

COMMISSION COMMUNICATION
« ADAPTING AND PROMOTING THE SOCIAL DIALOGUE
AT COMMUNITY LEVEL »

COM(98) 322

UNICE POSITION PAPER

13 November 1998

GENERAL COMMENTS

UNICE has noted with great interest the Commission communication on adapting and promoting the Social dialogue at Community level. This Communication follows a previous one, adopted by the Commission in September 1996, which objective was to gather a wide range of views of the interested parties on the development of the Social Dialogue. UNICE answered to this first Communication on 26 February 1997. The issues developed in this paper remain valid.

In general, although the overall structure of the document has improved and is clearer than the previous one, UNICE believes that clearer distinction should have been made between the social dialogue on the one hand and advisory committees and the other forms of concertation with the social partners on the other hand.

A- Regarding consultation

UNICE welcomes and supports the general objectives set by the Commission, especially concerning improvement of information channels and ensuring wide consultations of interested parties on ongoing developments with social policy implications. It recognises that the Commission has made a lot of efforts in that direction. UNICE also supports the more restricted approach proposed by the Commission regarding consultation of social partners under article 3 of the Agreement on Social policy, due to the very specific nature and objective of such procedures.

However, UNICE regrets that the Commission did not follow this approach by adopting in a great haste its proposal for a decision on sectoral social dialogue committees, and submitting its proposal for a Council Decision on the Standing Committee for Employment, even before the social partners had the possibility to express their views.

B- Regarding negotiations

UNICE welcomes the fact that the Commission underlines that only the social partners can develop a dialogue, decide on their own structures, and that it cannot impose participants in freely agreed negotiations. In its view, this must not be restricted to negotiations under article 4.3 of the Agreement on social policy and applies also to the autonomous social dialogue process in general.

Furthermore, UNICE welcomes the Commission's statement that it intends to continue to use the criteria for assessing representativeness included in the Commission communication concerning the application of the agreement on social policy (COM (93) 600 final), which reflect the proposals made in UNICE, CEEP and ETUC joint opinion of 29 October 1993.

However, UNICE deeply regrets that this statement is contradicted by the fact that the formulation of article 1.b of the Commission decision on the establishment of sectoral social dialogue committees has weakened these criteria as compared with COM (93) 600 final. Instead of requiring organisations to be representative "in all Member States, as far as possible", the Decision only requires them to be representative "in several Member States".

Finally, UNICE recalls that, in full respect of the principle of subsidiarity, social dialogue at European level should address issues of relevance at EU level. This is of particular importance with regard to the practical implementation of the employment title of the Amsterdam Treaty.

PROMOTING THE EXCHANGE OF INFORMATION

UNICE shares the Commission's objective to ensure better diffusion of information and the improvement of the information channels. However, UNICE considers that diffusion by the Commission of information concerning the social dialogue should be done in close co-operation with the concerned social partners.

UNICE has reservations with regard to the Commission's intention to reinforce its quarterly "Liaison Forum" assembling representatives of the cross-industry and sectoral organisations at EU level and maintains its position of this issue (see points II.2.3 to II.2.5 of UNICE's position paper of 26 February 1997).

ADAPTING THE CONSULTATION PROCEDURES

UNICE welcomes the general view of the Commission with respect to wide consultations. For the sake of transparency, UNICE however believes that the Commission should systematically provide information on who are the organisations it intends to consult, or were consulted on an issue.

Advisory Committees at cross-industry level

UNICE recalls its attachment to the proper functioning of the Advisory Committees (ACs). In this regard, the social partners' recommendation of June 1993 remains valid. In particular, UNICE welcomes and supports the proposed merger of the AC on social security for migrant workers with the AC on free movement for workers.

Considering the AC on security, hygiene and health protection at work (ACSHH), UNICE adopted, on 27 April 1998, a position paper (attached) giving its views on the way consultations of the social partners and of the ACSHH should be carried over once the Amsterdam Treaty will come into force. In particular, UNICE reaffirms its attachment to the good functioning of this committee and urges the Commission to propose to the Council the modifications of its internal rules adopted by the three interest groups.

UNICE shares the Commission's general objective to avoid overlaps and duplication of work or procedures. UNICE is however strongly opposed to the Commission's intention to align the work of the AC with general social dialogue developments. It considers that in order to avoid duplication of work it would be desirable to recognise the role played by UNICE and ETUC in the co-ordination of the interests groups concerned in the ACs. UNICE considers that consultations within the social dialogue and within the ACs are of a fundamentally different nature and have different objectives and that the Commission's intention would only add to confusion.

Consultation under Article 3 of the Agreement on Social Policy.

The choice of organisations consulted must be made according to the themes raised by the Commission. For consultations in the framework of the agreement on social policy, these organisations must meet the criteria for representativeness.

For horizontal themes, the interprofessional social dialogue where sectors play a role through national employers' associations and feed into the national co-ordination procedures is the appropriate forum.

UNICE deeply regrets that the Commission did not follow-on its intention to re-consider the deadline for consultations with a view to making it more adaptable on a case-by-case basis, as announced in its first communication, and decided to opt for a six-week deadline as a general rule.

Such a short deadline does not allow proper consultation by the social partners of their respective members (including national consultation processes). UNICE's intention is certainly not to slow down any process. On the contrary, proper time allows the social partners to carry out their respective internal consultations, necessary for the elaboration of their positions. Experience has shown that this can then bring efficient and more rapid solutions than the legislative procedure.

Furthermore, UNICE insists on the importance of genuine consultation of the social partners by the Commission. At evidence, the Commission remains fully responsible for its own decision, especially vis-à-vis both Parliament and Council. But UNICE strongly believes that, when it decides not to take into consideration certain arguments put forward by consulted organisations, the Commission should give reasons for it. This would prevent bad feelings generated in the past from reappearing.

Sectoral social dialogue

According to UNICE, sectoral social dialogue is the appropriate place to tackle subjects specific to the sectors concerned. Its comments on this issue, expressed in section II.2 of its position paper dated 26 February 1997, remain fully valid. In particular, UNICE strongly believes that the fundamental principle of **autonomy of the social partners** equally applies to social dialogue at sectoral level. .

UNICE has reservations concerning the text of the Decision on sectoral social dialogue. It is in particular concerned with the content of articles 2.b, 5 and 7.1 which contain elements breaching the principle of autonomy of the social partners. It is also concerned with the fact that the text of the decision does not specify that the sectoral committees would be consulted on developments at Community level having social implications **in the sectors concerned**.

In addition, UNICE believes that the Commission should make it clear that the choice of opting for the establishment of such a committee by the concerned social partners is entirely **voluntary**, and, above all, that the choice not to opt for establishment of a sectoral committee does not deprive the concerned social partners of their rights to be consulted, guaranteed by the Treaty itself.

Negotiations under Article 4 of the Agreement on Social Policy.

UNICE stresses that the representativeness of the parties to an agreement must be examined on a case-by-case basis. It recognises that it is the Commission's task to evaluate the validity of an agreement as a function of its content, including determination of whether the parties affected by the agreement were represented and welcomes the fact that this analysis was confirmed by the ECJ in its decision on the parental leave directive, thereby recognising UNICE's representativeness of companies of all sizes, including SMEs.

UNICE believes that the results of the study carried out by the Commission on the representativeness of the interprofessional social partners summarised in the 14 December 1993 Commission communication on implementation of the Protocol on Social Policy remain valid.

Finally, UNICE would like to call for a strict respect of the legal procedure provided for in article 4 of the Agreement on social policy, and recall that an agreement between the social partners cannot be modified by any third party.

EMPLOYMENT PARTNERSHIP

Val Duchesse social dialogue

UNICE underlines the importance and the value of the results achieved so far by the "Val Duchesse" social dialogue in accompanying the Single Market and the EMU processes. It believes that trying to improve convergence of views between employers and workers representatives at EU level will continue to be important, notably in the context of enlargement and of the implementation of the new European employment process.

However, UNICE would like to underline that employment policy remains the main responsibility of Member States and that its own involvement can only be limited to the part of the process which concerns the European level (i.e. preparation of European guidelines and contribution to exchanges of good practices on measures taken in Member States which are relevant for their implementation).

UNICE would like to be consulted in the context of the Val Duchesse social dialogue on draft proposals for employment guidelines prior to their adoption by the Commission as is already the case for broad economic policy guidelines. Similarly, it would like to have an opportunity to discuss the Commission communication on national action plans for employment prior to its adoption by the Commission at an early stage in order to be able to contribute to the process.

Tripartite concertation

UNICE welcomes tripartite discussions on employment by way of meetings between representatives of social partners representatives, of the Council or of the new Employment and Labour Market Committee (ELC) and the Commission. It is convinced that such discussions are necessary to create the framework conditions conducive to employment creation. However, these tripartite discussions should clearly be distinguished from consultation in the context of the social dialogue or discussions between the social partners, as an autonomous process between employers and workers representatives leading to declarations or agreements supported by both sides.

These tripartite discussions have notably taken place in the context of the Standing Committee for Employment (SCE). Like the Commission, UNICE believes that the functioning of SCE should be improved. Consequently, it favours a reform of this committee. However, it does not support all the elements of the Commission proposal for a Council decision modifying Decision 70/352/EEC as modified by Decision 75/62/EEC and would like to make the following remarks.

- UNICE agrees that technical discussions between the new ELC and social partners should take place in the context of the SCE before the EMC gives an opinion on proposals for employment guidelines and on the Commission communication on national action plans for employment. It is therefore astonished that articles 1 and article 2 of the Commission proposal which amend the tasks and composition of the SCE do not refer to the ELC.
- UNICE is opposed to the amendment which specifies that the SCE shall meet twice a year. The Commission justifies this amendment by the fact that it reflects better the important role of the social partners in the new employment process. UNICE believes that the proposed text does not represent an improvement in comparison with the present wording which foresees that the SCE shall meet before possible decisions by the competent institutions are taken. One of the main difficulties encountered by the social partners in this context is to be properly consulted by the competent institutions prior to their decisions being taken. The notion of prior consultation should explicitly be stated in the new decision.
- Given the fact that employment policy remains the primary responsibility of Member States, UNICE regrets that the proposed modification only foresees meetings with restricted delegations of the social partners. Excluding national social partners who are involved in practical actions on the ground would be counterproductive. It would also be unbalanced and unacceptable to ask social partners to operate in a restricted format while the Council would still have the possibility to meet in a plenary format as indicated in point 6 of the explanatory memorandum. In any event, UNICE believes that the restricted format can only apply if there is symmetry with the Council delegation (i.e. it is also restricted) and with ample notification so that sufficient time is allowed to carry out the necessary consultations with all employers members of the SCE and with their respective national members. UNICE also has great doubts on the proposed number of seats (8 for employers and 8 for workers) attributed to different groups of organisations.

If the system is to be operational, for meetings in a restricted format each side of industry should have 12 seats.

- UNICE welcomes the new practice of holding meetings between the troika at heads of government level and social partners prior to European Council's meetings. These meetings take place independently from the SCE. Their value is to have open and fairly informal discussions in a restricted format. UNICE does not believe that the SCE would be the appropriate forum to organise these meetings. UNICE insists that the different character of these two forms of meetings is duly respected.

NEW PROSPECTS OPEN UP

Social dialogue and enlargement

UNICE broadly supports the objectives set up by the Commission concerning social dialogue and enlargement. In this respect, UNICE would like to emphasise the need for helping national social partners and public authorities in the applicant countries to develop social dialogue, according both to their own rhythms and to the most appropriate ways, with regard to each national specificities. This could be achieved by improving technical assistance to employers organisations in the context of the PHARE programmes and ensuring proper involvement of the social partners of Member States in the development of projects. UNICE warns against the temptation of imposing systems in these countries which would not suit their needs.

Expert group

Finally, UNICE questions the Commission's intention to set up an expert group on industrial relations and social dialogue in Europe, and would like to receive more information from the Commission on its intention in this respect, before expressing any comment.
