demonstrated in a recent study by the Swedish National Board of Trade⁵. This study identified the following benefits:

- Reduced border formalities (84% of respondents);
- Common rules for public procurement (72%);
- Larger supply of goods and services (51%);
- Simpler administration for indirect taxes (46%);
- Easier to find new customers in other EU member states (40%);
- Common rules for product information (40%).

Shortcomings and barriers significantly limit those opportunities

However, the Internal Market is far from being complete (1) and, to some extent, it is even threatened (2).

(1) First, the Internal Market remains more fragmented than is generally appreciated. For instance, within the United States, trade intensity remains two to three times higher than on Europe's most integrated markets, and price dispersion is much narrower⁶. Besides, in many European economies, product market regulations inhibiting competition remain much more restrictive than in the USA⁷.

Shortcomings can be found in following areas:

- Implementation and enforcement of Internal Market directives, which is not yet satisfactory;
- Free movement of goods, despite the misleading perception that the free movement of goods is already achieved and that, as a result, political attention would no longer be necessary. The principle of mutual recognition in the non-harmonised area of goods does not function satisfactorily which leads to additional testing, administrative burdens and product changes.

⁵ For further information please see:

http://www.kommers.se/upload/Analysarkiv/Arbetsområden/EUs_inre_marknad/Fordel_EU.pdf

⁶ Source : *Politique économique et croissance en Europe*, Philippe Aghion, Élie Cohen, Jean Pisani-Ferry, 2006.

⁷ Source: *Product market regulation in OECD countries 1998 to 2003*, Paul Conway, Véronique Janod, Giuseppe Nicoletti, OECD Economics Department Working Paper no. 419, 2005.

- Services, for which a true Internal Market does not exist. The trade intensity of services within the EU is barely greater than with the rest of the world, while it is twice larger in the case of goods.
- Financial services, for which the action plan has not yet led to the creation of an integrated, deep and liquid market along the lines of the American model. More progress is particularly crucial among countries sharing the single currency. The creation of a Single Market in Payment Services is an imperative in order to exploit the potential for a fluid financial system. Whether further benefits of integrated EU financial markets will be realised depends more on adequate transposition and enforcement of existing measures than on new regulation. This implies, however, that margins for discretion, as foreseen by legislation, are kept at the minimum level required by economic necessities.
- Energy, for which a truly open European market has not yet been created;
- Telecoms liberalisation within the EU has been a major success however inadequate enforcement, and widely diverging application of the rules, are preventing the full benefits from being achieved;
- Intellectual property rights, with the absence of a Community patent fully meeting the needs of European companies and lack of proper enforcement;
- Free movement of labour: the EU has persistently lower geographical and occupational labour mobility than the USA⁸;
- In the area of company law, one of the priorities remains correct implementation of the many directives recently adopted or in the process of being adopted. There is also a need to improve the mobility of companies in the Internal Market, in particular tools to enable an easy transfer of seat, and a need to provide optional instruments that meet the needs of the many forms of companies that are active in the internal market, including SMEs.

As a result of the Internal Market fragmentation, companies every day face barriers both at European and national levels. In a survey published in 2004⁹, UNICE showed that more than half of companies interviewed (57.5%) had to change their products to comply with national requirements when exporting to another Member State. Nearly half of them (45.5%) had to carry out extra testing when exporting to another Member State. This should not occur in a truly Internal Market.

Fragmentation is found both in the harmonised and the non-harmonised areas. In the non-harmonised area, it stems from the fact that the principle of mutual recognition of technical rules, of conformity assessment procedures and of test results is not well-known, either by authorities or by companies. There is a need to reassess how the principle as stated in "Cassis de Dijon" case (among others) is applied in practice so as to ensure its optimal enforcement.

⁸ OECD figures show that inter-state mobility of nationals is almost five times higher in US than in the EU (5.9% compared with 1.2%). Geographical mobility within EU Member States is also relatively low. In the USA, occupational mobility is also higher. 30% of people are in their first year of employment with their employer in the USA compared with 16.4% in Europe.

⁹ See UNICE Free movement of goods working group publication entitled [It's the Internal Market, Stupid !](#).

(2) Second, the Internal Market is also subject to threats from within. Protectionism is looming with governments defying the free movement of capital and services. It is not through protectionism, but through competition that business innovates, makes the most effective use of resources, pushes up quality and pushes down prices.

The debate on the proposed services directive is an example of those threats. Protectionist forces in the legislative debate have resulted in substantial changes compared with the initial Commission's proposal. Although improvements are expected for freedom of establishment and administrative cooperation, the proposal will not inject as much dynamism as expected into cross-border trade in services due to the legal uncertainty on the applicable law and on how Member States can impose national restrictions on incoming foreign providers. Also, the services covered by the proposal have been excessively reduced.

The importance of the basic principles of the Internal Market should be given priority when the legal base for new legislation is chosen. *Article 95* of the EC Treaty is the appropriate legal basis for Internal Market legislation because of the need to ensure a level playing field for all economic actors. Whenever a piece of legislation is considered to serve other purposes than the Internal Market (e.g. environment or consumer protection), there is a tendency either to depart from *article 95 ECT* or to mix legal bases with the risk of divergent national implementation legislation, thus fragmenting the Internal Market.

In order to ensure that new legislation does not come into conflict with the principles of the Internal Market, an "Internal Market Compatibility Test" should be applied, both at EU level and at Member-State level. The Danish "Taskforce for the Internal Market" (TIM) project¹⁰ could serve as a best practice example. At the highest and lowest levels of the EU regulatory establishment there also needs to be a reassessment of how the Internal Market is dealt with.

PART II – PRIORITIES FOR FUTURE INTERNAL MARKET POLICY

Question 3

Do you agree with this choice of priorities? Are there others in your view?

UNICE agrees with this choice of priorities, considering that the Internal Market should focus on: fostering market dynamism and innovation, better regulation, better implementation and enforcement, taking better account of the global context and investing more in information and communication.

Small and medium-sized enterprises (SMEs) are the backbone of the European Union: they account for over ninety-nine percent of businesses and two thirds of employment. In this context, building an Internal Market in the EU should target SMEs as primary beneficiaries.

¹⁰ For further details, see www.naec.dk/EUinternalmarket

UNICE therefore supports implementation throughout the European Commission of a “think small first” approach as indicated in the European Commission Communication on a “Modern SME Policy” of 10 November 2005¹¹. Legislative and non-legislative Commission initiatives should not distinguish from the outset measures tailor-made for SMEs on the one hand, and for larger companies on the other: measures that are not burdensome for SMEs will de facto not be burdensome for larger companies whereas the reverse is not necessarily true.

Member States need to take greater ownership of the Internal Market. New instruments should be developed to increase cooperation among and between Member States and the Commission. Member States should cooperate more with each other and the Commission and provide mutual assistance. This would boost confidence in each other's regulatory structures and controls which is a prerequisite for an effective internal market. With the current political climate in the EU there is a great need to build trust between Member States and increase understanding that Member States can achieve similar results with different kinds of approaches.

Another area which has not been given due consideration but which should be considered a priority for the well-functioning of the potential of the Internal Market is 'transport'. The full benefit of free movement can only be derived if people, companies and products can move in, around and out of the EU in ways that suit them best. In this respect, the Trans European Network projects (both for transport and energy) have to be fully implemented. These projects are visible examples of internal market policy and as such also have a communication role vis-à-vis public opinion.

Question 4

Internal Market policy fosters economic reforms to which citizens and businesses then have to adjust. Do you think sufficient account is taken of the costs of making these adjustments? Why (not)? Do you think flanking measures are needed to accompany market opening? If so, what kind?

Market opening and economic reforms often generate short-term costs. They can only be a success if they are understood by stakeholders. Flanking measures, through which European institutions and Member States' authorities, as well as politicians, thoroughly explain the causes and positive effects of reforms, are thus needed. European institutions and national governments should lay a stronger stress on communication, launching information campaign – with concrete and easily understandable economic data – on the underlying reasons for reforms as well as on expected benefits. National authorities and representative stakeholders also have an important role to play to complement European institutions' communication.

¹¹ Commission Communication "Implementing the Community Lisbon Programme - Modern SME Policy for Growth and Employment" (COM (2005)551 final of 10.11.2005).

Question 5

In your experience, does the Internal Market offer sufficient opportunities for businesses? Why (not)? Where do you see barriers?

See above response to question 2.

Question 6

Do you consider that the Internal Market is 'innovation-friendly'? Why (not)? Where, in your view, are the main barriers to innovation? Which steps should be taken in order to ensure that the Internal Market is more innovation-friendly?

The Internal Market is not innovation-friendly enough. New EU rules should be technology-neutral in order not to hinder innovative solutions being created.

Internal Market policy and innovation policy should go hand in hand. The better the Internal Market works, the easier it is to realise the Lisbon targets (especially the 3% Barcelona goals) because companies will invest in R&D if there is output (and a market for it) as a result. Innovation policy should contain, besides R&D focus, financing (especially venture capital), entrepreneurship, development of business, networking and services, IPR, as well as education questions. Therefore, it is important that the large spectrum of policy areas support, not prevent, innovation. It is also important to make the approach of European innovation policy more demand-based. The Independent Expert Group on R&D and Innovation appointed following the Hampton Court Summit presents a justifiable strategy (Aho Report) to create an innovative Europe.

Further opening of sectors currently protected from free and fair competition is also required. National rules and regulations prevent innovation by preventing the exchange of innovative solutions and technology (most commonly found in the public sector). New Internal Market policies should stipulate measures aimed at breaking down these national barriers, thereby increasing the rate of innovation in Europe.

To facilitate market entry and foster innovation, a number of steps should be taken.

First, further enforcement of EU competition rules is necessary to bring down market entry barriers and ensure vigorous competition between companies. Enforcement of EU competition rules is not satisfactory in all sectors. For instance, in the energy sector, preliminary findings of the Commission's in-depth inquiry into European gas and electricity markets has shown that there are major competition problems in the gas and electricity sectors. These include high levels of market concentration and vertical foreclosure, lack of integration between national markets and an absence of transparency, and a general distrust of pricing mechanisms.

Competition provides the best incentive for business efficiency and it encourages innovation. In addition, Member States should redirect state aid towards the promotion of research and development and innovation and new EU state aid rules should make it easier for the Member States to devise effective state aid measures to encourage innovation.

Second, companies should be free to choose their location within the EU. In this context, it is important that companies have tools at their disposal to facilitate such mobility. In the field of company law, the European Commission has taken several measures to increase the mobility of companies, not least the adoption of a "European Company Statute". However, this Statute is inherently cumbersome, due for example to the fact that this type of company may issue securities to the general public. One of the recitals of the SE¹² regulation is very explicit in this regard in that it provides that the SE must be of a "reasonable size". The minimum capital required is € 120,000, which is too high for SMEs.

Third, for products, the New Approach and the Global Approach for conformity assessment as such are innovation-friendly and have proven to be a success in terms of helping achieve an internal market with few burdens for manufacturers. The announced revision of the New Approach is a positive step to make the system even more efficient and to ensure that all market players, including authorities, follow the same rules and principles. We believe that the principles laid down in the New Approach, i.e. focusing on essential requirements and leaving the technicalities to standardisation by manufacturers, should be appropriately applied to new legislation relating to goods and services. This approach is the right way to ensure innovation, thanks to its flexibility and setting of essential requirements only. Regulatory arrangements should be sufficiently flexible and principle-based to cover different business models in different Member States and to allow these to develop in line with market developments. However, the standardisation process should be speeded up to keep pace with technological innovations.

Fourth, UNICE is of the opinion that the European Commission should develop a statute adapted to the needs of SMEs. In this context we advocate the adoption of a European Private Company Statute. The results of a feasibility study commissioned by the European Commission were presented on 13 December 2005. We recommend strongly that the European Commission pursues this issue which will be beneficial to European companies in terms of flexibility, providing a European label and reinforcing their mobility in the Internal Market and presence in international markets.

Fifth, innovation-friendly Internal Market actions should be flexible enough to address the different needs of innovative small and large companies. Large, multinational companies play an important role in the knowledge economy through the R&D and knowledge-intensive products and services they produce in Europe. The Internal Market should stimulate large companies to keep doing that in Europe as they are important because of their relations with SMEs (outsourcing R&D and production).

¹² Abbreviation for "Societas Europaea", Latin for "European Company".

Last, an innovative Internal Market also requires better implementation of public procurement directives (see response to question 9).

Question 7

Do you consider that the current IPR regimes foster growth and innovation? In your experience, where is more focus or action needed?

No, the current IPR regimes do not foster growth and innovation enough. A clearly defined and proactive policy to protect intellectual property is a vital need for Europe's innovation and competitiveness. Europe is still far from having such a policy, compared in particular with its main competitors, namely the USA and Japan¹³.

First, in the field of patents, more focus in improving the European patent system in terms of costs and legal certainty is needed. Patent costs are extremely high in Europe compared in particular with the USA and Japan, which is due mainly to wide-ranging translation requirements. Those high costs make access to the patent system complex and unappealing, particularly for SMEs. Patents granted in Europe are roughly three times more expensive than in Japan and even five times more than in the USA. For European patents translation costs account for about one third of their total cost. More emphasis should therefore be placed on finding appropriate tools for assisting SMEs in this respect.

Second, rapid ratification of the London Agreement reducing translation requirements for patents granted by the EPO is key. Comprehensive translations of granted European patents are very rarely used while they are a heavy burden for companies seeking to protect their inventions and improve their competitive position. The political will to make the European economy more competitive should lead to the removal of unnecessary barriers.

Third, progress on the adoption of the European Patent Litigation Agreement (EPLA) is essential. UNICE attaches great value to EPLA. EPLA is designed to adapt the European patent system to the needs of companies for legal certainty by setting up a common, integrated, judicial system for litigating European patents. Currently, European patents are enforced nationally, which can lead to conflicting interpretations by different national courts and increase costs as well as legal uncertainty for companies.

Last, UNICE supports the Community Patent, in principle, as a truly unitary instrument for the EU. However, the common political approach of March 2003¹⁴ and subsequent texts cannot constitute the basis for creating a Community Patent that can fully meet the needs of users for quality, cost-effectiveness and legal certainty. Only a truly unitary and cost-effective Community Patent is going to be

¹³ See also [UNICE response on the Commission consultation regarding a future patent policy in Europe](#), 30 March 2006.

¹⁴ That common approach refers to the political agreement on the Community patent that was reached in 2003.

attractive to users, in particular SMEs. The use of English-only regarding the language arrangements for the Community Patent is the most cost-effective solution.

Furthermore, UNICE would like to reiterate that there is no need for compulsory licences or national provisions to facilitate the dissemination of knowledge and ideas. This is ensured by the publication of patent applications. It is only the commercial exploitation of the patented inventions which requires a licence.

In the area of trademarks, the Community Trademark provides an effective tool that meets the needs of European business. Also in the field of copyright with the spectacular progress of technological developments and the growing importance of copyright-based activities for economic development, it is key to ensure a proper balance between rightholders' rights and the exploitation of those rights. In the new digital environment, a high degree of protection of intellectual property must be ensured, in a way that encourages creativity in the information society and does not hamper the development of new applications and services. In addition the protection of undisclosed information in relation to article 39 TRIPS is important.

Counterfeiting and piracy, growing at an alarming rate poses a critical challenge to the interests of European business. UNICE has consistently supported all measures aimed at providing strong and effective enforcement of intellectual property rights as well as closer cooperation with all stakeholders to address the problem globally. UNICE is working closely with the European Commission and coordinating its action with European and international business organisations.

In this context, the amended proposal for a directive on harmonising criminal measures aimed at ensuring the enforcement of intellectual property rights (COM (2006) 168 final) is an important initiative.

Question 8

In your experience, do Member State authorities apply procurement rules in a way that gives businesses sufficient opportunity for market entry?

There are indeed authorities that apply the procurement procedures outlined in the directives as they were intended. There are many more that do not. As a result, we are of the opinion that Member States do not currently apply the rules in a way that allows businesses sufficient opportunity for market entry.

It is the experience of business that the principles of the treaty (equality of treatment, mutual recognition, proportionality and transparency, etc.) are not being fully applied, restricting market entry for businesses.

This failure to apply the rules properly is clearly demonstrated by the *exclusive behaviour* which many authorities seem to practice when it comes to procurement. This exclusive behaviour can be seen in the way that many Member States' public authorities (often a municipality) still insist on designing invitations to tender in such

a way as to benefit a specific bidder (often a regional bidder). Other examples of obstacles to market entry which European business has come into contact with include what is termed *illegal direct* and *in-house* procurement. Such a situation obtains

- in the case of *illegal direct* procurement which sees procuring authorities awarding contracts without prior public announcement of tenders,
- in the case of illegal awarding of contracts to entities over which the procuring authority has control but which fall outside the scope of the conditions laid down in the Teckal ruling,
- in the case of in-house entities operating outside the jurisdiction over which its controlling authority has control (if in-house entities wish to go into expansive mode, then opening of the home market must be allowed).

These methods of procurement, which in our view are much more common than anyone cares to admit, go against the principles of the public procurement directives and are amongst the biggest obstacles to market entry which business and industry face.

As regards SMEs, we are of the strong opinion that contracting authorities should follow several recommendations developed by UNICE in order to facilitate SME access to public procurement¹⁵. For example:

- Small contracts which are more accessible for SMEs than larger contracts should be given more consideration by contracting authorities (but recognising that contract size should be based on value for money and effectiveness considerations;
- Payment on time;
- Abstaining from demanding securities;
- Advertising of all small public procurement contracts on a centralised national website;
- To participate in major projects, SMEs should be encouraged to form consortia and working groups;
- Standardisation of documents;
- SME eProcurement. Efforts must be made enable SMEs to take part in electronic procurement activities. Special attention must be paid to the introduction of electronic catalogues. It should not be mandatory to have electronic catalogues in order to take part in electronic procurement.

¹⁵ For the full list of recommendations, please see [UNICE Position Paper Improving SMEs access to Public Procurement](#), 31 May 2006.

Question 9

Do you think that public authorities are sufficiently aware of the opportunities the EU public procurement framework offers for fostering innovation? If not, how could they be made better aware of it?

We do not believe that public authorities are sufficiently aware of the opportunities that the EU's public procurement framework offers (though this lack of awareness is not just limited to public authorities). Public procurement is not a routine or simple administrative task and should not be treated as such. The public sector across Europe should create, sustain and develop vibrant public procurement markets, because these will motivate the strongest players to invest, research, innovate and compete.

There are a number of ways which this could be improved upon. Some public authorities are very professional in their use of procurement, others are not. Those that are most professional and know the procurement rules are using them as intended (including fostering innovation). However many do not. This can perhaps be addressed through the exchange of best practices at national level.

Considering the delivery of works, supplies and services, local authorities might also contemplate the provision of innovative solutions linked to guaranteed performance on the basis of life-cycle analysis.

Member-State governments themselves can also do more to demonstrate the possibilities of using the public procurement framework to foster innovation. Governments are also customers and as such could take a lead and use their own procurement activities to foster innovation. This is also true for the European institutions. They too can lead by example and use their own procurement processes in ways that foster innovation¹⁶. In this context, we welcome the possibility to use competitive dialogue.

We believe it should be considered essential to introduce and promote advanced education and training in public procurement, both for civil servants of contracting authorities and for suppliers, if the opportunities which the EU procurement framework offers are to be fully realised.

Looking at this realistically, training by means of case-by-case conferences or seminars will not in our view be enough. Advanced education and training can, in our mind, be provided through post-graduate education which could have official recognition in the form of, for example, a diploma. Such training programmes should be open to public procurement practitioners or other candidates with a prior

¹⁶ For more detailed information, please see UNICE's 2005 paper [Achieving world-class public procurement across Europe](#).

qualification in law, economics or in the technical field – from the side of both public purchasers and suppliers¹⁷.

Question 10

In your experience, are there any significant problems with the Internal Market preventing the development of the private equity and venture capital market on a cross-border basis? If so, what are they?

Yes, some problems prevent the development of the private equity and venture capital market on a cross-border basis. Financial needs are greatest in the early part of the life-cycle of a company when initial funding is no longer available to finance growth investments. However, economically advantageous venture capital investments are often inhibited by information problems between investors and target companies relating to the risks and the profitability of the investment. The thresholds determined by private equity investors' portfolio policies and required return targets often make investments of below 2.5 million Euros unattractive. This market failure needs to be addressed by public policy.

The Risk Capital Action Plan 1998-2003, which set the regulatory framework for the EU's private equity market, provides the right conditions for fostering healthy competition between market actors, but it does not address the specific problems.

The size of EU venture capital funds is small compared with their US counterparts, mainly due to divergent national legislation regarding fund structures in EU countries. Different regulatory requirements prevent investors from different countries from investing across borders. This leads to economically inefficient fund sizes in Europe. The Commission should thus consider proposing a common, EU-wide definition of a venture capital and private equity fund so that funds active in cross-border operations no longer need to establish a range of parallel intermediary structures in order to gain access to investors in a cross-border market and to avoid double taxation of fund investments in EU countries other than the country of establishment. The common structure should be optional for funds. Given the complexities of agreeing on a common structure, mutual recognition of national structures would be a first step towards making cross-border operations easier.

UNICE has also identified¹⁸ three priority areas to be addressed by EU financial services policy and by EU financial instruments for SMEs:

- Elimination of obstacles to the creation of cross-border markets for loans, private equity and venture capital;
- In some EU countries, there is a perceived need for SMEs to diversify their financing structure and increase their equity base;

¹⁷ For further information, please see UNICE's comments [Advanced education and training is key in promoting world class procurement in Europe](#), April 2006.

¹⁸ For more detailed comments, please see [UNICE Comments on SMEs Access to Finance](#), 12 December 2005.

- Development of private risk capital markets.

More specifically UNICE considers that:

- “Exit opportunities” for investors have to be enhanced;
- A common EU-wide structure for funds needs to be established;
- Tax policy must provide incentives for increased equity financing of SMEs.

Regarding funding solutions for innovative projects, in the proposed Competitiveness and Innovation Framework Programme (CIP) 2007-2013, the Commission plans to set up a *High Growth and Innovative SME Facility (GIF)*, under which it would allocate resources to investments in venture capital and in risk capital funds providing equity or quasi-equity capital to SMEs in their seed, start-up and expansion phases.

UNICE greatly welcomes this initiative, but would prefer higher thresholds than those foreseen by the CIP 2007-2013 up to which the GIF can invest in venture capital funds and in risk capital funds.

Question 11

Do you think that voluntary standards for services would be beneficial? If so, in which sectors should they be introduced?

UNICE agrees that voluntary standards for services may offer benchmarks and serve as guidelines which foster innovation. We also recognise the need for standardised documents and a common terminology. However, some basic requirements and a clear and coherent strategy should be provided before standardisation work starts. From the business perspective, one of the major reasons for the use of standards is to promote free trade in the Internal Market, therefore the development of services standards should arise from market demand and also have elements that facilitate cross-border trade. This is not necessarily the case today when new initiatives on service standardisation are made.

Development of certification schemes, which do have a tendency to become de facto mandatory, should not be encouraged as it adds to the costs without any proof of an added value. National schemes should be changed into European or, better still, international schemes and mutual recognition of the certificates should be ensured.

At the same time, the services market has peculiarities that must be taken into account:

- Excessive standardisation can reduce the variety of services and service quality;
- Standardisation process is time-consuming and hampers quick adaptation to new preferences of consumers or technological developments in dynamic areas;
- Enterprises’ preferences cannot always be adequately reflected in standards. Whereas SMEs are the great majority in the service sectors, they are less likely

to join the standardisation process. Therefore, their preferences are not always taken into account.

- In some sectors enterprises are not really aware of the existence of standardisation;
- Enterprises can lack financial resources to initiate and sustain European standardisation projects.

The proposed services directive encourages development of European standards for services with the aim of facilitating compatibility between services supplied by providers in different Member States, information to the recipient and the quality of service provision.

European standards are drawn up by the European standard-setting bodies, the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) and the European Telecommunications Standards Institute (ETSI). Where appropriate, the Commission may, in accordance with the procedures laid down in Directive 98/34/EC of the European Parliament and of the Council issue a mandate for the drawing-up of specific European standards for services.

UNICE believes that that question of service standardization, particularly on account of the proposed services directive, deserves a comprehensive debate with the participation of the interested stakeholders. Also prior to elaboration of new standards in this field, it is important that an ad hoc feasibility test is carried out and the relevant stakeholders are consulted.

Question 12

What are your views on how we carry out consultations on Internal Market policy? For instance, what are your views on the consultation process, and on the relevance and presentation of issues in our consultation documents?

Preliminary remarks about the better regulation agenda

UNICE supports the increasing emphasis which the Commission and European Council have over the past few years put on better regulation as a crucial tool for promoting competitiveness. Better regulation and less red tape is vital for doing business in Europe. It is important that this approach is borne in mind when future policy initiatives are developed and that it results in a real simplification of the EU legal framework as well as less administrative burdens for business in future¹⁹. The better regulation agenda should also be implemented at Member-State level.

Increasing the quality of legislation in the EU implies that regulation must be drafted and enacted at the appropriate level – national or European – and be proportionate to the problem to be solved. It must always be based on sound scientific facts. Better regulation also implies encouraging initiatives in favour of self-regulation or co-regulation. It includes no regulation when alternative solutions can prove to be

¹⁹ See [UNICE position paper on Better Regulation](#), 28 April 2005.

efficient to meet the objectives. Naturally, better regulation also implies the proper and swift implementation of Internal Market directives in national law.

Better regulation and ridding Europe's entrepreneurs of unnecessary red tape are all the more necessary for SMEs. According to a document released by the Irish government during its Presidency of the EU, it is estimated that in a firm employing 8 people, 50 per cent of one person's time is spent filling out forms. According to the same document, it is estimated that the cost of unnecessary regulation to the EU as a whole is somewhere in the region of 0.45 per cent of European GDP or nearly € 40 billion!

Another way of avoiding red tape is to promote e-government. E-government has the potential to considerably reduce administrative burdens linked with information gathering, both for enterprises and for the public administration. It is therefore of utmost importance that new legislation does not contain legal obstacles to the use of e-government.

As regards consultations on Internal Market policy

UNICE is pleased with the emphasis which the new Commission Impact Assessment Guidelines put on consultation and fully supports the idea that consultation should start as early as possible and that it should be seen as a recurring need in the policy development process rather than a 'one-off' event. The minimum standards for consultation²⁰ should be fully respected in order to ensure that consultation documents are clear and concise, that all relevant target groups are consulted, that there is sufficient time for participation, and that feedback is provided.

UNICE also welcomes the Lamfalussy procedure for securities legislation and its extension to banking and insurance. The procedure has contributed significantly to speedier adoption and increased flexibility of EU financial markets legislation. Consultation of market participants, as foreseen in the procedure, can improve the quality of the legislation if the proposals become more attuned to market realities. It can avoid the need for ex-post amendments to legislative proposals. Emphasis should be put on timely ex-ante consultation before the legislative proposals are drawn up so as to avoid an unnecessary request of ex-post amendments.

In order to elicit the widest possible response from market participants, the Commission should approach those mainly affected directly with its request for input and not restrict itself to advertising a consultation on its website. As regards financial services, the advisory panels to CESR²¹, CEBS²² and CEIOPS²³ should in each case convene those market participants that are really affected by the specific measure on the agenda. Consultation documents should contain clear executive summaries, which identify the key issues for different types of business.

²⁰ COM(2002)704.

²¹ Committee of European Securities Regulators.

²² Committee of European Banking Supervisors.

²³ Committee of European Insurance and Occupational Pensions Supervisors.

UNICE does not favour closed questionnaires since these can be over-simplistic and may lead to misinterpretations. In this respect, UNICE has reservations about the use of public online consultations, such as IPM (Interactive Policy Making). Such consultations are not a substitute for reliable and representative consultation. UNICE thus prefers the use of open consultations together with constructive dialogue with policy-makers. Direct discussions with European business organisations, individual companies and other interested stakeholders are important in particular when it is a question of impact assessments of specific legislative initiatives. These consultation methods generally provide a better understanding of stakeholders' positions and a better dialogue platform. Equally important is the fact that all replies should not be given the same weight. Greater account should be taken of the real representativeness of respondents.

The Commission should also bear in mind that SMEs are a very heterogeneous group with little time to devote to responding to consultations. In this context, it is important that the time allowed for consultations is sufficient (twelve weeks should be considered a minimum). Furthermore, UNICE is of the opinion that panels created as a quick and easy-to-use consultation mechanism (e.g. "SME Panel") cannot replace consultation of representative business organisations.

Question 13

What are your views on the way we carry out impact assessments on Internal Market policies? In your experience, are we using the right policy instruments to achieve the objectives?

Before preparing new proposals policy-makers need to better evaluate the content and implications of existing legislation in Member States. The presumption should be for no regulatory action in the absence of evidence of a problem.

In 2005, the Commission undertook to improve the quality of impact assessments of EU legislation. To this end, new internal impact assessment guidelines have been adopted to ensure that legislative proposals are properly assessed for their potential impact on Europe's competitiveness so that they are consistent with the Lisbon objectives. UNICE welcomes these new guidelines which provide better guidance on the need to assess the impact on growth, competitiveness and jobs of new legislative proposals, something which has not been done properly in the past.

From 2006, impact assessments should also clearly assess administrative costs, something which was also lacking in the past. It is important that these new rules are implemented fully and consistently to ensure that legislative proposals are always properly assessed for their impact on competitiveness.

The EU should also be willing to make changes where experience has shown that other solutions might be better or where the regulations prove to be disproportionate to their aim. A case in point is the Financial Services Action Plan.

UNICE also strongly believes that the credibility of impact assessments would gain if they were entrusted to or verified by an independent body. UNICE would for example be pleased to see an expert body verify whether an impact assessment of the lead DG has properly assessed the impact on competitiveness and attest to the five Commissioners responsible for competitiveness that the benefits of a proposal exceed the costs in line with the Lisbon objectives. UNICE would also support an independent body reporting on a yearly basis whether impact assessment principles and procedures have been applied correctly. In addition, relevant and representative stakeholders should be given an opportunity to comment on an impact assessment before it is finalised and before the legislative proposal is adopted. As stated above, and which applies equally to impact assessments, greater account should be taken of the real representativeness of respondents.

UNICE also supports impact assessments being conducted on all new legislative initiatives. Assessments should follow the legislation from “cradle to grave”, i.e. throughout the entire decision-making process towards adoption, i.e. including amendments proposed by the EP and the Council. That is why UNICE regrets that no proper impact assessment has been carried out on the Commission’s amended proposal for the services directive. Also the renewed emphasis on cost-benefit analysis should help provide the motivation to enhance the collection of data, which can then be a powerful tool to promote the Internal Market.

In particular, costs for business are almost never quantified in Commission’s impact assessments. A 2006 CEPS study on the quality of impact assessments made by the Commission in 2005 shows that costs for business were assessed in only 14% of cases²⁴.

Only through looking carefully at the potential impact of envisaged legislative or non-legislative initiatives on enterprises, especially SMEs, can the European Commission fully grasp the extent of this impact.

Question 14

What are your views on evaluations conducted for Internal Market policies and the follow-up given to them?

UNICE strongly supports carrying out ex-post evaluations of EU policies after measures have been put in place. This is an important tool to see whether EU measures have achieved their goals and whether or not they have done so without disproportionate additional costs. Such evaluations should be the basis for simplification measures to reduce burdens and render legislation cost-effective.

²⁴ Impact Assessment in the EU: The State of the Art and the Art of the State, Andrea Renda, Brussels, 1st January 2006.

Question 15

Do you think that Member States should be encouraged to carry out national screening exercises (of existing and new rules and administrative procedures) and if so how?

Yes, UNICE believes that, in addition to the Commission, the Member States should also carry out screening exercises of existing and new rules and administrative procedures. If the Internal Market is to become a reality, Member States have a vital role to play. Screening, for example, is an important exercise for simplifying rules and reducing administrative costs. Impact assessments are crucial for getting an idea about the cost-effectiveness of legislation and especially measurement of the size of administrative burdens is an important information-based tool for identifying simplification priorities.

There is significant know-how available in the EU as regards the clear and transparent evaluation of administrative costs and in this respect UNICE favours introduction of the so-called *Standard Cost Model*. This method provides for a clear and transparent evaluation of business costs and is relatively easy to apply. Information about the size of burdens will also help raise awareness about the need for simplification and generate support for simplification proposals. In addition, UNICE believes that the Commission and Member States should link screening to the setting of a quantified goal for the reduction of administrative burdens, whereupon they should exchange best practices and engage in peer review to ensure fast progress in the adoption of simplification measures.

The proposed services directive is a good model providing for screening obligations in order to help modernisation of the national administrative and regulatory frameworks governing services. This should result in simplification and enhanced transparency.

National screening also means proper transposition. For instance, the use of so-called “gold-plating”, i.e. going beyond what is necessary to comply with EU legislation when transposing a directive, should be significantly reduced. While the goal of the EU legislation is to create a level playing field, “gold-plating”, creates new barriers and significant burdens for business. Measures to impede such “gold-plating”, legislative fragmentation and non-uniform understanding should therefore be established in the renewed strategy.

In order to have correct and timely transposition, the Commission should engage in a regulatory dialogue with Member States. To that extent, the “transposition working group”, which provides a forum for discussion and the exchange of best practice and a specific website and which helps Member States implement the Unfair Commercial Practices Directive²⁵, is an initiative to be repeated whenever necessary.

²⁵ 2005/29/EC.

Furthermore, the numbers of *new* national, technical regulations are still at a very high level. Neither foreign authorities nor business organisations have the resources to check the long-term consequences of such increasing national regulation, even if it is notified as per directive 98/34. This is why we support the idea of introducing a mandatory 'Internal Market Compatibility Test' for all new national, technical regulations. This means an obligation to answer the question: "Will this new regulation hinder the free movement of goods or services - does it conform to the principles of the Internal Market?"

Question 16

In which fields do you see the greatest need to step up cooperation between Member State authorities in order to make the Internal Market work?

In order to achieve uniform and equal interpretation, application, monitoring and enforcement of the EU legal framework and thus avoid distortion of competition, it is also important to establish close administrative cooperation between Member States. The revision of the Internal Market strategy should put forward targeted measures (meetings, exchange of information, events) to enhance understanding and acceptance of other Member States' approaches to common problems. The Commission should have a role in facilitating the above-mentioned measures to be carried through within and between the Member States.

In accordance with the principle of subsidiarity, the Commission's role can go as far as adopting measures to foster coordination between Member States. Efficient cooperation between national authorities responsible for enforcement is essential for the proper functioning of the Internal Market. When appropriate, systems of cooperation or mutual assistance between competent authorities should be established at Community level. For instance, the 2004 regulation on consumer protection cooperation²⁶ is an example to be followed.

Question 17

What is your assessment of the role and work of supervisory or regulatory authorities in Member States? Should similar systems of supervision be extended to other Internal Market fields?

To have the right balance between pre-market control measures and post-market measures, Member States must fulfil their responsibility to ensure proper market surveillance. The aim of this is both to ensure compliance with EU legislation and to ensure a level playing field for manufacturers²⁷. Special attention should be given to the fact that the increasing number of imported products necessitates efficient involvement of customs authorities in market surveillance activities. Customs

²⁶ Regulation (EC) No 2006/2004 of the European Parliament and the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

²⁷ See [UNICE position paper on efficient market surveillance](#), October 2005.

authorities have already instigated a change in their role to become more focused on security and safety. Control of product conformity with European legislation should be included in this new customs approach.

UNICE also believes that the Draft Community Framework for Market Surveillance as presented by the EU Commission (Certif 2005-7) provides a good basis for discussion and for drawing up concrete measures within this area. A common internal market requires an efficient market surveillance system. Equivalent and comprehensive provisions as well as correct and consistent implementation and enforcement are required to ensure that the overall aim of the internal market is advanced. Member States need to take responsibility for ensuring that Market surveillance is conducted in a consistent and homogeneous manner.

Closer cross-border cooperation between the market surveillance authorities throughout the EU area is required in order to ensure more effective use of available resources and to avoid duplication of work. This type of cooperation is essential to achieve consistent enforcement of the legal framework and in order to enhance mutual confidence as mentioned above.

In financial services, national supervisory competences are currently fragmented along national lines. Their nature and extent differ significantly among Member States. Also, supervisory regimes for internationally active market participants are divergent according to the subject covered, such as prudential supervision, lender-of-last resort function, deposit insurance, etc. However, while local supervisors are each competent in questions regarding parts of the operations of financial institutions conducted in their country, those institutions themselves perform operations relevant for supervision, such as integrated risk management, increasingly on a consolidated basis.

National divergences in regulatory approaches, such as different reporting standards or internal risk management model validation criteria pose a significant impediment to the further integration of financial markets and work to the detriment of issuers and investors alike. For areas subject to the Lamfalussy procedure, increased cooperation between national administrations is foreseen to ensure consistent transposition. UNICE has repeatedly welcomed the cooperation mechanisms foreseen in particular in the areas of supervision of securities markets and banking, such as provided by level 3 of the Lamfalussy procedure. Additional initiatives, such as the *mediation mechanism* for national regulators in the field of securities legislation proposed by CESR can be a useful instrument to eliminate differences of interpretation of EU law and thus ensure more uniform enforcement, on condition that it does not impinge on the prerogatives of the European Commission and the European Court of Justice in interpreting and enforcing EU law, and that it reserves substantial consultation and information rights for market participants. Also, consistent enforcement would benefit from an increased *exchange of information* between national regulators, to be provided to their EU-level committees (CESR, CEBS, CEIOPS), on the administrative rules and practices they have adopted on the basis of EU legislation, accompanied by their reasoning as to why a specific practice or approach has been adopted.

Furthermore, the *alignment of certain rule-making and supervisory competences*, in particular in the field of securities market regulation and supervision, but also in banking supervision, could contribute to a more consistent implementation and enforcement of EU law across the EU. At the same time, national regulators' powers should be subject to a thorough review: Powers of regulators should be set by parliament and not by the regulators themselves. Thus, rule-making powers which the regulator might use to increase his own competences need to be eliminated.

In the long run, however, the coordination between national regulators and supervisors within the current system of fragmented powers may not be sufficient for regulatory and supervisory practices to converge to the level mandated by market practices. Supervisory practices and reporting standards may need to be harmonised through legislation so that financial institutions active in different Member States are not subject to multiple requirements. Furthermore, it needs to be evaluated whether certain supervisory competences need to be restructured at EU level, along the lines of the home country control principle foreseen in the Second Banking Directive. This would provide market participants with one single initial point of contact, a sort of "lead supervisor" responsible for a number of important supervisory tasks such as reporting schemes regarding solvency and liquidity issues, or the validation and authorisation of internal risk management models. This should apply to operations at the consolidated, group level, but also at the local level. The lead supervisor should be assisted by other supervisors from those countries in which the financial institution has business interests, and could delegate powers to them. The "consolidated supervisor" model as foreseen in the Capital Adequacy Directive for the supervision of adequacy of own funds or the "coordinating supervisor" model foreseen by the Financial Conglomerates Directive may be a first step in this direction.

Question 18

What is your view on current mechanisms for enforcing Internal Market rules at the national level? What should be improved?

Enforcement of Internal Market rules remains unsatisfactory. Current mechanisms should therefore be improved. First, satisfactory enforcement at national level implies a shared responsibility. The Commission has a double role: it should ensure correct enforcement of the rules as well as facilitating increased cooperation between Member States and efficient problem-solving.

To enhance enforcement, UNICE thinks that networks of Member-State representatives are useful tools. Therefore, those networks should be at appropriate level: Member States' representatives must be the people in charge of implementation of Internal Market legislation. We also believe that the EU should step up its action regarding infringement proceedings against non-complying Member States and perhaps consider swifter action and accelerated procedures.

Business has the role to ensure compliance of its products and services with the rules, and users and consumers must take responsibility for using the products in

the correct way. Furthermore, it is important that both business and citizens are conscious of the opportunities and challenges of the Internal Market and participate in the dialogue for further improvements.

Second, an effective and well-functioning problem-solving system is of vital importance for fully exploiting the opportunities of the Internal Market. The SOLVIT system seems to be a useful tool. However, for the system to be efficient, each and every Member State must put sufficient resources into the administration of their SOLVIT centres. The new Strategy should also include measures aimed at achieving a more efficient dispute settlement mechanism. In this context, it would be appropriate if the Commission were able to give an informal statement in cases which are raised at national level, or within the SOLVIT system, thus ensuring that a "European view" is taken into consideration. Commission intervention at an informal stage might also help speed up the process and prevent a court case.

In addition, adequate resources need also to be allocated to information and communication of this way of solving problems. UNICE strongly encourages the Commission to communicate more about the existence of such mechanisms (when possible via business organisations through providing publicity material in a format that is easily disseminated and translated into the appropriate Community languages). A follow-up mechanism should be put in place in order to identify possible repeated problems of a similar character that might require a structural (EU) solution.

Question 19

What is your experience (if any) of the Commission's infringement policy in the field of the Internal Market? Which type of infringement cases should we handle as a priority?

The Commission has an important role to ensure correct enforcement of Community legislation. The Internal Market Scoreboard includes a report on infringement proceedings. In the light of transparency measures and in order to keep pressure on Member States to transpose directives correctly and timely into national law and to ensure that they are applied properly in practice, UNICE believes that it is necessary to continue to follow developments and to publish the statistics as it is done today.

In view of the well-functioning of the Internal Market, the Commission should handle cases with direct influence on the free movement as a priority. However, correct and uniform implementation of directives in general is of great importance for creating a level playing field for companies. This is why sufficient resources must be allocated to follow transposition and application of EU legislation in practice, especially in view of the challenge to create one internal market based on 28+ different countries.

Question 20

Do you agree with the need to step up coordination and responsibility in Member States for managing the Internal Market? What (further) assistance could the Commission give in this respect?

Enlargement has increased the size of the Internal Market and the number of public authorities involved to such an extent that a top-down management approach is no longer workable. In that context, Member States have to take greater ownership of and responsibility for the Internal Market (ensure efficient implementation of the rules, including proper and efficient market surveillance, cooperate more, provide mutual assistance, boost confidence, and build trust and understanding in each other, etc.). They should show the same degree of responsibility for the proper functioning of the Internal Market as they bear vis-à-vis their domestic market. The Commission has a role to play as the facilitator to ensure increased cooperation between Member States and efficient problem-solving

Question 21

In your experience, does Internal Market regulation take sufficient account of the bigger picture of international competitiveness? If not, in which areas do you see problems and what could be done?

UNICE does not believe that internal market regulation takes sufficient account of international competitiveness. The overall aim of regulation should be to make the EU an attractive location for investment (domestic and foreign) where innovation can flourish. In the elaboration of EU legislation, due consideration should also be given to the framework conditions existing in third countries, the objective being to assess the impact on business competitiveness.

The EU should frequently *benchmark* its regulatory approaches, especially for new regulatory issues, to ensure that they are not diverging from the approaches of major trading partners. Otherwise, business will be put at a competitive disadvantage and policies to promote regulatory convergence with major trading partners will be difficult, if not impossible, to achieve. A clear example of where the EU regulatory approach erred in the past is in biotechnology. However, regulatory convergence will also require the EU to show some flexibility with regard to recognising the regulations of major trading partners such as the USA and Japan.

Unfortunately, EU regulations have not always contributed to strengthening the EU's manufacturing and services base. Instead they have contributed to burdensome and costly overregulation, especially in the area of environment, consumer protection and financial services. UNICE regrets that indirect impacts of the ETS²⁸ on power prices have had a significant negative effect on the competitiveness of Europe's energy-intensive industry. Therefore, it is vital that regulation within the EU is open to rapid revision to enable unintended impacts on the competitiveness of EU industry to be ameliorated. Another example can be drawn from REACH.

²⁸ Set up by the ETS Directive 2003/87/EC.

Substantial resources will be needed within governments and industry to comply with the REACH system. The call on resources, both human and financial, is often disproportionate to the objectives of effective chemicals management. This will adversely affect EU competitiveness. Moreover, initiatives such as the mark of origin for certain products or extra taxes on low-cost products are not measures which will help European companies become more competitive.

As regards financial services, it should be a key goal for European policy-makers 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. Policy-makers and legislators must pay attention that, while creating access to an integrated EU market for EU issuers, EU legislation does not at the same time provide an incentive to issuers and investors from third countries to move away from the EU, for example through increased transparency requirements.

We welcome the increased dialogue between the EU and US. CESR should use this forum to form its view on how EU financial markets legislation might affect EU companies' access to global capital markets.

Costs to EU business have risen at unsustainable levels while international competition continues to push down output prices for many EU products. Improved EU industrial policies that foster innovation and investment will allow EU industries to maintain a competitive edge. However, this requires a regulatory framework that favours rather than hinders European competitiveness.

New EU regulations should not only be subject to a generalised impact assessment, including an evaluation of the direct and indirect costs, but should also include a proper "necessity test" (regulatory measures based on the proportionality principle, an examination of their impact on trade and investment and a WTO compatibility test). The objective should always be to choose the least trade restrictive form of regulation in line with the WTO. UNICE also insists that impact assessments must be based on adequate and proper consultation of the industries/companies concerned.

Question 22

On which regulatory issues and with which countries and regions should the EU strive for more international regulatory convergence or equivalence? How should this be achieved? By contrast, where do you think differing rules and standards should coexist?

To remove regulatory barriers, the EU should become a leader in developing models for advancing regulatory convergence and mutual recognition with EU neighbours and with its main trading partners. Initiatives to set common regulatory objectives - such as taken by the UNECE WP.6 - either for specific sectors or for specific regions should also be given full support. A stronger focus should be directed towards work on international standards.

On which regulatory issues should the EU particularly strive for more regulatory convergence?

The achievement of truly global International Financial Reporting Standards (IFRS) should be an important long-term goal of the EU. Globally used accounting standards will lower the cost of capital and thus contribute to more growth and jobs, also in Europe. A concrete short-term goal (by 2009) should be sufficient progress on the current roadmap for convergence between IFRS and US GAAP in order for the reconciliation requirement for European companies listed in the USA and using IFRS to be lifted. Convergence must, however, not be pursued at any price (see question 23).

Apart from IFRS, the regulatory issues on which the EU should particularly strive for more regulatory convergence depend on which EU partner is considered.

With which countries?

Cooperation with the USA on regulatory convergence would probably provide the greatest economic benefits to the EU due to the high degree of economic integration. However, the EU and the USA should make a stronger commitment to recognising the impact of regulation on the transatlantic market when conducting impact assessments and adopting new regulations. In addition, UNICE feels that both countries should work together to prevent divergence in new regulatory fields. The most significant obstacle to even closer EU-US economic integration is first and foremost the divergence in health, safety, consumer and environmental legislation between both markets. In addition, new, and often disproportionate, security regulations pose a significant risk to transatlantic trade. UNICE has been pleased with the high-level commitment shown by both the USA and the EU to regulatory cooperation through the means of the High Level Regulatory Cooperation Forum since the June 2005 EU-US summit. Now, however, it is time for the Forum to begin to deliver real results.

Cooperation with other countries on regulatory convergence, such as Russia, should also be sped up to facilitate closer integration. Other key countries should include the main EU trading partners, the countries included in the Neighbourhood policy and Canada. As regards Neighbourhood policy countries, UNICE considers that the Neighbourhood policy should facilitate the adoption of EU technical regulations and standards in order to foster trade and closer economic integration with those countries.

Question 23

Where should the EU engage more strongly in either intergovernmental or nongovernmental standard-setting organisations?

Companies would appreciate greater clarification, more transparent frameworks and recognition of international standards. With this in view, closer cooperation between EU industry and international standardisation bodies should be promoted. The EU should strive to establish more stringent rules regarding the implementation of

international standards and the requirement of least trade-restrictiveness of technical rules and regulations.

The establishment of a new WTO mechanism to solve implementation problems due to technical regulations through consultation and mediation based on the establishment of national contact points in all WTO Member States could also facilitate trade and amicable solutions to Non-Tariff Barriers (NTBs).

As regards IFRS, which have been mandatory for listed companies in the EU since 2005, are fixed by the International Accounting Standards Board (IASB). EU companies therefore have a vital interest for their specific concerns to be taken account of in the IASB standard-setting procedures. This is unfortunately not always the case at the moment. The EU should therefore strive to strengthen the European voice on IASB notably through giving support to EFRAG, the expert advisory board on international accounting set up by European stakeholder organisations.

Question 24

In your experience, do Member States and the EU institutions do enough to promote the opportunities presented by the Internal Market? Which concrete actions would you suggest for improving the situation?

No, Member States and EU institutions should do more to promote the opportunities presented by the Internal Market, not only for companies but also for citizens, as has been advocated in the recent communications about the future of Europe. It is essential that institutions enhance communication about those opportunities. For this purpose, business urges investment in a European-wide communication strategy, initiated by EU institutions, implemented by national governments and parliaments, and involving representative stakeholders.

In the context of the Commission's contribution to the future of Europe, we consider that the emphasis on the Internal Market of utmost importance. The Internal Market is a great and tangible achievement of the European Union. It can and should rightly be presented at a strong link between citizens and Europe.

Good "grass-roots" communication is a prerequisite for building trust and understanding concerning the need for a more integrated Internal Market. Communication should take place as close to the citizens as possible. National information plans should also be developed. Those should include accessible explanation and examples as to why new EU legislation is required in various areas, what the new legal framework aims to regulate and how it should be interpreted.

Efficient and wide promotion of the Internal Market opportunities also implies actions from stakeholders. UNICE is decided to play an active role. As decided by UNICE Presidents, UNICE has committed to become stronger in campaigning in favour of business issues, explaining to the decision-makers on EU and/or national level how to create a favourable business environment.

* * *

REPLY TEMPLATE
FOR THE
PUBLIC CONSULTATION ON THE FUTURE OF THE INTERNAL MARKET

In accordance with Commission Consultation standards this consultation will be open for 8 weeks (i.e. until 15 June 2006).

We kindly invite you to make use of this reply template. You may reply in any of the official languages of the EU, although by replying in English, German or French, you will facilitate our analysis of your reply.

Please send your comments by e-mail to:
markt-future-IM-policy@cec.eu.int

Or by regular mail to:
Bernhard Friess
European Commission
DG Internal Market and Services
C-107 5/32
B – 1049 Brussels

PRIVACY STATEMENT

Please be sure to **indicate** if you **do not consent** to the **publication** of your personal data or data relating to your organisation with the publication of your response or if you require us to publish your contribution **anonymously**.

The contact data provided by the stakeholder make it possible to contact the stakeholder to request a clarification if necessary on the information supplied. By responding to this consultation you automatically give permission to the Commission to publish your contribution on the website

http://europa.eu.int/comm/internal_market/strategy/index_en.htm#consultation

unless your opposition to publish your contribution is explicitly stated in your reply. The Commission is committed to user privacy and details on the personal data protection policy can be accessed at:

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- I / We do not consent to the publication of this reply (tick the box)
- I / We accept this reply to be published anonymously (tick the box)

Profile of the respondent

Please indicate which of the following categories you represent:

Private citizen / Business / Representative organisation / Public administration / Other

Business / Representative organisation

Private citizen, please state your
Name, address (incl. country of residence) and email

Business, please state your

Name, address (incl. country of residence), e-mail, sector, size (number of employees) and whether you are engaged in any intra-EU cross-border activities.

Representative organisation, please state your

Name, address (incl. country of residence), e-mail and level of activities (local, regional, national, EU, International)

UNICE (Confederation of European Business), 168, Av. de Cortenbergh, 1000 Brussels; email: main@unice.be, EU and international level of activities

Public administration, please state your

Name, address (incl. country of residence), e-mail, and level of activities (local, regional, national)

EU Institution, please state your

Name, address (incl. country of residence), e-mail, and level of activities (local, regional, national, EU, International)

Academic Institution, please state your

Name, address (incl. country of residence), e-mail, and level of activities (local, regional, national, EU, International)

Think tank, please state your

Name, address (incl. country of residence), e-mail, and level of activities (local, regional, national, EU, International)

Your reply to the questions in the consultation document

As indicated in the consultation document we do not expect all stakeholders to be concerned by all questions asked. However, we would be most grateful if you could state hereunder your replies to the questions that matter to you.

Please see document at annex for response.